

Courts' decisions indicate judicial weakness that requires remedy

"Eye on Justice" obtained a judgment rendered by a magistrate court which contained noticeable contradiction.

The judgment stated, under the court title: "After having verified the suit file and provided evidences therein finds that it was proved that the accused party has committed the charge ascribed thereto", that "the court, based on what has been stated, determines, pursuant to Article (274/1) of the Criminal Procedures Law in force, that the defendant is innocent of the charge ascribed thereto because the act does not constitute a crime".

For the purposes of looking into the controversial contradiction contained in the judgment in question, "Eye on Justice" hereby publishes the judgment shown below:

Palestinian National Authority The Judicial Authority



Penal Suit No. 5646/2011

Judgment

**Issued by the Conciliation Court authorized to conduct the trial
and issue it in the name of the Arab Palestinian People**

The Court Panel:

Clerk:

Plaintiff: Public right

Defendant:

Charge: Seizure of third party's property contrary to the provisions of Article (448) of the Penal Law No. 16/1960

Facts and Proceedings

The Public Prosecution ascribed the charge mentioned above as detailed in the indictment list as follows (before about two months, the defendant in question seized the plaintiff's house illegally and refused to depart it. Nevertheless, he does not hold any title deed authorizing him to remain in the house claiming that the plot on which the house being constructed deemed to be commonly owned between them).

At the public hearing of 28/3/2011 the indictment list together with the charge were read to the defendant.

The defendant responded that: (whatsoever ascribed to me is untrue and I am not guilty).

At the hearing of 29/12/2010 the prosecutor filed the plaintiff's testimony as an evidence stating that (I know the accused party and this problem occurred since 1/6/2010. The defendant requested me to stay in a house in which I have a share. We did not make a lease agreement between us. I allowed the defendant to stay in the house by way of benefaction for his daughter, whereas he used to work with me. I have asked him to hand over the house but he refused, and prevented me from entering the house but I refrained, as well, from doing so because he stays therein and I fear problems).

The prosecutor filed the remaining evidences and a copy of the registration deed was demonstrated after having been matched with the original copy for Plot No. 154, Block 7 and featured by the Letter N/1.

At the hearing of 2/2/2011 it was determined to try the defendant as if he was present because the date of the hearing was brought to his knowledge, yet he failed to appear.

Clerk

Judge

**Palestinian National Authority
The Judicial Authority**



At the hearing of 2/5/2011, it was determined to bring the defendant in the trial. The prosecutor filed the witness's testimony, which stated: (I know both the plaintiff and defendant. The plaintiff is my uncle. The defendant demanded this house from the plaintiff to stay therein as his daughter suffers from audio disability and would like to stay in such house, which deemed to be near to the school where his daughter learns as the school bus cannot reach the area where he lives. The plaintiff said to the defendant to stay in the house for free for a period of one year, which is the academic year. When the plaintiff asked the defendant to hand over the house, the defendant requested for a grace period. Following such grace period, however, the defendant failed to leave, despite his promises, to the plaintiff, to leave. I went to Mukhtar who said that we have to be patient until the defendant finds a house).

At the hearing of 2/5/2011, it was determined to bring the defendant in the trial. The prosecutor filed the witness's testimony, which stated: (I know both the plaintiff and defendant. The plaintiff is my uncle. The defendant demanded this house from the plaintiff to stay therein as his daughter suffers from audio disability and would like to stay in such house, which deemed to be near to the school where his daughter learns as the school bus cannot reach the area where he lives. The plaintiff said to the defendant to stay in the house for free for a period of one year, which is the academic year. When the plaintiff asked the defendant to hand over the house, the defendant requested for a grace period. Following such grace period, however, the defendant failed to leave, despite his promises, to the plaintiff, to leave. I went to Mukhtar who said that we have to be patient until the defendant finds a house).

The prosecutor filed the remaining evidence of the witness, which stated: (I know both the plaintiff and the defendant. The plaintiff is my uncle. The plaintiff gave the house to the defendant because the defendant has a handicapped daughter who would then be able to go to school. The house is composed of two floors. The plaintiff gave the defendant a room in the ground floor. The defendant seized another room adjacent to the room he firstly took. I do know the house and the room. No one lives in the house except the defendant that lives in the mentioned room, whereas the house is made up of four rooms. I act as an attorney for my uncle in regards to his house as he used to travel to USA. I asked the defendant many times to leave and hand over the house but he refused and is still doing so). The prosecutor has concluded his evidence.

At the hearing of 30/5/2011 it was determined to try the defendant as if he was present because the date of the hearing was brought to his knowledge and failed to appear.

The prosecutor pleaded the case requesting that the defendant to be convicted of the charge ascribed thereto and inflicting the deterring punishment against him. The trial proceedings were therefore concluded.

Clerk

Judge

**Palestinian National Authority
The Judicial Authority**



The Court

After having verified the suit file and evidences provided therein finds that the defendant proved to be committing the charge ascribed thereto.

In accordance to the law, Article (448) of the Penal Law in force provides the following (1. whoever does not hold an official title deed or disposition and seizes a real estate or part of a real estate in the possession of another party without consent shall be imprisoned for a maximum period of six months).

By applying the law to the facts of such suit, it appears that the provision of the foregoing Article stipulates for the satisfaction of the crime elements that the real estate, the subject of the suit, must be in the possession of a party other than the perpetrator who seizes it without the plaintiff's consent where the real estate is in the plaintiff's possession.

According to the previously mentioned, the crime elements are neither satisfied nor applicable. The standing case shows that the defendant was the party who stayed in such real estate upon the plaintiff's consent and did not seize it in the sense which the foregoing Article intends.

Regardless to the ownership of the real estate and the legal characterization as to the presence of the defendant in the real estate under a lease agreement or in his possession held in trust, the court finds itself before a dispute in its essence a civil in nature as evidenced in the papers and the plaintiff, if so wishes, may file a civil lawsuit before the competent court.

Therefore

The court, according to the mentioned, determines, pursuant to Article (274/1) of the Criminal Procedures Law in force that the defendant is innocent of the charge ascribed thereto because the act does not constitute a crime".

The Court, in the presence of the parties, rendered the judgment, which was read in the name of arab Palestinian people liable to be appealed and made understood on 30/5/2011.

Clerk

Judge

Further, "Eye on Justice" obtained another judgment rendered by a Conciliatory Court incorporating a discretion and interpretation of the rule of law, which aroused a legal contention. The judgment states as follows:

**Palestinian National Authority
The Judicial Authority**



Date of Hearing: Sunday 27/3/2011

Time of Hearing: 1:11 pm

Court: Conciliation Court

Case No: 1625/2011/ Offenses

Court Clerk:

The assistant prosecutor Mr. was in presence under a secondment decision.

The plaintiff being a minor was in presence.....// 13.5 years old/student, his father also attended, as his guardian.

The defendant attended/...../21 years old/worker

The trial was commenced publicly.

The charge of injury was read to the defendant in violation to Article (334) of the Penal Law No. 16/1960 as detailed by the assistant prosecutor.

The defendant responded: I am not guilty.

The assistant prosecutor said: I submit my evidence and request for exhibiting the final forensic medical report issued by the medical examiner on today's date informing the period of disruption as one day.

The defendant said: No objection.

Judgment

The court determined exhibition of the forensic medical report, which was featured by the Letter N/1.

By referring to the indictment list, the court found that the date of assault against the plaintiff was on 15/8/2010.

By referring to Exhibit (N/1), the court found that the period of disruption was one day on the part of the plaintiff.

Such crime, and whereas the disruption period is less than 10 days, the law stipulates in order to establish the same existence of a complaint, it must be lodged with the court within three months from the date in which the criminal act took place and the perpetrator is identified.

The court, by referring to the provision of Article (5) of the Procedures Law in force, which states that (in all cases where an action may be instituted, the law stipulates existence of a complaint or claim for civil right by the victim or otherwise the complaint shall not be accepted following the elapse of three months after it has been brought to the knowledge of the victim and perpetrator unless the law otherwise provides for).

From within such provision the court found that the Public Prosecution should have sought to file the indictment list within three months from the date on which the criminal act took place.

Since the Public Prosecution has violated the provision of Article (5) of the Procedures Law, the court therefore rejects the suit and made understood on 27/3/2011.

Official Seal: Palestinian National Authority - Judicial Authority – Penal Section - Date: 28/03/2011



"MUSAWA" hopes that the department of judicial inspection may verify the two decisions and to take legal action thereto and hopes also that the judicial training committees to consider such controversial jurisprudences in its various training programs.

In accordance to the provisions of Article (67) of the Labor Law and Article (3) of the decision by law regulating right to strike in civil service

High Court of Justice Suspends Doctors' Strike

The High Court of Justice headed by Judge Mahmoud Hamad and Judges Rafiq Zuhd and Mustafa Al-Qaq rendered a judgment suspending the strike declared by Doctors Association that started on 1/6/2011. The court determined to suspend the strike on 8/6/2011. The judgment stated that the Doctors Association failed to serve a written notice signed by 51% of the doctors working with the Ministry of Health before four weeks from the commencement of the strike as Article (67) of Palestinian Labor Law so requires. Doctors Association has therefore violated the procedures provided for in the law. This makes the commencement of the strike illegal regardless to legality of reasons for the strike and fairness of the demands thereof.

The court pointed out elsewhere in the judgment that the right to strike is guaranteed by the basic law of which Article (25/4) provides that the right to go into strike shall be used within the limits of law. The civil servants' right to strike is confirmed by the decision by law No. 5/2008 regulating exercise of right to strike in civil service. The court affirmed that the settlement of legitimacy of strike will require verification of four matters respectively by the court:

- Firstly:** The procedures specified by law prior to commencement of the strike have been observed.
- Secondly:** The strike is founded on legal reasons and fair demands.
- Thirdly:** The strike will cause unreasonable damage to public interest.
- Fourthly:** The court and/or the parties involved in the strike has neglected or seriously lagged to remedy the reasons beyond the strikes

The court said that Article (67) of Palestinian Labor Law has been formulated in such a way mandating provisions concerning strike as represented by the following procedures:

- Firstly:** A written notice must be served by the party concerned with the strike to the other party and the Ministry before two weeks from the date in which the action will be taken specifying reasons thereof.
- Secondly:** The notice must be served prior to four weeks if it takes place within public facilities.
- Thirdly:** The written notice must be signed at least by 51% of workers operating with the firm.
- Fourthly:** Impermissibility of the strike in the course of action of considering the collective dispute.
- Fifthly:** Suspension of the strike if the collective labor dispute has been presented to the competent agency.

The High Court of Justice judgment has aroused a legal debate

with variant opinions from eight different angles:

- Firstly:** Whether or not the provision of Article (67) of the labor law is constitutional particularly the requirement for the signature of the written notice by 51% of the workers operating with the firm ((51% of doctors working with the Ministry of Health)), and whether or not such requirement will impose restrictions on exercising the right to strike constitutionally guaranteed to the extent that they will affect the right to strike itself.
- Secondly:** The extent of the actual need for the signature of 51% of doctors working with the Ministry of Health as far as they are compulsory and by force of law adjoined to a trade union representing them. Their adjoining to the trade union deemed to be a requirement for practicing medicine profession similar to the Bar Association and engineer society since the doctors' trade union represents them and its leadership body is elected from within the general assembly.
- Thirdly:** the extent in which the Supreme Court Justice may construe and interpret the legal provision in light of the standing facts referred herein above.
- Fourthly:** the extent in which the court may touch on the constitutionality of Article (67) of the labor Law or looks into the doubt about the unconstitutionality and committing the matter to the Supreme Court to which the legislator assigned the power of considering and settling the constitutional appeals until the Constitutional Court is established to settle the power of considering the extent of the constitutionality of Article (67).
- Fifthly:** The extent in which the investigation into doubt about unconstitutionality depends upon the interpretation of the court itself or should it be adhered to by the appellant as being unconstitutional. The appellant in such a case is the doctors' trade union, which has never raised the matter throughout the litigation proceedings.

These should not disparage the importance of looking into the satisfaction of other matters required by law to determine over the legality and legitimacy of the strike declaration in the manner referred to by the High Court of Justice particularly with respect of procedures and periods thereof, and that the strike relies on legal reasons and fair demands without causing damage to the public interest together with the fact that the government has been availed a sufficient opportunity (four weeks) to respond to theses demands or delaying and ignoring them prior to settling the legitimacy of the strike or being illegitimate and then suspend it.

Sixthly: Under the decision by law specifying the litigation proceedings and binding on the court to issue its decision within three days, what is the impact arising from raising the doubt about unconstitutionality whether by the court itself or the Doctors' Association? It is imagined that that committal will be made.

In such a case we have two presumptions: either the suspension of the strike until the appeal against unconstitutionality is settled by the High Court of Justice upon which the legislator vested the power of settling constitutional issues or the strike continues until such settlement is made, the thing which contradicts with the provisions of the decision by law.

Seventhly: Why no appeal has been taken against the unconstitutionality through a direct suit in isolation from the strike, the merits of the suit.

Eighthly: it is presumed that the court refrains from enforcing the provision relating to the necessity of the signature of 51% of the doctors working with the Ministry of Health if it satisfied with the unconstitutionality pursuant to the general rules.

Such matter in this suit in particular, however, shall not change the conclusion reached by the High Court of Justice as the Doctors' Association violated another action that it failed to grant the Ministry the period of four weeks legally provided for and available to the Ministry to demonstrate its stance towards whatsoever contained in the notice. From this angle, the suit should have to be rejected nevertheless the notice is signed by 51% of doctors, the law stipulates that no strike shall commence unless the period of the four weeks referred to by the law has been elapsed.

For the purposes of enriching legal dialogue and closing the door of debate together with responding to the foregoing eight questions and comment on the judicial interpretation, MUSAWA will task legal experts in administrative law to comment on the judgment and publish the same in Justice and Law Magazine.

MUSAWA came to know that Doctors' Association failed to comply with the decision issued by the High Court of Justice and has not suspended the strike, which the court determined to suspend. A political reconciliation, suspending the strike for a period of one month, however, was reached in contravention to the High Court of Justice judgment, the highest judicial level in the country.

Contrary to what was clearly and expressly provided for by the basic law and the Judicial Authority law, which cannot be interpreted or construed that failure to execute the court judgments or postponing, slowing down or delaying their execution shall be deemed to be a crime punishable by law and require dismissal from employment if the perpetrator found to be a civil servant. Dismissal here will be enforced by force of law without the requirement for rendering a judgment thereon. The Authority shall guarantee to compensate the injured party against this crime.

The Doctors' Association stance raises once again the legitimate question that where are we from the State of law and its rule over all, and when the judicial judgments and decisions will be respected?

Circulation

The Head of the High Court of Justice and President of High Judicial Council, Judge Farid Al-Jallad issued the circular No. 1/2355 dated 19/5/2011 determining the amounts to be paid in consideration of a witness's appearance to testify before the court. The circular classified witnesses and quantified the amount of allowance to be paid. Further, the circular determined payment of one allowance in the event of summoning a witness to testify in more than one suit before the same court. The circular specified the legal fees and distinguished between lawyers from within the governorate and those from outside the governorate.

In view of the importance of such circular from the legal and legislative angle, "Eye on Justice" hereby publishes the circular:

**Palestinian National Authority
Judicial Authority
Chief Justice Office**



**Heads of Regular Courts
Judges of Regular Courts**

Dear Sirs,

Subject: Determination of Witnesses' Expenses and Legal Fees as shown below

All judges are hereby requested to comply with whatsoever referred to below as per rules:

1. 50 NIS shall be paid as a witness's appearance allowance to the employee or the judicial policemen if the witness resides within the governorate, and 100 NIS if residing outside the governorate.
2. 150 NIS shall be paid as a witness's appearance to the medical examiner, engineer, calligraphy expert, translator or assessor if residing within the governorate, and 250 NIS if residing outside the governorate.
3. 300 JD shall be paid as legal fees if the lawyer is from within the governorate and 500 JD if residing outside the governorate.
4. In the event of a witness appearing to testify in more than one case before the same court and date, only what is stated herein above shall be paid for all cases and no payment shall be made for each individual case.

(Signed)

Chief Justice and President of High Judicial Council

Official Seals

MUSAWA points out that the circular in question has raised expansive legal debate. In particular, it represents legislation beyond HJC President powers. Further, the legal fees are specified in the current Bar Association law for regular lawyers. The debate revolves around the extent of the circular initiator's power in issuing the same, and whether it falls as to the subject matter within the administrative powers or exceeding them to the legislative and judicial powers. This is in addition to whether the circular falls within the framework of the regulation of HJC and courts business or departing therefrom.

Significant figures require immediate government intervention

"Eye on Justice" came to know that the Palestinian Independent Commission for Human Rights received 94 complaints about failure to respect judicial judgments over the period from the beginning of this year until September 2011 of which 92 complaints were from West Bank and two from Gaza.

The Commission received 192 complaints relating to torture and threat during detention of which 124 complaints were from West Bank and 68 complaints from Gaza.

Further, 66 complaints with respect of rigorous, inhumane and dishonoring treatment during detention have been received of which 16 complaints were from the West Bank and 50 from Gaza.

The Independent Commission records show that 282 complaints relating to arbitrary arrest without arrest warrant of which 153 complaints were from West Bank and 129 from Gaza. These included 20 cases of arrest without the indictment list and trial (administrative arrest) of which 15 cases were from West Bank and 5 from Gaza. 294 complaints relative to arrest without being presented to the public prosecution or regular judiciary have been received as well of which 262 complaints were from West bank and 32 from Gaza.

The political background based arrest cases reached over the same period, according to the Independent Commission for Human Rights, 250 cases of which 223 cases in West Bank and 27 in Gaza while the arbitrary dismissal from employment reached 57 cases in West Bank.

"MUSAWA" believes that the figures mentioned herein above are of serious indication requiring immediate remedying and the Government should fulfill its obligations by which it declared on the Human Rights National Day. Is there any respondent?!

Positive cooperation hoping it will continue

MUSAWA received a written memorandum from the Head of the Bar Association informing their receipt of bills for amending regular lawyers law, regulations and training system proposed by MUSAWA affirming that the Bar Board would consider memorandum by MUSAWA and its proposed bills within the context of the Bar foundation plan.

In view of the importance of the memorandum from the legal point of view, "Eye on Justice" hereby publishes the memorandum.

Palestinian Bar Association
The Main Center – Jerusalem
Ramallah – Al-Irsal St.
Salam Building, 2nd Floor – P.O.Box 2203
Tel: 2952010, Fax: 2986805
Email: info@palestinebar.ps
Website: www.palestinebar.ps
Gaza – Al-Gala' St. P.O. Box 1024
Tel: 2865651, Fax: 2849211



Reference No.: 545/2/2011

Palestinian Center for Independence of Judiciary and Legal Profession "MUSAWA"

Subject: Memorandum forwarded to the Bar Association

Dear Sir,

Reference is made to your letter concerning the memorandum on the draft law amending regular lawyers' law, regulations and under training lawyers system.

We have received draft bills for amending the law and regulations. The memorandum and draft bills will be considered by the Board within the context of foundation plans in place.

Regards

Dated 20/2/2011

Official Seal and Signature: **Ali Mhanna - Head of Bar Association**

Worth mentioning "MUSAWA" has previously sent three memos to the Bar Association relating to the proposed draft bills the last of which was as follows:

Palestinian Center for the Independence of the Judiciary and the Legal Profession
"MUSAWA"



Date: 14/2/2011

M/s. Head and Members of the Bar Association Board

Subject: (1) Our Memorandum sent to you on 12/1/2011 and resent on 6/2/2011 concerning a draft law amending regular layers' law, regulations and training system.

(2) Written Memorandum signed by 536 lawyers including 273, 68, 39, 27, 106 and 23 lawyers from Gaza Strip, Toulkarem, Bethlehem, Hebron, Jenin and Ramallah respectively supporting MUSAWA proposals hoping your Board will consider them together with taking the necessary administrative and legal actions to determine and enforce the suggested, a copy of which is attached hereto.

Dear Sir,

The Palestinian Center for the Independence of Judiciary and the Legal Profession "MUSAWA" reminds you of the memorandum mentioned herein above sent on 12/1/2011 and 6/2/2011 accompanied with three draft bills proposed by MUSAWA for the purposes of amending the legislative system organizing the Bar Association in connection with regular lawyers' law, regulations and training system. Enclosed hereto a 3rd written memorandum signed by 536 lawyers as stated herein above expressing their support to MUSAWA draft bills and hoping that your Board will consider and adopt such bills together with taking the necessary administrative and legal actions to put them into operation. We have referred in our memorandum as in draft bills to the justifications and reasons for the necessity of making the proposed amendments to the legislative system organizing the Bar Association, which received a written support from a great number of lawyers exceeding the number entitled to invite the General Assembly to convene.

From our own point of view, these will require you to pay an adequate attention to our proposals and to consider them together with adopting whatsoever you deem appropriate and to proceed with the necessary administrative and legal actions to have them entered into force. Once again we look forward to receiving your comments on our proposals and what you plan to take expecting always to strengthen cooperation and develop our joint action in such a way that will benefit our Bar, society and national cause.

Date: 14/2/2011

Enclosures:

Lawyers' memos and their signatures.



"MUSAWA" looks positively forward to receiving the reply of the Head of the Bar Association hoping that its proposal will contribute to the enhancement of the Bar Association corporate structure. "MUSAWA" is pleased by the issuance of the Bar Association General Assembly resolution establishing the Bar sub-committees by election embodying a story of success by adopting MUSAWA proposal contained in the draft law bills relating to the amendments to be made to the legislative system organizing the Bar Association.

"MUSAWA" hopes that the Bar Association Board will accelerate putting the General Assembly's resolution into operation and enforcement and commence with conducting the election of the Bar sub-committees as practical as possible.

Al-Jarbawi: The Government declines to control civil society organizations and looks forward to substantiating strategic partnership

The Minister of Planning and Administrative Development (MPAD), Dr. Ali Al-Jarbawi, expressed the government and MPAD willingness to cooperate and integrate with the national sector creating a true partnership with such sector underlining the existence of a permanent relationship with the civil society to which the government looks as an integral and key partner in achieving sustainable development.

Dr. Al-Jarbawi pointed out to the coordinating role by Palestinian government and MPAD specifically in directing international support in line with the development needs and priority in different sectors. "The government must know and learn about aspects of finance provided by donating organizations and countries with the aim of ensuring non-recurrence of development projects and their contradiction with the government and civil society together with achieving absolute transparency in bringing in, finance and implement projects by donors", Dr. Al Jarbawi said.

Dr. Al-Jarbawi affirmed that the government declines to control civil society organizations but aiming at substantiating a true strategic partnership leading to the achievement of joint national objectives towards Palestinian society. These were reported when Dr. Al-Jarbawi received on 13/9/2011 a delegation from the civil society organizations. The two sides agreed upon conducting regular meetings aiming at exchanging information, learning about new developments, and addressing obstacles facing joint action. Furthermore, they agreed to hold annual consultative meetings with the objective of designing joint policies and plans in such a way that embodies partnership in planning and implementation between the government and civil society organizations.

"MUSAWA" values the vision of the Minister of MPAD and shares him the hope for substantiating a true strategic partnership between the civil society organizations and the government

Ministerial Committee's recommendations on human rights whereto?!

On 16th of last August, which observed as a national day for human rights, the Minister of Justice, Dr. Ali Khashan, delivered the government's speech at the official ceremony held on this occasion.

Dr. Khashan pointed out the undertaking by Palestinian government to honestly implement all the recommendations contained in the Palestinian Investigating Committee according to Goldstone report.

The Council of Ministers decided on 18/10/2010 to establish a special Ministerial Committee for follow-up and monitor the implementation of theses recommendations.

The Minister of Justice maintained that the said Ministerial Committee recommended series of steps and procedures for the government to take the most prominent of which:

1. Enhance mechanisms for controlling and supervising the reform and rehabilitation and detention centers in accordance with the provisions of the basic law and the relevant laws in such a way that will ensure prosecuting any person who illegally detains citizens and exercising torture or mistreatment together with taking the necessary actions towards these violations as to ensure that Palestinian human rights with respect of detention and arrest procedures in Palestinian Authority prisons are protected.
2. Suspend finally referral of civilians to courts-martial and restricting their referral to the normal judge (regular courts) pursuant to the provisions of the Criminal Procedures Law and prosecuting any person who detains any citizen in contravention to the law.
3. Continue to take procedures and measures for preventing torture in Palestinian prisons and prosecuting, judicially and administratively, any person proved to be violating the law and using torture.
4. Palestinian government's compliance with implementing any judicial decision compensating any person proved to be tortured and punishing any person found to be committing the crime of torture with the aim of uprooting the same.
5. Keep any national association harmless contrary to the provisions of the charitable associations and Civil Society Organizations law for the year 2000, and ensure compliance with the legal provisions regulating formation of provisional committees for the associations together with immediate execution of all judicial decisions relating to charitable associations and Civil Society Organizations.
6. Government's compliance with executing court judgments and prosecuting any person who does not adhere to executing these decisions by imprisonment or dismissal from employment pursuant to the provisions of Article (106) of the basic law.
7. Review the work condition relating to security safety as a pre-condition upon appointment in a government job and restricting the same to the certificate of non-conviction issued by the Ministry of Justice only.
8. Ensure respect of freedom of press and media, government's compliance with all journalists and mass media right to work with complete freedom and prevention of any journalist from security tracking based on his job background regardless to the mass media for which he works.
9. Ensure right of assembly and freedom of opinion.

Review all legislations in force in Palestinian territories to ensure their compliance with international human rights standards and agreements, mainly the International Convention on Civil and Political Rights.

"MUSAWA", whilst valuating the Ministerial Committee's declared recommendations, looks forward to having a special report issued by the Ministry of Justice and the government demonstrating the status of human rights and the extent of the government's compliance with executing these recommendations particularly after the elapse of almost a year since the Ministerial Committee has been established and more than six months from the declaration of the recommendations in question.

Time has come to rectify relations between Judiciary and Public Prosecution from one hand and lawyers on the other hand

MUSAWA has sent a written Memorandum to the Chief Justice and President of HJC in Gaza and the Attorney General concerning the relationship of those in charge of judicial profession and Public Prosecution with lawyers. Such relationship has recently witnessed a state of deterioration as seen in the increasingly cases of detaining lawyers and hindering them to perform their legal duty without taking into consideration the prevailing legal rules to the extent that affecting lawyers' legal, moral and social immunity. In view of the importance of this Memorandum from the legal point of view, "Eye on Justice" hereby publishes the same as the following:

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



Date: 15/06/2011

Judge Abdul Rauf Al Halabi
President of High Court and HJC

Subject: Judges and Public Prosecution Relationship with Lawyers

Dear Sir,

We, in the Palestinian Center for the Independence of Judiciary and the Legal Profession look with a great seriousness to the deterioration in the relationship between those in charge of official justice professions and lawyers. The relationship has recently witnessed a noticeable increase in cases of detaining lawyers and hindering them in performing their legal duty without reckoning with the prevailing legal rules.

This would affect lawyers' legal, moral and social immunity and their ability to defend their clients' interests and impairing litigants' confidence in lawyers' role and justice entirely. We do, hereby, request you to regulate the relationship between judges and Public Prosecutors and their assistants on one hand, and lawyers on the other hand in such a way that will enhance mutual cooperation and respect between them.

We, in the Palestinian Center for the Independence of Judiciary and the Legal profession, affirm that advocacy license shall not relieve the holder thereof from the legal obligation. We believe that, however, the detention, investigation and accountability procedures initiate with addressing the Bar Association with respect of the complaint ascribed to the lawyer, then the investigation into the subject of the complaints proceed.

If the same found to be involving a penal charge, the Bar will refer the matter to the Public Prosecution for investigation in the presence of a representative from the Bar Association. Where the Bar Association finds the complaint to be involving an administrative or behavioral violation, the lawyer will be referred to a disciplinary board subject to the applicable rules in this respect.

If the Bar Association's opinion the complaint does not imply any penal, administrative or behavioral considerations, the Bar shall address the judges or the Public Prosecution as the case may so require to provide them with a copy and results of the Bar's investigations. We, in the Palestinian Center for the Independence of Judiciary and the Legal Profession "MUSAWA" feels that it is necessary to be committed to strengthening and enhancing cooperation between judges and heads, prosecutors and assistants of the Public Prosecution and lawyers. This will serve the rule of law, ensure protection of human rights and maintain the lawyer's dignity

through attempting to stop immediately dealing with lawyers in manner beyond the legal framework and harms the dignity, honor and independence of advocacy.

We, at the Palestinian Center for the Independence of Judiciary and the Legal Profession "MUSAWA" will take the adequate legal and administrative actions in order to put an end to such deterioration and have the situation returned to normal in accordance with the legal rules.

With Respect, ,,,,,,,,,

MUSAWA



The Bar Association in Gaza announced refrain from appearing before the public prosecution and criminal courts due to the increasingly cases of lawyers suspension and hindering them to perform their professional duty. MUSAWA regrets that no reply was received to its memo although it has learned that the public prosecution and the Bar Association in Gaza reached a resolution to the said tension in a time subsequent to its memo. MUSAWA looks forward to removing all reasons that may restore tension in relations, expressing its hope that the lawyers' legal, moral and social immunity will be maintained with its adherence to the rule of "no one is above the law". In order to avoid negative results arising out from the defect in the professional relationship between members of the public prosecution from one hand and lawyers from the other hand, MUSAWA learned that an understanding between the Bar Association and the Public prosecutor, Mr. Ahmed Al Magana, was made providing for the referral of any complaint relating to violations that may be attributed to lawyers to the Bar Association, which will undertake the investigation. If the Bar Association finds that the complaint involves a criminal act, the accused lawyer will be referred to the public prosecution to precede with the investigation procedures as per rules. In the case where the complaint found to be involving behavioral violation, the Bar Association will assume the investigation together with considering and settling the same. If the complaint proved to be of no legal title and does not constitute a behavioral or criminal violation, the Bar Association will notify the public prosecution as per rules. MUSAWA hopes that such understanding will be complied with, which may put an end to any violation leading to harm lawyers' rights and dignity or affecting their ability to plead and defend their clients' interests

MUSAWA and Relief International conduct 150 legal clinics in 5 governorates

The Palestinian Center for the Independence of Judiciary and the Legal Profession "MUSAWA" ended in collaboration with the Relief International and the European Union's support conducted 150 legal clinics at which free legal consultations have been provided to over 1100 male and female workers residing and operating in the governorates of Hebron, Bethlehem, Nablus, Jenin and Salfit.

The legal clinics were conducted in the villages, camps and towns of the five governorates in coordination with the offices of the Ministries of Woman and Labor and the civil society organizations operating in these governorates along with male and female lawyers. The clinics discussed worker's rights and duties in accordance with Palestinian labor law and regulations thereof, employer and government duties and litigation procedures relating to labor disputes. As a result, several male and female workers' cases were adopted. MUSAWA and Relief International paid the legal fees and appointed lawyers to institute these cases before the competent courts.

MUSAWA and Relief International conducted 100 workshops in the governorates of Nablus, Hebron, Bethlehem, Jenin and Salfit aimed at increasing the awareness of the working woman about her labor rights, available legal mechanisms for protecting her together with the duties of employers, local councils, labor unions and competent Ministries in connection with ensuring working woman's rights. The workshops were conducted over a period of 4 months with the participation of 2000 working women and interested personalities in labor law and rule of implementation thereof.

On the other hand, the Palestinian Center for Independence of Judiciary and Legal Profession in collaboration with Relief International and the European Union's support prepares for an international legal conference to be held under the title of **"The Fourth Annual Conference on Palestinian Justice": Rights of Working Women and Available Legal Mechanisms for Ensuring their Rights** expected to take place on 29 -30/11/2011 with the participation of international and local experts via video conference between Gaza and Ramallah.

With the participation of judges from the Egyptian Supreme Constitutional Court and the Jordanian Court of Cassation

"MUSAWA organizes a training course in Amman entitled "Best International Practices in Monitoring the Performance of the Pillars of Justice"

On 30/6/2011, The Palestinian Center for the Independence of Judiciary and the Legal Profession MUSAWA finalized a five days training course in Amman entitled "Best International Practices in Monitoring the Performance of the Pillars of Justice". 35 legal and community personnel operating in the field of justice, Authority's official organizations and civil society organizations have benefited from the training.

The course was attended by judges and law experts from Egypt and Jordan including Judge Mahmoud Ghnaim, Judge Dr. Hamadan Fahmi, the Vice President of the Egyptian Supreme Constitutional Court, and the university lecturer, Advocate Ahmed Musa, from Egypt beside the former judge of Jordan Court of Cassation, Advocate Yousif Le-Hmood, Advocate Isam Al-Sharif and Advocate Eva Abu Halawa, the Manager of Al-Mezan Center for Human Rights in Jordan. The course discussed a number of issues relevant to monitoring the performance of the pillars of justice including limits and mechanisms for the control over the appointment in a judicial position, the political and administrative decisions and monitoring mechanisms thereof, legislations and parliament performance control, relationship between control, independence of judiciary and Public Prosecution, control over lawyers' performance and their Bar, litigation procedures control and their connection with the rules of publicity of trials and causation of judgments, constitutional guarantees and criteria with respect of the right to control, role of media in controlling the Performance of the Pillars of Justice, role of administrative and constitutional judiciary in protecting and enabling control and best international practices in control.

Further, the training covered issues relating to the formulation of judgments as a form of control over the performance of the pillars of justice, right to information and right to publication and their connection with defamation and slander crimes, sections of education in the faculties of law and their impact on the performance of the pillars of justice, fair trial guarantees at the investigation and trial phases and documentation and monitoring mechanisms for violations in the performance of the pillars of justice. The chairman of MUSAWA, Advocate Yasser Jabr and the Chief Executive Officer, Advocate Ibrahim Al-Barghothi opened the course welcoming the participants and beneficiaries therefrom underlining the course objectives as to raise beneficiaries' competency, capability and awareness about the concept of the control over the performance of the pillars of justice and best international mechanisms for practicing the same. They encouraged the beneficiaries to the necessity of discipline, attendance and involvement in all training sessions with the objective of achieving the maximum utilization from lecturers' expertise by virtue of their expansive experience in the course issues whose daily minutes were published by different mass media. Later, the Palestinian Center for the Independence of Judiciary and legal Profession MUSAWA conducted three consecutive courses. The first course was held under the same title in Gaza during the period from 12 – 14/7/2011 and the second course was in Khan Younis from 19 – 21/7/2011 whereas

the third one held in Ramallah from 26 – 28/9/2011. 94 lawyers, under training lawyers and employees at the Ministries' legal departments and civil society organizations have benefited from these courses.

The courses held in Gaza and Khan Younis discussed several issues mainly the control over the appointment in a judicial position, relationship of control with independence of judiciary and Public Prosecution, right to information and publication, role of media in controlling the Performance of the Pillars of Justice, guarantees of fair trial during investigation and trial, administrative control, constitutional control over legislations, lawyers' and Bar performance control, documentation and monitoring of violations mechanisms and role of civil society organizations in control.

Mr. Zahir Al-Aqqa, the judge of the court of first instance and director of the technical office of the Public Prosecutor, university lecturer, Dr. Abdul Qader Jarada, Advocate Bakr Al-Turkumani, Mr. Salah Abdulati, prosecutor Samar Al Khudari, Zain Beseso, the Head of the Public Prosecution, Dr. Hani Ghanim, Mr. Raid Qandil, Advocate Safi Al Dahdoh, Dr. Advocate Abdul Karim Shubair and a representative from Civil Society Organizations Networking with another from Al-Mezan Center for Human Rights have participated in the two courses held in Gaza and Khan Younis. The course held in Ramallah was attended by Advocate Muath Al Taziz, Trainee Advocate Suhaib Al Sharif, and Advocate Yasser Al Salah from the Independent Commission for Human Rights and Advocate Ghaleb Yassin from the legal department of the Presidential Council, and Advocate Qossai Awwad and Mamoun Al Attili from NDC organization. The course discussed issues on control over the appointment in a judicial position, right to information and publication, role of media in the performance of the pillars of justice, best international practices in control within the framework of the international law regulating human rights, fair trial guarantees during investigation and trial, constitutional control over legislations, constitutional guarantees and criteria with respect of right to control, control over lawyers' performance and their Bar, civil society organizations role in control and documentations and monitoring of violations mechanisms.

The Palestinian Center for the Independence of Judiciary and the Legal profession is expected to conduct two similar training courses in the southern and northern governorates of West Bank. The instructors were chosen from the graduates of the course organized by MUSAWA in Amman, and they will be taking part in delivering similar course issues.

The conduct of the courses in question comes as part of MUSAWA preparation for issuing its second observatory study "Legal Monitor" aiming at demonstrating the change in the performance of the pillars of justice over 2010 – 2011 as compared with the performance level during 2008 – 2009 for the purpose of identifying areas of strength and seek to improve them and areas of weakness and strive to overcome with the support of Foundation for the Future and UNDP.

Critical legal issue worth discussion

Prosecution and Court powers limit to amend the indictment list after filing and consideration

"Eye on Justice" learned that the Public prosecution filed to the Court of First Instance the indictment list concerning a significant drugs case under which 4 people were charged.

After having filed the indictment list and the court commenced considering the case, the Public Prosecution filed once again an amended the indictment list for the same case reducing the accused parties from 4 to 3 people.

MUSAWA gathered that one of the panels of the Court of First Instance approved the amended the indictment list. The suit file was referred to another Court of First Instance, as per the normal.

The second Court of First Instance after having considered the suit file desisted from the first panel's decision and determined to approve the first principal the indictment list in which 4 people were charged ignoring the amended the indictment list.

The Public Prosecution took an appeal before the Court of Appeal against the judgment rendered by the second Court of First Instance.

The Court of Appeal rejected the appeal and determined to ratify the decision of the second Court of First Instance.

The Public Prosecution was dissatisfied with the said judgment and took an objection for cassation before the Court of Cassation, which reject the Prosecution's objection determining that the objected judgment for cassation cannot be objected being an interlocutory judgment, which has not yet been released by the Court of First Instance.

MUSAWA learned that the Court of First Instance, as a result, regarded the evidences filed by the Public Prosecution (the investigation file only) claiming its insufficiency to convict the accused parties. The Public prosecution should have summoned prosecution witnesses so that the defence may discuss the matter with them pursuant to the rule of confrontation in the criminal trials. The Court rendered a judgment acquitting the four accused parties from the charges ascribed to them.

The Public Prosecution has not taken an appeal or objection for cassation against the judgment making it to be final.

The failure by the Public Prosecution to take an appeal against the judgment acquitting the parties together with its decisions and actions it took towards the case file including the interpretations by the first Court of First Instance, which approved the amended the indictment list reducing the number of accused parties from 4 to 3 people aroused a great legal debate focusing on the question that "Can the Public Prosecution after having filed the indictment list to the court file an amended the indictment list omitting one of the accused parties therein?, and was the decision by the first Court of Instance accepting the amended the indictment list in line with the proper law?!

MUSAWA believes that the questions in regards to the subject of the legal dialogue are worth to be looked into as a matter of importance from the legal point of view. In particular, the judgment by the first Court of Instance and the Court of Appeal judgment contain therein a negative answer to such questions.

Moreover, the importance of the question regarding the reason for the Public Prosecution's failure to take an appeal against the judgment by the Court of First Instance acquitting the four accused parties particularly the Public prosecution has not declared an interpretation to its decision not to take and appeal against the said judgment.

Judiciary Conference and judicial promotions arouse debate and denial among judges

"Eye on Justice" learned that the judicial promotions that have been made under the last year's judicial formations aroused a great debate among judges. A number of judges expressed their denial to these promotions describing them as being illegal and not, in their opinion, grounded on established criteria.

Some judges were told that such promotions are based on seniority criteria, while others were told to be based on competency criterion, while some others have been told that it is grounded on a double criterion combing both seniority and competency.

The judicial promotions and ongoing debate with their respect compelled the President of Judges Club to meet the Vice President of HJC expressing the Club's objection to the approved promotion mechanism urging to be reconsidered.

Commenting on the 4th Judicial Conference held in last June, the President of the Judges Club said, "I have never become aware that there is a judicial conference neither heard of any department submitting reports. The said conference was not held to monitor the Judicial Authority performance contrary to the key objective for conducting such conference".

"The conference should have represented a general assembly to monitor the performance of the Judicial Authority over the past year at the administrative and judicial levels in order to assess and identify areas of weakness and determine the mechanisms and actions to be taken to overcome," he added.

"Several judges taking part in the conference complained from lack of opportunities to be availed to them for discussing the papers provided to the conference."

Further, they objected to divisions of the conference sessions and costs inquiring about the results produced by the conference," he pointed out.

Cont. / Judicial Authority dignity, security and responsibility

This was on the background of distributing a written statement in Nablus appended by a signature of so-called "SARAIA AL-ADL". The statement included descriptions and accusations which affected the President and members of HJC, Presiding Judge of Nablus Court of First Instance, lawyers and Minister of Justice. In view of the importance of the said memorandum, "Eye on Justice" hereby publishes it.

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



President and Members of High Judiciary Council

Subject: Judiciary Authority Dignity, Security and Responsibilities

Greetings ,,,,,,,,,

It was not long until the current judicial year started, the judicial and legal family was surprised by a written statement distributed intensely in Nablus incorporating descriptions and accusations affected the President of the HJC as well as the Presiding Judge of Nablus Court of First Instance, Lawyers and the Minister of Justice.

Whilst we believe that it is not necessary to repeat the contents of the statement being appended by a signature of what so-called "SARAIA AL-ADL" as we are well aware of it, however, we express our astonishment of the HJC's failure to take any action, and failure to issue any clarification or declaring any stance.

Dear Sirs;

Our astonishment is based on a set of facts and matters, which you, undeniably, share with us the same opinion, including;

1. The judicial position is not personal but a social job, as the right of judiciary is a social right owned by citizens pursuant to the principle that justice is the basis of rule, and judiciary is the security of the society guaranteeing its unity, stability and development. An action to be taken towards the said statement is a legal duty and citizen's right.
2. The judicial position is featured by a special transparency that cannot accept any offence and stand any deed or doubt; this requires a serious consideration to the statement in question seriously. In the first instance a special committee is to be established to probe into all conditions and circumstances surrounded the issue of the statement as well as to look into the allegations contained therein together with taking the legal requisite towards them.
3. The most prominent established constitutional principle is that no one above the law and no authority above the law and no immunized decision and no legitimacy departing the provisions of law. These will require the establishment of such committee to initiate the necessary administrative investigation and disclose the facts and declare them to the public.
4. With adhering to the rule presuming that the accused party is innocent until proven guilty and desistence from areas of doubts, particularly the judicial position, is a feature of the Judiciary Authority independence and a criterion for filling the judicial position.
5. The said statement is not the first of its kind. We have previously sent a Memorandum on 21/4/2011

in connection with another statement in which one of the High Court of Justice judges was intruded upon. The statement was distributed in Ramallah and Nablus. The source of the statement was not satisfied only with issuing the same but threatened through a telephone call, the said judge of killing. The HJC failed to announce any stance disclosing the truth to the people. The two statements referred to hereinabove are not the only form of intruding upon judges. This constitutes an expression of a serious approach required to be looked into in a brave, transparent and express manner and putting the rule of law into operation towards whosoever illegally encroaches upon the Judicial Authority, the judges or the rule of law.

Dear Sirs;

Nevertheless, it is affirmed once again that filling of a judicial position does not justify keeping the judge away from accountability for any act in contravention to the provisions of law that may so requires. Such accountability must be conducted by the observed and applicable legal means in accordance with transparent accountability procedures providing fair trial proceedings away from security escape, gangsters and jungle law. We, at the same time and pursuant to the foregoing rules, look forward to seeing the HJC taking the internal administrative actions and the legal requisite towards the said statement together with declaring such actions and urging the competent authorities to activate their roles and assume their legal liability for putting an end to such dangerous if not destructive phenomenon.

Your reply to this memo will be highly appreciated,,,,,,,,,

Date: 12/09/2011

MUSAWA



On 13/9/2011, MUSAWA Chief Executive Officer met the President of HJC where the said Memo, which the HJC President promised to present to HJC, was discussed. The HJC invited MUSAWA's Board of Directors for a meeting with him to be held on 3/10/2011 to discuss the subject of this memo.

MUSAWA sent another memo on 21/4/2011 to the President and members of HJC, the President's legal adviser, the Public Prosecutor, the Independent Commission for Human Rights, and the Board of Palestinian Bar Association concerning the defamation and threatening of killing to which one of the Supreme Court judges was exposed. This was contained in a written statement distributed before courts in Nablus and Ramallah. While being at home, the said judge received a telephone call threatening of killing. In view of the importance of such memorandum, "Eye on Justice" hereby publishes it.

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



President and Members of High Judicial Council

20/04/2011

Subject: Judiciary Authority Dignity, Security and Responsibilities

Dear Sirs;

The Palestinian Center for the Independence of Judiciary and the Legal Profession "MUSAWA" learned about the defamation and threat to which the Head of the Technical Office at the HJC and member of Palestinian Supreme Court Judge Imad Saleem was exposed. These were contained in a statement distributed in Ramallah and Nablus, incorporating personal harm and killing threat. Further, the said judge, while being at home among his family members received a telephone call in which the source required from him immediate resignation under the risk of assassinating him before his house.

Dear Sirs,

Nevertheless, several days have passed since this incident took place, yet the HJC failed to announce a stance providing protection and sense of confidence, tranquility and social, human and personal security for the judge. As such fact affects the judiciary prestige and dignity of judges and lawyers as well; we look forward to seeing the HJC putting its authorities and powers into force by urging all security and executive agencies to commence with immediate investigation together with speedy seizure of perpetrators, referring them to justice. Further, all law operators including civil society organizations, at the top of which the Independent Commission for Human Rights, Bar Association and parliamentary blocs are to be invited for joint action and consolidation of efforts that may put an end to the phenomenon of assaulting against judges for ever.

Dear Sirs;

Nevertheless, it is affirmed once again that filling of a judicial position does not justify keeping the judge away from accountability for any act in contravention to the provisions of law that may so requires, such accountability must be conducted by the observed and applicable legal means in accordance with transparent accountability procedures providing fair trial proceedings away from security escape, gangsters and jungle law.

Dear Sirs;

We hope that the HJC will announce, under its authorities and powers, whatsoever will enhance the judge's security and maintain his dignity.

Our Best Regards ,,,,,,,,,

Copy to:
Legal Advisor to the President
Public Prosecutor
Independent Commission for Human Rights
Palestinian Bar Association

MUSAWA



MUSAWA received on 12/5/2011 a written message from the Chief Justice, the President of HJC Judge Fareed Al-Jallad in response to its memo of 21/4/2001 stated as follows:

**Palestinian National Authority
Judicial Authority
Chief Justice Office**

M/S Palestinian Center for the Independence of Judiciary and the Legal Profession MUSAWA

Dear Sir,

Subject: Your Letter dated 20/4/2011

The Judicial Authority presents to you its compliments and refers to your letter dated 20/4/2011 concerning the Judicial Authority prestige and security. Your interest in this regard is appreciated.

We wish to affirm that the acts of defamation and threat launched by someone against Judge Imad Saleem was on the center of HJC's attention and follow-up from the first moments since affects the Judicial Authority's prestige and independence.

We have made the necessary contacts with the competent agencies for following-up the investigation into such crimes in order to bring those liable for these illegal acts before justice according to law.

The HJC is keen to maintain the independence of the Judicial Authority and preserve the security and dignity of its members.

We will not slack in taking the necessary legal actions against whoever attempts to harm or threaten the Judicial Authority's prestige and independence.

Our Best Regards ,,,,,,,,,

**Judge / Fareed Al-Jallad
President of High Court
Chief Justice
(Signature + Official Seal)**

In the wake of the said threatening statement, about twenty judges sent a written memo to the President of Palestinian National Authority stating that the said statement is in fact a continuation of the series of assaults committed against judges and injuring their reputation including without limitation kidnapping judges in person, firing them, burning their vehicles etc. The memo, of which "Eye on Justice" obtained a copy, added that judges became unsecured at home and on the streets since their prestige has become almost inexistent and subject of ridicule. The memo pointed out that no assault incident against any judge has been dealt with seriously together with failure to seize the doer being involved in any of such crimes. The memo said that the signatory judges perceive with bitterness and pain that influential hands always attempt to conceal and shelter the doer. The judges who signed the memo called upon the President saying that: (We appeal to you to save us from falling into the pit, and pay your utmost concern over the judiciary's prestige and independence. Save our Judicial System). MUSAWA hopes that the Supreme Judicial Council will respond to its memorandum, establish a fact-finding committee to look into the statement, the subject of its memo, of 12/9/2011 to verify the contents therein, take the legal requisite towards the same, announce the investigation results, and enable citizens to be aware of truth and look into HJC's opinion on such phenomena and the legal actions taken thereby.

Cont. / Controversial Circular

Court judges are also prohibited from leaving courts during the official working hours without permission from the immediate supervisor if a good reason is in place.

Considering the debate and reactions by judges aroused by this circular, "Eye on Justice" hereby publishes the circular in its exact words:

**Palestinian National Authority
Judicial Authority
Chief Justice Office**

Circular

M/S Heads and Judges of regular Courts

Dear Sirs,

Judges are hereby prohibited from conducting meetings or interviews with any authority, Ministry, Department or any official therein.

Further, judges are also prohibited from leaving the court during the official working hours without permission from the immediate supervisor, if a good reason is in place.

Our Best Regards ,,,,,,,,,

**Judge / Fareed Al-Jallad
President of High Court
Chief Justice
(Signature + Official Seal)**

Cont. / Judicial formations for 2011/2012 require review and correction

Pointed out that the judicial formations produced by HJC for the judicial year 2011/2012 arose several legal inquiries and variant reactions by judges and their club, to the extent that they are to be reconsidered and corrected in accordance with the provisions of law and judicial profession regulatory requirements as per rules.

Considering the importance of the memo from the legal point of view and the importance of the comments contained therein on the judicial formations, "Eye on Justice", hereby, publishes the memo.

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



M/S President and members of HJC

Subject: Judicial Formations for the Judicial Year 2011/2012

Dear Sirs,

Palestinian center for Independence of Judiciary and the Legal Profession learned that the judicial formations produced by HJC and published on your website on 4/9/2011 have raised several legal inquiries the prominent of which are as the following:

1. Devoid of any reference to the technical office formation and stating the name of the presiding judge of the technical office. This raises a legal problem in connection with the legitimacy and legality of the formation of the Judicial Inspection Department in case of entrusting the headship of the technical office to a judge other than the one to whom the chiefship of the judicial inspection department is assigned, pursuant to Article (9) of the Judicial Authority Law, which necessitates that the head of the technical office shall assume the headship of the judicial inspection department. This problem will lead to legal results and impacts that may make the decisions by the judicial department to be null. These formations should therefore include a statement for the technical office and its headship in such a manner that the headship of the technical office and the judicial inspection department will be unified, pursuant to the rule of law and ensuring legitimacy and legality of decisions issued by the judicial inspection department together with complying with the judicial rule ratified by the Court of Cassation recently with respect of the judicial organization.
2. The formations in question lack a statement for the formation of the Courts Department and its headship, particularly such department that deals with the financial and administrative affairs of the Judicial Authority. The formation of this department will involve a highest degree of importance related to the management of public funds beside to its administrative importance and relevancy to the organizational building of the Judicial Authority especially the judge who was in charge thereof is no longer on the job for several months.
3. The formations deemed to be a surprise for a great number of judges violating the judicial custom requiring ratification and announcement of judicial formations at the beginning of the judicial holiday so

that judges may arrange their positions in line with these formations. In fact the formations seem to be approved in the beginning of the new judicial year (4/9/2011) and not at the beginning of the judicial holiday (15/7/2011 – 4/9/2011).

4. The formations incorporated a clear defect with respect to the number of judges from Jerusalem Appeal Court (5 judges) as compared to Ramallah Appeal court (15 judges) despite the fact that geographical area included in the jurisdictions of Jerusalem Court of Appeal is not less in the capacity or population density than that of Ramallah.
5. The judicial formations contained the assignment of headship of the Courts of First Instance to judges who have never undertaken headship of Courts of First Instance; nevertheless, eight judges have been prompted to the headship of Courts of First Instance and some of them since their promotion or appointment as heads of Courts of First Instance have not been assigned yet to such judicial position. This raises an inquiry about the need for appointing judges heading Courts of First Instance at the time in which heads of Courts of First Instance already exist. Also, despite that the number of judges operating in the Court of Appeal is sufficient; heads of Courts of First Instance are seconded to the Court of Appeal.
6. It has been noticed that the judicial formations contained a difference in the number of the judges of Courts of First Instance. Jericho Court of First Instance was formed of two judges (the court session quorum is 3 judges whereas the number of judges of Bethlehem Court of First Instance is 7 judges, Jenin Court of First Instance is four judges and Tulkarem Court of First Instance is four judges. This means that judges from Jericho Court of Magistrate will be seconded to Jericho Court of First Instance. If the legal provisions regulating the judicial secondment and period thereof taken into consideration and the judicial rule ratified by the Court of Cassation with respect of judicial secondment criteria and mechanisms, the operation of Jericho Court of First Instance will therefore be unstable; otherwise, we'd consider that the judicial formation for this court is invalid.
7. It is noticed that the formation of the High Court of Justice consists of two panels. If the administrative judiciary, being a single level judiciary of legitimacy and the importance and necessity of the unity of judicial rules issued by the High Court of Justice are taken into account, the formation of the High Court of Justice of two panels may lead to contradiction in judicial interpretation and difference in judicial rules, the thing which might negatively affect the public's confidence in judiciary and open the door wide for conflicting interpretation that cannot be remedied.
8. Alternatively, it has been noticed that the formation of the Court of Cassation (11 judges) was structured as one panel. If we have taken into consideration the excessive number of cases and applications before the Court of Cassation since the last judicial year till the current year, which accounts for over 1200 suits and applications, such formation will not assist with mitigating the judicial accumulation. Further, the selection of judges who consider appeals and applications filed to this Court will be lacking a clear criterion and an abstract factor; hence, depending upon a personal interpretation of the presiding judge or head of this Court.

Dear Sirs;

Nevertheless, the foregoing comments, the fact indicates that since the next day from the approval of the said formations and their entry into force, the phenomenon of the secondment from Ramallah Court of Magistrate to Ramallah Court of First Instance (2 judges) and from Ramallah Court of First Instance to the Court of Appeal (one judge) was re-coursed to. This indicates that the approval of the formation may was probably made in a hurry considering the shortage of time.

MUSAWA learned that a number of judges objected to their transfer to other courts. They expressed their doubt or fear that their transfer might be produced on disciplinary basis. The Judges Club was preserved towards the formations urging to be reconsidered.

Dear Sirs;

We hope that our memo will be looked into together with addressing whatsoever contained therein in accordance with rules and law. We affirm that the HJC has the exclusive and sole jurisdiction, power and authority over the judicial formations. Our comments are not, by all means, intended to affect such powers or enter into their limits.

Your opinion on our memo accordingly will highly be appreciated,,,

With Respect,,,,,

Date 12/9/2011

MUSAWA



MUSAWA Chief Executive Officer met next day to deliver the memo to the President of HJC Judge Freed Al-Jallad. During the meeting, they discussed the memo which Judge Fareed promised to refer to HJC. From its part, the HJC invited MUSAWA Board of Directors for a meeting to be held on 3 October to discuss the memo.

Cont. / What is the legal value of HJC President's decision to cancel a Ministerial Resolution?!

An objection for cassation was brought on 10/2/2008 against the decision in question before the High Court of Justice under the suit No. 26/2008. The High Court of Justice rejected the objection (suit) making the mentioned decision to be valid and immunized.

In the 9th edition of Justice and Law Magazine issued on October 2008, MUSAWA published the verdict of the High Court of Justice on the law suit and the comments of law experts including Judge Fareed Al-Jallad, President of HJC and Chief Justice, as well as the comments by Advocate Mahmoud Abdul Fatah Emoor from Jordan and Dr. Fathi Fikri Heads of General Law at the Faculty of Law in Cairo University. The three comments unanimously agreed on the invalidity of the judicial interpretation issued by the High Court of Justice. The Court, in their opinion, should have accepted the appeal and cancelled the Council of Ministers' decisions. Since the Council of Ministers' decision was issued until 1/8/2011 the decision remained valid and binding on the Justice Clerk Circuits and their clients with respect of attestation of regular powers of attorney.

On 31/7/2011, Judge Fareed Al-Jallad, President of HJC since 2009, issued circular No. 20/1145 canceling the Council of Ministers' decision. Considering the importance of the circular from the legal point of view, "Eye on Justice" hereby publishes it.

**Palestinian National Authority
Judicial Authority
Chief Justice Office**

Circular

M/S Heads and Judges of regular Courts

Dear Sirs,

Cardinal greetings,

Subject: Clearance Certificate to the Justice Clerk

Reference to the above subject, you are hereby requested to advise the Notary Public of the following:

Article (1): The discharges, of whatsoever kind, shall not be applied for upon attestation and endorsement of regular power of attorney.

Article (2): This circular supersedes whatever contradicts therewith.

Article (3): This circular shall be applicable as from 1/8/2011.

Issued in Ramallah on 31/7/2011

Our Best Regards ,,,,,,,,,

**Judge / Fareed Al-Jallad
President of High Court
Chief Justice
(Signature + Official Seal)**

The decision by the President of (HJC) aroused several inquiries about his power to revoke a Ministerial decision by an administrative decision (circular) after the High Court of Justice has said its word and legalized the Ministerial decision regardless to whether or not the court's interpretation is valid in view of the fact that the administrative judiciary deemed to be of the same level of those whose judgments are conclusive, final and irrevocable.

The decision by the Chairman of the SJC further arouses questions relevant to the principle of separation of powers and the extent of the judicial authority's administrative power to intervene in the business of the executive authority, particularly the judicial authority's administrative power which departs from the framework of the judicial control and has nothing to do with the settlement of disputes.

The decision arouses as well a problem related to the methods of taking an appeal against the administrative decision by Judge Fareed Al-Jallad and the legal value of his decision. Also, the question of the more worthy decision to be enforced is it the ministerial decision in force or the administrative decision issued by the HJC? Also, the question whether the President of HJC has the power or the jurisdiction over revoking the legalized ministerial decision, and is the order to cancel or withdraw the Council of Ministers' decision included in the administrative jurisdiction of the President of HJC or a core function of the Council of Ministers the source of the said decision? This arouses a question about the reason, motive and timing, which prompted the President of HJC to issue his decision, which deemed to be from the legal and constitutional point of view usurpation to the executive authority's powers whereof imparted by absolute nullity and causing the impacts arising out therefrom to lose any legal value. This is in addition to the question about the Council of Ministers' power to insist on implementing its decision and requesting the Notary Public to ignore the decision by the President of HJC who surpassed his powers.

Cont. / Story of Success**Court of Cassation decides nullity of judicial secondment from higher to lower levels**

MUSAWA's remarks on the judicial formations, for the judicial year 2009/2010, included a violation to the law by entrusting the headship of the Court of First Instance to a judge from the Court of Appeal. The memo stated as follows:-

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



M/S President and Members of HJC

Subject: Judicial Formations

Dear Sirs;

Firstly, we wish to affirm that the formation of courts falls within the exclusive jurisdiction of HJC in accordance with the provisions of law. With all due respect and undertaking not to affect such jurisdiction or interfere in the limits thereof, we, in our capacity as a civil society organization, however, seek to enhance the rule of law, promote justice system and comply with the rule of law and articles on all. By virtue of the legal and legitimate inquiries received by MUSAWA, without prejudice to the judges or anyone therefrom with our due respect to them without exception, we believe that the formations involved secondment procedures contrary to the rule of law and Palestinian High Court of Justice's interpretation.

Subject to Articles (22) and (24) of the Judicial Authority law in 2002, the secondment must be grounded on parameters. The first of which is the exigency, the second is provisional secondment, the third is that the secondment must be from a lower level court to a court of a higher level or to a court similar to the one from which the judge is seconded and the fourth parameter is the impermissibility of the secondment from a higher level court to a court of a lower level.

Dear Sirs;

The headship of the Court of First Instance by a judge from the court of appeal to which he was seconded as a presiding judge as contained in the judicial formations may arouse judicial disputes with respect of the legality of the formation of the Court of First Instance. This in turn would lead to prolonging the term of litigation procedures together with increasing judicial accumulation, and delaying the settlement of disputes and slowing down the attaining of justice contrary to the rule of law. This prompted us to inquire about the validity and legality of such formation and stimulate us as well to look forward to seeing the HJC reconsider this formation in accordance to the rule of law and the Supreme Court interpretation.

Dear Sirs;

The formations in question contained a formation for the technical office and another for the judicial inspection department contrary to the rule of law. The headship of both the technical office and the judicial inspection department is undertaken by another judge contrary to the express provision of Article (9) of the Judicial Authority Law which states in paragraph (1) (a technical office at the Supreme Court will establish under the Presidentship of one of its judges etc). Article *42), which provides in its Para (1) that (A judicial inspection circuit attached to the HJC comprising of the head of the technical office shall be established..... Etc). According to such express provision, the head of the technical office must be the head of the judicial inspection department. In light of the constitutional rules, which nullify any regulations, system, decision or procedure which contradicts the rule of law; we hope that the HJC will reconsider the declared judicial formations in line and complying with the rule of law.

Date: 22/0/2010

With Respect,,,,

MUSAWA

Administration



Hand Writing: Received by Court

On: 22/09/2010

"MUSAWA" did not receive any response to the above memo and the Chief of Justice, as well as, the members of HJC did not respond to the memo.

The Court of Cassation settled and decided upon the debate over a judicial rule under its verdicts issued with respect to the criminal appeal No. 117/2010 and request for appointing the criminal reference (the competent court) No. 38/2011 issued on 23/6/2011 together with its judgment requesting for appointing the criminal reference (the competent court) No. 23/2011. The court established an important judicial rule nullifying the judicial secondment from higher to lower level and canceling the secondment made in this respect of the one referred to in MUSAWA's Memo. Considering the legal importance of the judicial rule issued by the Court of Cassation, "Eye on Justice" hereby publishes the Court of Cassation's judgment issued on 3/7/2011 with respect to requesting the appointment of the criminal reference (the competent court) No. 36/2011 in its exact words:

**Palestinian National Authority
Judicial Authority
Court of Cassation**



**Request for Appointment
of Penal Reference
(Competent court) No. 36/2011**

Judgment

Issued by the Court of Cassation convened in Ramallah, and authorized to conduct the trial and issue the judgment in the name of the Palestinian people

The Jury is presided by Judge Sami Sarsoor and the membership of Judges, Abdullah Ghozlan, Eman Nasser Eddin, Azmi Tanjir and Adnan Al-Sho'aibi.

Petitioner: Assist. Public Prosecutor

Proceedings

The petitioner filed on 20/2/2011 this request for the appointment of the competent court pursuant to the provisions of Article (175) of the criminal procedures law No. 3 of year 2001.

The facts and reasons of the request are summarized as the following:

First: The Public Prosecution referred the accused parties, Tayseer Hamza Abdulhadi Suleiman, also known as, Tayseer Al-Deek and Azzam Mahmoud Hussien Dahadha to Ramallah's Court of First Instance for their trial according to what is ascribed to each of them:

The first accused party Tayseer charged with joint forgery punishable by Article (262) of the Penal Code No. 16 of year 1960

The second accused party, Azzam:

1. Joint forgery punishable by article 265 of the Penal Code No. 16 of year 1960.
2. Use forged instrument punishable by Article 261 of the Penal Code No. 16 of year 1960.
3. Fraud punishable by Article 417 of the Penal Code No. 16 of year 1960.

The lawsuit was recorded in the Court under No. 26/2010. At the hearing session held on 25/10/2010, the court determined its non-jurisdiction and referred the papers to the Court of Corruption Crimes.

Second: In the wake of the decision in question, the lawsuit was recorded at the court of corruption crimes under No. 3/2010 towards which the court determined its non-jurisdiction over the lawsuit.

Third: The issuance of the successive decisions by the courts referred to hereinabove has suspended the progress of Article (175) of the Criminal Procedures law.

The Court

After having verified and deliberated the facts of the suit and all papers thereof; and in the light of the provisions and rules contained in the Anti-Corruption law; and the decision by the High Judicial council issued on 1/8/2010 creating the panel of the Court of Corruption crimes; and the judgments rendered by the Court of Cassation (117/2010) and (request for appointing the criminal reference the competent court No. 38/2011) issued on 23/6/2011; and the legal impact arising out from the mentioned judgments necessitating compliance with such judgments before all other courts in all cases in accordance with the express provision of Article (239) of the Law of Principles of Civil and Commercial Trials No. 2/200.

We found that Ramallah Court of First Instance was relevant to the lawsuit on 10/3/2010 and deemed to be the competent court for hearing the suit. Such relevance found to be in such a manner conforming to the rule of law. The Court of Corruption Crimes was on that date the competent court assigned by the legislator for considering such kind of crimes and has been established but has not entered into existence. Further the panel of Ramallah Court of First Instance, which has determined its non-jurisdiction and issued its decision on 25/10/2010 so requiring its referral of the lawsuit to the Court of Corruption Crimes, was not formed in accordance with the provisions of the law as the presiding judge Osama Al-Kilani has no connection with the Court of First Instance by reason of being a judge at the Court of Appeal.

The secondment of the mentioned judgment to Ramallah's Court of First Instance will cause no change in the matter as such secondment violates the express provisions of Articles (22) and (24) of the Judicial Authority law No. 1/2002 and Article (35) of the formation of regular courts law No. 5/2001. The provisions of the foregoing articles have laid down the secondment rules in a strict and precise manner by stating the competent agency for secondment and identifying the events and the scope of manner in which it has been made and not in the events or the manner that to have a judge at the Court of Appeal seconded to a Court of First Instance or acting as its presiding judge, and any work he performs shall be void and will not lead to any impact for violating rules relating to the public order associated with the judicial structure. Such rules exceed the litigant's interest and no party shall be protected, though the judge is satisfied with the decision on his secondment as the judge's satisfaction with his secondment in a manner violating the rule of law exceeds, as well his interest and satisfaction as mentioned hereinabove are associated with the judicial structure.

In particular, the legislator stated a provision specifying that secondment shall be permissible only in the events and manner that is laid down by the law and such matters will not be subject to interpretations, wishes or interests. As the matter being so, the decision by Ramallah's Court of First instance on non-jurisdiction and referral of the suit to the Court of Corruption crimes has become in such event as if non-existent and any procedures followed that decision have also become as if non existent and will not generate any impact.

On such grounds

The court determines that the condition for appointing the reference (competent court) is unsatisfied, the thing which requires returning the papers back to Ramallah's Court of First Instance for taking the legal requisite in the light of what has been stated drawing the attention to what has been referred to in the preamble herein with respect of the judgments rendered by the criminal circuit at the Court of Cassation (117/2010) and (request for appointing the criminal reference the competent court No. 38/2011) issued on 23/6/2011; and the legal impact arising out from the said judgments necessitating compliance with such judgments before all other courts in all cases in accordance with the express provision of Article (239) of Law of Principles of Civil and Commercial Trials No. 2 of year 2001.

A judgment issued in the name of the Arab Palestinian people on 3/7/2011

Presiding Judge

Clerk

In fact, the judicial formations for 2011/2012 issued on 4/9/2011 were produced in compliance with the Court of Cassation judgment in this respect despite the debate aroused by these formations and the other violations to the rule of law involved thereby. This is in spite of the delay in the execution of decisive judgment issued by the Court of Cassation, which should have been entered into force since 4/7/2011.

MUSAWA expresses hereby its regret for the HJC's failure to correct the judicial formations against which an objection for cassation was brought before the said judgments were issued by the Court of Cassation and for the delay in such correction pursuant to the Court of Cassation judgment. MUSAWA hopes that the President and members of the HJC will adopt its suggestions and remarks relating to the judicial formations for the current judicial year 2011/2012 without waiting for a judgment in their respect. This might well provide stability for the judicial business, impart legitimacy to judgments rendered thereby, contribute to redress the phenomenon of judicial accumulation and maintain rights and legal status for litigants and judges alike. MUSAWA looks forward to accelerating the formation of the Judicial Authority technical office and unifying its headship with the Judicial Inspection Circuit in accordance with the legal rules as to ensure legality of decisions and actions issued by Judicial Inspection Circuit in view of the fact that its formation is a genuine judicial structure relevant to the public order. In the event of failure to comply with the legal formation of the Judicial Inspection Circuit, the decisions issued thereby will be nullified at the top of which is to entrust its headship to the head of the technical office pursuant to Article (9) of the Judicial Authority Law, which describes any regulation or decision issued by the HJC contrary to its provisions as unconstitutional from one hand and absolutely null on the other hand in accordance with the judicial rule established by the Court of Cassation, which needs due respect, execution and non-revisable and any departure therefrom will absolutely be null and the impacts arising out therefrom will be of no legal value.

Cont. / Waiting for political groups to play their role

Scheduled to take place on 22/10/2011 until the national reconciliation is completed, which suggests the cancellation of these elections in addition to requesting the members of PLO executive committee, the members of the said follow-up committee, to fulfill their obligation to request from the President to withdraw the decision in question. These were reported in wake of the successive meeting held by the legal committee to discuss the legality of the presidential decision and the available legal tools to take an appeal against it by reason of being an administrative decision subject to judiciary control (High Court of Justice). The President has issued the said decision on 22/8/2011, which "Eye on Justice" publishes herein under:



The President Decision No () for 2011

**President of the State of Palestine
President of the Executive Committee for the Palestinian Liberation Organization
President of Palestinian National Authority**

After having perused the basic rule of the Palestinian Liberation Organization;

And the law for the election of the local councils bodies No. 10/2005 and amendments thereof;

And the local authorities law No. 1/1997 and amendments thereof;

And the Council of Ministers decision No. (01/A52/13/CM/SF) for 2010 concerning the postponement the of election date of the local councils;

And referring to the postponement of the formation of the government to contribute to the efforts in ending the division and achieving the national reconciliation and unity,

And supporting the national and Arab efforts in ending the division and achieving the national reconciliation and unity;

And for the purposes of providing the atmospheres to achieve this,

And giving the opportunity to the Central Election Commission to complete the preparations for conducting the election in all governorates;

And according to powers vested upon me;

And subject to the benefits of the national interest requirements and achieving the public interest;

We decided the following;

Article (1)

The date of the local elections in all northern governorates scheduled for 22/10/2011 shall be postponed until adequate conditions are available for conducting it in all governorates, and whatsoever contradicts with the provisions of this decision shall be void.

Article (2)

All competent agencies, each within the scope of its competence, execute this decision and enforce it as from the date of issue and to be published in the official gazette.

Issued in Ramallah on 22/8/2011

**Mahmoud Abbas
President of the State of Palestine
President of PLO Executive Committee
President of Palestinian National Authority**

The national groups and legal organizations issued a statement in respect of the local council elections as follows:

Statement by National Groups and Legal and National Authorities with respect of Local Elections

President Mahmoud Abbas issued on 22/8/2011 a presidential decree postponing the date of conducting the local elections in the northern governorates (West Bank) which was scheduled for 22/10/2011.

The decree in its preamble pointed out "to contribute to the efforts in ending the division and achieving the national reconciliation and unity, and supporting the national and Arab efforts in ending the division and achieving the national reconciliation and unity; and for the purposes of providing the atmospheres to achieve this, and giving the opportunity to the Central Election Commission to complete the preparations for conducting the election in all governorates."

In this connection, national, social and legal organizations called upon each other for a meeting attended by a number of PLO Executive Committee members Mr. Abdulrahim Mallooh, Tayseer Khalid, Saleh Raafat, Ghasan Al-Shakaa and Ahmed Majdalani.

The meeting was attended also by leaders and members of the Popular Front for the Liberation of Palestine, the Democratic Front for the Liberation of Palestine, Palestinian People's Party, Palestinian National Initiative, Palestinian Democratic Union, Palestinian Popular Struggle Front, Palestinian Liberation Front, Arab Palestinian Front, Palestinian National Organization Network, Independent Commission for Human Rights, Civil Society Election Coalition, representative of the lists previously established for the election and national independent personalities .

The attendance discussed the dimensions and consequences arising out from President Abbas' decision and the implication of such decisions on the democratic process together with Palestinian aspiration towards enhancing Palestinian democracy in such a way that will guarantee the legitimacy of the elected organizations and put an end to the wearing out affecting the official organizations legitimacy.

The meeting discussed the President's decision owing to constituting a violation to the provisions of Palestinian basic law and the judicial rule established by Palestinian High Court of Justice.

The election according to the decision by the High Court is a democratic entitlement and at the same times a constitutional right as well as the preparedness of the Central Election Commission, which did not ask for the postponement of the election.

The participants underlined what has been determined by the High Court of Justice that the postponement decision is not associated with the national reconciliation and unity as the election in its essence does relate to the sovereign matters but to the public services and interests and therefore cannot be taken as a pretext to postpone the local election.

Further, the attendance pointed out that PLO Executive Committee has previously discussed the issue of the local elections in the presence of the President and Prime Minister affirming at that time the necessity of complying with conducting the elections.

In the light of the foregoing, the meeting decided the following:

- Adhere to conduct the local council election within the nearest possible time in consultation with the Central Election Commission.
- Urge President Mahmoud Abbas to ensure the implementation of the elections being a constitutional right and democratic entitlement for the Palestinian citizens and withdraw the decision on the postponement of the elections.
- Seek by all means guaranteed by law to achieve this object at the top of which respecting Palestinian Judiciary decisions and strive within the largest Palestinian popular sectors to crystallize a pressing public movement to ensure the implementation of the elections.
- Urge members of PLO Executive Committee who objected to the President's decision postponing the election to assume their responsibility for the political movement within the framework of the Executive Committee to ensure the implementation of the elections.
- Establish a body to follow-up execution of the decisions and liaise with the respective agency to ensure that the election will be carried out on time and organize popular activities and legal and judicial follow-ups.

Urge the members of Hamas Movement to pave the way for the Central Election Commission to organize the election in Gaza strip on the same date and ask the official agencies to prepare the atmospheres to ensure the conduct of a fair and transparent election and the necessity to respect the results thereof.

The Civil Society Election Coalition sent a memorandum to the President, Prime Minister of Gaza government and the parliamentary blocs in the wake of the announcement by the Council of Ministers to conduct the elections on 9/ 7/2011. Considering the legal importance of the said memorandum bearing the title "Civil Society Organizations Vision on Local Elections – National Campaign for the Support of Participation in Local Elections," "Eye on Justice" hereby publishes this memorandum as follows:-

Date 12/4/2011

Civil Society Organizations Vision on Local Elections **National Campaign for the Support of Participation in Local Election**

Local elections deemed to be a legal and democratic entitlement at the same time. As per Local Councils Law No. 10/2005 under which the last local elections were carried out, all local councils tenure will expire on 22/12/2008. But, due to the state of political division being experienced by Palestinian people, the elections were cancelled on that date.

The Ministry of the local government was therefore prompted to appoint some local councils constituting encompassment of citizens' right to elect their representatives in these councils.

Palestinian government issued a decision to conduct the elections on 17/7/2010 but in no time has cancelled it on the pretext that there is a horizon for national reconciliation.

But, in compliance with pressures exerted by civil society organizations, political parties and some electoral lists, which were victorious by receiving a decision from the High Court of Justice on 13/12/2010 canceling the government decision in question, the government decided to carry out the elections on 9/7/2011.

We, in **the National Campaign for the Support of Participation in Local Elections**, whilst assuring the nature of the role played by local councils in providing vital general services to their citizens being their reference and source of legitimacy in view of the fact that they have been elected by them, we believe that it is necessary to keep the local elections away from the political division consequences. Also, we feel that their alignment with the reconciliation is out of delay and political investment serving narrow political interests and considerations rather than public interest.

The National Campaign for the Support of Participation in Local Election believes that the announcement of the elections' date as to be conducted on 9/7/2011 is commitment by the government to Palestinian Judiciary decision and rule of law.

Such announcement comes in line with what stated in Article 26 of the basic law, which provides for the citizen's right to the political participation particularly during elections and pursuant to Article 4 of the local elections law, which provides that "the local elections shall be carried out on one day every four years by a decision from the Council of Ministers in order to prevent appointment of local councils in view of expiry of the legal tenure of all local councils on 22/12/2008.

In consequence, **the National Campaign for the Support of Participation in Local Elections** feels that the local elections must constitute a will for stirring national reconciliation if carried out in atmospheres of democracy, freedom, fairness and transparency.

For the sake of providing these atmospheres and substantiating the principle of peaceful circulation of elections, we lay down hereby the following rules and basis as pre-conditions for providing a favorable climate for carrying out free and fair elections:



Firstly: availability of a political will with all parties at top of which Gaza and Ramallah governments to release public and private freedoms particularly freedom of opinion, speech and assembly, releasing all political detainees, reopening Civil Society Organizations, which have been closed and suspending other actions taken towards them.

Secondly: Unconditional participation by citizens and the political forces throughout Palestinian territories in all local elections.

Thirdly: Compliance by all parties and independent electoral lists with the local elections law and regulations thereof organizing the progress of the election process and the directives, decisions and procedures by the Central Election Commission together with whatsoever commitment required therefrom to cooperate with such committee in its efforts to organize a free, fair and transparent elections together with respecting its staff and keeping them away from assaults. Similarly, the local elections committee must undertake to open its meeting for civil society organizations.

Fourthly: Necessity to provide democratic and adequate atmospheres to conduct the elections and implement whatsoever the Central Election Commission may require with the objective of securing safety and security of its staff, local and international observers, candidates and citizens who will cast their votes as well as the necessity of non-intervention by security agencies in the elections process by all means.

Fifthly: Neutralize official organizations from playing any role in the local elections and supporting a party on the account of the other party including refraining from using government facilities like offices, equipment, vehicles and employees' working hours for the benefit of certain blocs and excluding others.

Sixthly: Invite political parties, factions, electoral lists and candidates to sign a charter of honor to be abided by before and during the election process and respecting its results.

Finally, we do hereby assure that we would stand as fortified rampart in the face of any violations to the elections' process. We would be having our own opinion through tracking all the elections' process and if we find that the nature and size of the violations will affect the elections' results, these shall expressly be announced and the legitimacy of results announced will be objected.

1. The Independent Commission for Human Rights.
2. Palestinian Center for the Independence of Judiciary and the Legal Profession.
3. Palestinian NGO Network - PNGO
4. The Coalition for Accountability and Integrity - AMAN.
5. Human Rights and Democracy Media Center. SHAMS
6. Palestinian center for Peace and Democracy
7. Observatory of the Arab World to Democracy and Elections
8. Jerusalem Legal Aid and Human Rights Center
9. The Palestinian Institution for the Promotion of Global Dialogue and Democracy MIFTAH
10. Ramallah Center for Human Rights Studies.
11. Working Woman Association.
12. Women Affairs Technical Committee (WATC).

Signed by: All parties.

MUSAWA learned that the legal committee referred its mentioned recommendations to the follow-up committee of the political groups and community based organizations and other electoral lists participating therein, and MUSAWA is still waiting the political groups to take place thereto.

MUSAWA hopes the political decision makers and executors to make available for the citizen to elect their representatives at the local councils through public, freedom and integral elections and shall respect its results as soon as possible. MUSAWA is seeking to achieve the national conciliation on the ground and to initiate building a Palestinian democratic state and also MUSAWA confirms and assure that the role of the local councils is serving people while the whole world considered it as an integral part of the democratic process of building any civilized state.

The Shari'a Jurisdiction, Personal Status Prosecution, Shari'a Courts Judges Pay Scale lack organizing law

"Eye on Justice" learned that the Personal Status prosecution lack operational organizing legal title, which was grounded on an organizational structure issued by the Council of Ministers in 2005 on the basis of an official endorsement by the late President Yasser Arafat in 2003. The Legal Department at the Presidency Office found that the official endorsement in question cannot be regarded as a decree, which urged the need for the personal status prosecution to be organized upon legal basis.

The Personal Status Prosecution cadres are employed without proper jobs based on a legal organizational structure as no law or presidential decree was issued in this respect. The High Court being entrusted with the operations of the Constitutional Court until the latter is formed, rendered a judgment nullifying Shari'a High Court structure, which was established in 2003 by a presidential decree from late President Yasser Arafat making it to operate without a proper structure, noting that such Court has rendered over 14000 judgments.

The Shari'a jurisdiction's legal and administrative structure requires urgent proper systems to legalize the course of actions as to lead to sound effects. On the other hand, the salaries of Shar'i judges and their equivalence with the regular judges pay still require a legal structure.

In particular, a legal debate has been raised with respect of the legality of the Council of Ministers decision no. (07/04/CM/AK) for 2003 determining the application of the current regular judges pay scale to Shar'i judges as from 14/12/2003 and amended by the Council of Ministers decision No. (07/18/12/CM/S) for 2007 determining the continuation of payment of Shar'i judges salaries in accordance with pay roll contained in the Judicial Authority Law, which will no longer be operative for Shar'i judges who are appointed after the issuance of this decision. The issue of the debate relates to the adequate legal mechanism for regulating Shar'i judges' salaries, which require a law and not a government decision – Cabinet's decision.

Cont. / Editorial /what is after...?

MUSAWA learned that the Legal expert, the former Jordanian Minister of Justice, entrusted by the legal advisor to the President Mr. Hassan Al-Ouri to prepare a proposal for resolving justice crisis in Palestine and the problem of relationship among justice officials, has not yet completed the assignment despite several months have elapsed.

MUSAWA also learned that **"AL KHOLWA"** proposed by Ministry of Justice and supported by the legal advisor to the President scheduled to be organized in Jordan between justice officials the President of HJC, Public Prosecutor and Minister of Justice has not yet been organized or at least its results, if organized, were not announced to the public opinion and was not reported to relevant community agencies.

Considering the urgent need, Musawa requests all parties concerned about justice, officials, nationals, legal experts, political and parliamentary forces representatives and civil society organizations to agree upon mechanism for releasing justice from its current impasse.

We, further, urge decision makers to expressly announce their political will and immediately proceed with taking actions guaranteeing reform if not re-building the justice system in conformity to the requirements for building the State of Palestine, the member No. 194 of the international family members, considering the President's speech before the UN General Assembly which affirmed that the State of Palestine, requiring an international recognition, is a state of law and founded on the principle of rule of law, good governance, separation of powers and independence, neutrality and integrity of judiciary being a protector of rights and general freedoms.

It is no longer acceptable to maintain silent towards the depth of the crises facing justice in Palestine, which prevents the achievement of Palestinian Spring. So till when shall we wait, hanging under the risk of accepting the tragedy and failure of doing the duty?

Cont. / For technical reasons and obstacles

Gaza HJC President declines permission for judges and employees to fill out “Legal Monitor” questionnaire forms

MUSAWA seeks to produce a legal monitor observatory study annually as a report monitoring changes occurring in the performance of the pillars of justice in order to identify areas of strength and develop them and areas of weakness for overcoming them away from harming or interfering in judges and courts staff work.

Palestinian Center for the Independence of the Judiciary and Legal Profession (MUSAWA) sent a written memorandum to the HJC President in Gaza in this respect.

In view of the importance of this memorandum, from the legal point of view, MUSAWA hereby publishes it appended by the reply of the HJC President, which stated in its exact words “No room at the present time for technical reasons. As soon as the obstacles are vanished, cooperation will be made in this area”.

Palestinian Center for the Independence of the Judiciary and the Legal Profession

“MUSAWA”



Judge Abdul Rauf Al Halabi

President of High Judicial Council

Gaza

Subject: Legal Monitor

Dear Sir,

It is our pleasure at the Palestinian Center for the Independence of the Judiciary and the Legal profession “MUSAWA” to inform you that we have made a contract with Alpha Researches and Studies Company for conducting a survey study which aims at demonstrating to the public opinion the change in justice position between 2009/2010 and 2011/2012.

For the purposes of producing the “Legal Monitor” observatory study, your approval and permission are kindly requested for judges and courts staff to fill out the questionnaire forms to the best of their belief and opinion in accordance with the observed rules in this area.

We do hereby affirm that the report will be based on scientific and objective approach in order to identify areas of strength and achievement and areas of weakness together with the need for correction and improvement away from any harm or interference in the work of judges and courts’ employees.

We look forward to strengthening the bonds of cooperation in such a way that will substantiate rule of law and independence and efficiency of Judicial Authority.

We hope that our request will be approved for the benefit of the public interest requirements and being an indispensable legal and national need.

MUSAWA together with Alpha Researches and Studies Company will fully be prepared for any procedures you may determine and comply with the professional, scientific and legal rules with the hope of having the “Legal Monitor” observatory study produced in the ideal format and in a way that will achieve the desired goal.

Date: 14/9/2011

MUSAWA



ting: No cooperation at the time being for technical reasons, in case these obstacles faded away, then we will cooperate in this regard.)

(Signature and date)

MUSAWA regrets that those in charge of judiciary in Gaza were unable to respond to its demand. MUSAWA will seek to publish the reply by the President of HJC and justifications thereof in the 2nd Legal Monitor report intended to be issued in the mid of next March.

Cont. / Written documents confirm MUSAWA's monitoring role

The decision of appointing an officer of a major rank from Protective Security in the Public Relations Department at the High Judicial Council has been made, and he has assumed his job.

MUSAWA pointed out as well to the memorandum sent by a university chancellor to the President of Palestinian National Authority regarding the university's decline to comply with a judgment rendered by the High Court of Justice and a sharp critique to its judges who rendered the said judgment.

MUSAWA pointed out to the contacts it made with HJC President to relinquish the decision appointing the officer in question and to send a memorandum to the President in response to the university Chancellor's memorandum.

MUSAWA praised HJC President's response to its request indicating to a letter of appreciation it submitted to him, which stated:

Hot Dialogue with HJC President

MUSAWA learned that the HJC President decided to appoint an officer of a major rank from the Preventive Security in the Public Relations Department at the HJC who has assumed the job.

MUSAWA learned as well that a university chancellor sent a memorandum to the President of Palestinian National Authority regarding the university's decline to comply with a judgment rendered by the High Court of Justice and a sharp critique to its judges who rendered the said judgment.

The President referred the memo in question to the HJC who slackened the reply to whatsoever contained in the memorandum according to the manner that will ensure authenticity of the judgment and judges' prestige and position who were summoned and their judicial interpretations were discussed. On its part, MUSAWA made contacts with HJC President for relinquishing the decision appointing the officer in question and sent a memo to the President in response to the university chancellor's memo. The HJC decided to relinquish the decision appointing the officer and sent a memorandum in response to the university chancellor's memo.

In the wake of the foregoing, MUSAWA sent a letter of appreciation to HJC President and the HJC Secretary General, Head of the Courts Administration, which stated:

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



Judge Fareed Al-Jallad – Head of High Court and President of High Supreme Judicial Council

Judge Ezzat Al-Ramini - Director of Courts Administration

Dear Sirs;

MUSAWA appreciates your prompt response to its request for relinquishing the decision appointing an officer of a major rank from the protective security in the Public Relations Department at the HJC as such response reflects proper and sound enforcement of law. You are thanked as well for responding to MUSAWA's request for sending a written memorandum to the President underlining your adherence to the authenticity of the judgment and the necessity to obligate all parties to execute it without delay in response to the letter by An-Najah National University Chancellor addressed to the President regarding failure to submit to the judgment rendered by the High Court of Justice on enabling the university students to object to the decision dismissing them from the university to settle their entitlements as per rules. Your response to MUSAWA's request for relieving the magistrate judge from his administrative duties as the Director of the office of the HJC President in order to devote himself to his judicial work is appreciated as well.

MUSAWA thanks you for your promise to invite it to use its right to monitor the next judicial competitions procedures. Furthermore, MUSAWA appreciates your adoption of its comments on judges' satisfaction survey form with respect of the judicial situation, the thing which provides the conditions for the judge to give his opinion in a strict confidential and free manner.

Your response to MUSAWA's demands and comments is seen by MUSAWA as a greatly positive indicator and looking forward to seeing further steps and decisions that is hoped to be issued from your part as to provide the desire to respect and apply the law to all and contributing to develop sound administrative and legal performance of the HJC.

MUSAWA expresses its complete willingness for positive and constructive cooperation with the HJC in a way that will substantiate the principle of rule of law and activate judiciary role in consolidating the features of justice in Palestine.

Our Utmost Regards,,,

MUSAWA



MUSAWA pointed out that it has received a response to the said letter of appreciation from the HJC President containing an absolute denial to the appointment of any personnel from the security services by the HJC, which stated:

**In response to the letter of appreciation, MUSAWA received the following
reply from the HJC President:**

**Palestinian National Authority
Judicial Authority
Court of Cassation**



M/S The Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"

Greetings,,,,,,,,

Please be advised that the HJC looks with a great condemnation to your letter addressed to us, on 14/6/2010, as it contains an intervention in the Judicial Authority affairs contrary to the observed constitutional and legal rules, which prohibit intervention in the courts and justice affairs.

The HJC does not expect any appreciation from any agency for performing its duties entrusted thereto.

The actions taken by the HJC towards any respect of the Judicial Authority affairs are emanating from the HJC keenness on practicing its duties as per rules.

Your letter in question contained several contradictions as the HJC has not appointed any personnel from the security agencies in the HJC Public Relations.

The memorandum to the President was not sent at your request.

Furthermore, Judge Ahmed Walad Ali is fully devoted to Ramallah Magistrate Court and his provisional secondment to the office of the HJC President besides to his position is an administrative and organizational procedure in which you do not have any capacity or right to intervene.

The judicial competitions are conducted in a responsible transparent manner with the participation of non-government organizations.

I wish to point out that conflict of interests may lead to misunderstanding with third parties as long as your organization's Chief Executive Officer works as a practicing lawyer and appears before courts by virtue of his job.

Finally, you're requested to stop such practices for the sake of preserving the judiciary public interest and desist from any role causing harm to the independence of judiciary.

**Judge Fareed Al-Jallad
Head of High Court
Chief of Justice
(Seal + Signature)**

MUSAWA restrains from making comments, leaving it to the cleverest legal bodies, to guarantee a positive and effective relationship with all justice parties.

MUSAWA received a written letter sent by HJC President to the President of the Preventive Security Service requesting appointment of a security officer for the HJC. In view of the importance of this confirmative letter from MUSAWA's transparent monitoring operations point of view, MUSAWA hereby publishes it:

**Palestinian National Authority
Judicial Authority
Court of Cassation**



**Major General Ziad Hab-Errih,
Head of the Preventive Security Service**

Esq.

Dear Sir,

Subject: Appointment of a Security Officer for HJC

In view of the particularity of High Judicial Council word, you're hereby kindly requested to appoint a security officer from within your security service to assist with maintaining security at the premises of the High Court of Justice.

Thank you for your cooperation in this respect.

**Regards,
Judge Fareed Al-Jallad
Head of High Court
Chief of Justice
(Seal + Signature)**

MUSAWA obtained a copy of the letter sent by the Chancellor of the said University to HE the President confirming the validity of the facts referred to by MUSAWA in its dialogue and correspondence with HJC then. "Eye on Justice" hereby publishes it as follows:

**An-Najah National University
The President Office**

Date: 27/5/2010

No. 529 RG/905

URGENT

**HE the President Mahmoud Abbas
President of the State of Palestine
President of PLO Executive Committee**

Dear Sir,,,,,

We are honored to present to your Excellency our dearest compliments and appreciation being a leader for the precious country's march. Your Excellency let me first say that I do look forward to witnessing the Palestinian Judiciary establish rules of justice and fairness in our society as to be the foundation on which our independent state will be established. Your Excellency will be aware that the judgments rendered by courts are based on causation thereof featuring the judge whilst performing his duty with respect of verification, investigation and close examination in a bid to identify the truth, which his judgment will disclose. The causation of judgment prompts the judge to be careful and fair in rendering his judgment in such a way that the judgment will not be rendered under sentiment influence or on the basis of a vague conception whose features have not yet appeared and the details thereof are concealed. The judgment must be deduced from specific, clear and exclusive reasons in a manner that will impart tranquility among litigants otherwise the judgments, regardless to the rendering court whether are final or provisional, will be null. The foregoing exactly applies to the judgment issued by the High Court of Justice panel presided by Judge Eman Nasser Eddin in the suit No. 290/2010 dated 26/5/2010 suspending the execution of the decision by the University's Board dismissing two students from the University by reason of messing around with the University's regulations and security. I am placing herewith before your Excellency a copy of the judgment, which found to be devoid of reasons for its issuance in accordance with the law requirements, perhaps due to interference by personnel or agencies having the influence in such or that area. These may, as a consequence, encourage those who abuse the University's security and impairing its established regulations since longer years being the national scientific lofty building seeking by virtue of your support and directives to maintain it.

Our Best Regards,,,,,

**Your Brother,
Rami Hamdallah, PhD, Professor
University President
(Official Seal + Signature)**

CC:- HE the Head of High Court

The President issues instructions concerning drafting lands power of attorney

President Mahmoud Abbas issued instructions concerning drafting of power of attorney relating to immovable properties (lands) with Palestinian Embassies and Consulates abroad. In view of the legal importance of the rules and procedures contained therein relevant to circulation of real estates ownership, "Eye on Justice", hereby publishes such instructions.

Palestinian National Authority

Palestinian Liberation Organization

The President

Instructions Concerning Drafting Power of Attorney Relating to immovable properties with Palestinian Embassies and Consulates abroad

1. The power of attorney relating to immovable properties, which are drafted abroad shall not be approved and attested unless prepared and made directly with Palestinian embassies and consulates.
2. The preparation of power of attorney relating to sale and registration of immovable properties shall be restricted only to regular power of attorney excluding any texts relating to sale and registration from general and special power of attorney.
3. No regular power of attorney shall be prepared for holders of Palestinian ID or passport.
4. The following text shall be added to the lower part of the general and special power of attorney "The sale and registration of immovable properties shall be excluded from the provisions of this power of attorney".
5. No regular power of attorney shall be prepared unless a registration deed or a recording receipt whose issuance has not exceeded one month is produced.
6. The preparation of regular power of attorney shall be in accordance with names of the interested parties contained in their personal documents and the number and type of the identification document shall be incorporated in the text of the power of attorney.
7. The following documents shall be attached to the power of attorney:
 - a. Land registration deed the subject of the power of attorney.
 - b. Copy of inheritance limitation deed if the immovable properties are registered in the name of the legator together with listing the number of the inheritance proof, place and date of issue in the text of the power of attorney.
 - c. Copies of IDs of the parties to the power of attorney.
 - d. A duly attested copy of the power of attorney and attachments thereto shall be delivered to the interested parties, and the second copy and the attachments thereof shall be retained with the Embassy Notary Public.

Palestinian National Authority

The President

Palestinian Liberation Organization

8. A duly attested and authenticated copy of the power of attorney as well as attachments thereto shall be delivered to concerned parties and other copy and attachments thereto shall be maintained at the embassy notary office.
9. Palestinian Embassies shall on regular basis provide the Ministry of Foreign Affairs with copies of power of attorney and attachments thereto for matching such power of attorney their analogous produced by the interested parties before are attested.
10. The computer systems of the Civil Status and Notary Public within Palestinian territories shall be linked with the Lands Authority.

Ramallah, 16/02/2010

MAHMOUD ABBAS
President of the State of Palestine
President of PLO Executive Committee
President of Palestinian National Authority
(Signature)

Probe into death of detainees required and a legal duty

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA" sent a written memorandum to the Public Prosecutor in Gaza Judge Mohammed Abed requesting initiation of an investigation into the conditions and circumstances behind the death of citizen Adel Riziq while being detained at one of the detention centers in Gaza and announcing the investigation findings.

In view of the importance of this memorandum from the legal point of view, "Eye on Justice" hereby publishes it:

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



Date: 21/4/2011

**Mr. Mohammed Abid
Public Prosecutor**

Subject: Death of Citizen Adel Saleh Riziq Riziq in a Detention Center

Dear Sir,

MUSAWA learned that Citizen Adel Riziq (52 years) was taken to Al Shifaa Hospital in Gaza and his relatives received a telephone call at 8:00 on Tuesday morning 19/4/2011 informing them of his death at a detention center and the body was taken to Al Shifaa hospital in Gaza. According to the information obtained by MUSAWA from the deceased relatives, police from Internal Security Service came to Riziq house at about 20:00 on Thursday evening 14/4/2011 demanding him to accompany them without producing any arrest warrant from judicial agencies specified by law. The deceased has never received any subpoena or notification of whatsoever. Riziq's relatives affirmed that he was not complaining of any diseases and had good health.

Riziq was a soldier at the National Security Service the batch of 2005 and married with 8 children including 6 girls, two of them are still kids. The Ministry of Interior received a clarification on its website over the death stating as follows "On the dawn of Tuesday 19 April 2011 Adel Riziq (52 years) being detained with the Internal Security Service has died in the wake of an indisposition attacked him yesterday Monday. He was treated at the hospital but further multiplications led to his death. His body currently is being presented to the Forensic Medicine. An official investigation committee was met in this respect together with informing all the competent agencies including the Inspector General and lawyers.

MUSAWA affirms that every death takes place inside detention centers is a subject of doubt and requires initiation of a criminal investigation extending to include arrest and arrangement procedures, the investigation made with the deceased and the extent of observing such procedures of law particularly without being liable to torture or any kind of harsh and lethal treatment.

MUSAWA is concerned about the information quoted from the deceased's relatives, which indicated that the arrest was made contrary to the procedures as there was no arrest warrant from the Public Prosecutor and the agency, which seized and arraigned late Riziq was authorized under law, an act expressly violating the provisions of Palestinian Criminal Procedures Law.

Further, the prohibition of Human Rights Organizations Lawyers from viewing or attending the

autopsy is a matter arouses the concerns of MUSAWA whose legal vision conforms to the view of Human Rights Organizations: Al HAQ Organization, Al Mizan Center for Human Rights and Al Dameer Center for Human Right, which was expressed in the statement issued by such organizations.

While MUSAWA regrets the death of the citizen Adel Riziq under vague conditions and circumstances, we look forward to initiating an investigation, at your end, over the circumstance behind the death as every death inside a detention center prompts the prison manager or his representative to inform the Public Prosecution in accordance with the provision of Article (16) of Rehabilitation and Reform Centers Law No. 6 of year 1998. MUSAWA points out that the initiation of the investigation and looking into all circumstances and details accompanied the case including the actual reason for the death is an exigent and necessary claim and a legal duty as well together with publishing the investigation findings as soon as completed within a reasonable period of time conforms with the professional investigation rules and procedures. MUSAWA emphasizes on the family's right to bring an independent autopsy examiner. Such right cannot be undermined in view of its role in enhancing transparency and integrity of investigation.

MUSAWA expects the issuance of the Medical Examiner's report who examined Riziq's body to verify whether or not the death was a result of torture and abuse.

MUSAWA



In a subsequent development, MUSAWA urged the competent agencies in Gaza to probe immediately on the circumstances of the death of the 27 years old detainee Mohammed Hassan Al-Hmaid from the Central Governorate in Gaza Strip on 13/6/2011 after has been moved from the detention center of the Anti-Drug Department to Al Shifaa Hospital in Gaza as well as the death of the 46 years old detainee Anwar Abu Ghanim on 27/5/2011 and to announce the investigation findings accordingly and as per rules.

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



MUSAWA urges competent agencies to initiate immediate and serious investigation on circumstances and conditions for moving detainee "Anwar Abu Ghanim" from Ansar Detention Center to Al Shifaa Hospital

MUSAWA learned that 46 years old detainee Anwar Ismail Mohammed Abu Ghanim from Jabalia Refugee Camp was taken on Friday evening 27/5/2011 to Al Shifaa Hospital in Gaza in a very critical health condition. Abu Ghanim was arrested on 14/4/2011 by the Internal Security Service and detained for investigation at Ansar Detention Center. According to the available information the detainee's relatives went directly to the hospital and after two hours they could see him following his transfer to the Intensive Care Unit. They brought a private doctor who affirmed that Anwar was in a critical condition suffering from severe internal bleeding on the left side of the brain. Anwar's relatives pointed out that their son was not complaining of any diseases and his health was good before being arrested. MUSAWA maintains that the transfer of Anwar to Al Shifaa Hospital in a very critical health condition comes after less than two weeks from the suspected death incident of Adel Saleh Rizi, 25 years old. On Tuesday 19/4/2011, he was taken dead from Ansar Detention Center to Al Shifaa Hospital in Gaza. MUSAWA regrets that record of victims in Palestinian prisons and detention and investigations centers still contuse by reason of torture and harsh treatment being prohibited by Palestinian law and international agreement particularly Anti-Torture Convention for 1948. MUSAWA urges the government in Gaza to necessarily initiate an immediate and serious investigation on the conditions and circumstances accompanied the movement of Anwar Abu Ghanim from the Detention Center to Al Shifaa Hospital and publish the investigation findings to the public once completed. MUSAWA invites the government in Gaza to urge the police and security individuals to strictly observe the legal and procedural rules regulating arrest and detention operations. MUSAWA appeals to the expected government to reinstate the investigation in a professional manner on all cases of death among detainees and prisoners in Gaza strip and West Bank detention centers and prisons particularly during the period of Palestinian division as to be on the top of its priorities.

MUSAWA

Gaza Public Prosecutor: Judiciary will say its word in the appeal filed by Sharik Association

The Palestinian Center for the Independence of Judiciary and the Legal Profession "MUSAWA" sent on 21/7/2011 a written memo to the Minister of Interior and National Security in Gaza concerning dissolution of Sharek Youth Forum.

In view of the legal importance of the Memo, "Eye on Justice" hereby publishes it:

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



**His Excellency Minister of Interior & National Security
Government of Gaza**

Subject: Your Decision of dissolving Sharek Youth Forum

Dear Sir;

The Palestinian Center for the Independence of the Judiciary and the Legal Profession is greatly and seriously concerned about the material violation reflected on your decision No. 31/2011 dated 12/7/2011 to the provisions of the basic law particularly Chapter (3) thereof regulating and guaranteeing Palestinian citizen's basic rights and the Charitable Associations and Organizations Law in force. Your decision was based on reasons inconsistent with the law of which the allegation that Sharek Youth Forum branch throughout the governorates of Gaza has no license from the Ministry of Interior. The decision in question involves a consolidation to the division of the country contrary to the rule of the Basic Law and laws in force and conflicting with the declared national reconciliation agreement, provisions of the Basic Law and the Charitable Association and Organizations law No. 1 of year 2000. The alleged violation by the said Association to the public order and morals according to the investigations by the Public Prosecutor in Gaza is in contrariety to the law. The Public Prosecution cannot make by itself a reason for the dissolution as such dissolution must be grounded on a final judgment with respect of any violation that may be ascribed to this or that association. The long and flowing allegation, which failed to demonstrate the aspect of violating the public order and morals and has not been settled by a final judgment from the competent court, is not sufficient to have your appealed decision issued. The Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA" expresses its astonishment and condemnation to the execution of the dissolution from immediate effect as contained in your decision. Your decision in question, which is demanded to be cancelled, has preceded the High Court of Justice' decision in Gaza regarding the contest made by the said association against the Public Prosecutor's decision requiring provisional closure of the association. Further, your contested decision preceded as well and infringed the powers of the High Court of Justice together with conflicting with its provisional judgment accepting the association's contest against the public prosecutor's decision who was entrusted to demonstrate the necessitating or prohibiting reasons for canceling it within 15 days form date on which he has been notified of the High Court of Justice' decision issued on 27.6.2011.

MUSAWA points out that your decision came as a topping to series of illegal actions targeted the association in question and hindered the execution of its community mission. These actions, which started with summoning those in charge of the association and breaking into its premises, searching and confiscating the contents therein by the security services in Gaza in several times were followed by a decision on 29/11/2010 from the Public Prosecutor in

Gaza Judge Mohammed Abed closing the Association premises tentatively until the investigations are completed against which an appeal was taken before the High Court of Justice. The decision was followed by closure of the association's branches in Rafah and Jabalia without leaning on any judgment from the competent court expressly violating the Public Prosecutor's decision and preceding Gaza Premier Ismail Haniya's reply to the several demands addressed to him by civil society organizations operating in Gaza including the memorandum sent by Palestinian Center for Human Rights to Premier Ismail Haniya on 16/12/2010 for reopening Sharek Youth Forum premises in Gaza Strip.

MUSAWA maintains that your decision that demanded to be cancelled involves several violations to the provisions of law including the allegation contained in its preamble that it has been issued in order to preserve Palestinian social fabric and for the benefits of the public interest requirements. Having perused the applicable laws, the subject of preserving Palestinian social fabric is a theoretical matter involving several interpretations and based on a number of philosophies and visions being a philosophical concept provided for in the rules and provisions of the basic law, charitable and national associations and current Palestinian legislative package. The respect of Palestinian social fabric is respected through law and its rule over all rulers and ruled without being subject to personal and self interpretation departing it from the limits of respecting the law and its rule over all. It should be regard as a legal pillar for administrative decisions of which the decision on dissolving Associations for which the law expressly provides reasons and actions thereof leaving no room for interpretation or argument.

With all respect to your interpretations and vision, it is the provisions and rules of laws that are to be relied upon and binding on all and not the personal intellectual interpretations. The strange and astonishing thing is your justification that Sharek Youth Forum is obligated to obtain a special licensing from the Ministry of Interior at Gaza governorates to practices its activity. This was disclosed after the passage of almost 7 years since the Forum has been licensed by Palestinian National Authority through its different Ministries like the Ministry of Interior and the Ministry of Youth and Sports being the competent Ministry. It is evidenced that Sharik Association obtained a licensing from the Ministry of Interior in 2004 and from the competent Ministry in 2005. In accordance with the Charitable Associations and Civil Society Organizations Law No.1/2000 the Forum is entitled to open branches or offices within the country with no requirement for new registration. This applies to all associations whose their main offices are situated in Gaza and those having main offices in the West Bank.

In regards to your decision reliance on what so-called the Public Prosecution investigations, the applicable laws of which the Criminal Procedures Law prescribe that the litigation shall cease to be valid after the passage of 6 months from the last proper action taken thereto.

As no action has been taken towards the Public Prosecution investigations since 29/11/2010, the litigation arising out therefrom should have become invalid by virtue of law. Palestinian Center for the Independence of the Judiciary and Legal profession "MUSAWA" reminds your Excellency of the provision of Para (2) to Article (36) of the Charitable Association and Civil Society Organizations Law, which clearly provides that if an appeal is taken against a decision dissolving an association organizations before the competent court, the association may proceed with its operations until a final decision suspending its activity is issued.

As Sharek Youth Forum re-coursed to the judiciary for bringing an appeal against the said decisions, your decision on dissolve it or suspending its activity prior to a final judgment from the competent court is absolutely null and inexistent by reason of violating expressly the rule of law and should therefore be cancelled together with all results arising out theorem.

Your Excellency

By virtue of what we have detailed hereinabove, the Palestinian Center for the Independence of the Judiciary and Legal profession "MUSAWA" urges you to withdraw the decision on dissolving Sharek Youth Forum in Gaza and enable the Forum to practice its activity in accordance with the provisions of the law in assurance of respecting the right to establish the constitutionally and legally protected associations being an indispensable national need and social necessity.

Best Regards,

Date: 20/7/2011

MUSAWA



The Ministry of Interior in Gaza from its part, according to what has been published on Donia Al-Watan website, pointed out that the dissolution of the Forum came after the discovery of cases of breach of honor and infringement to divinity took place within the forum. The legal advisor to the Minister of Interior in Gaza Twafiq Abu Daqqa said to the same source that the fact of insulting divinity within the forum took place several times by the forum manager whilst one of the female staff operating therein has torn the Quran pointing out that cases of breach of honor were seized within the Forum premises. Abu Daqqa maintained that Sharek Youth Forum has not obtained a licensing from the Ministry of Interior in Gaza and the decision on the dissolution as based on reports produced by the general Affairs Department at the Ministry of Interior and a recommendation by the Public prosecutor Judge Mohammed Abed commenting that cases relating to public morals do not require delivery of a notification to the Forum or drawing it attention adding that the Ministry granted the said association 6 months to rectify its positions but those who are in charge persisted in their acts.

As regard to the course of considering the appeal filed by the Forum before the competent court in Gaza, Abu Daqqa said that we have evidences expected to be presented before the court and final word is vested upon the judiciary. In a subsequent development the Public Prosecutor in Gaza Judge Mohammed Abed pointed out and according to the same source that the Supreme Courts Justices is currently considering the appeal filed by Sharek Youth Forum and the court will say its word in this respect. The Public Prosecutor said that his department will proceed with the investigations over the violations to the rule of law ascribed to for person from those who are in charge of the Forum and operating therein. The findings of the investigations will be referred to the competent court to take the adequate legal requisite.

He added that the opportunity is available to civil society organizations to track the case before judiciary if they believe that the Prosecution procedures raise any doubt. In another development "Justice on Eye" learned that the High Court of Justice at the hearing of 27/9/2011 to consider the said appeal has postponed rendering a judgment on the appeal until 18/10/2011. According to a statement by Mar'i Basheer the member of the defense for Sharek Youth Forum, the Bar Association as represented by the vice president Salama Biso joined the defense.

The defense for the Association stated that Sharek Youth Forum is committed to all Palestinian laws and willing to comply with any legal procedures as to substantiate rule of law expressing belief in justice of Palestinian judiciary hoping that the court will cancel the decision by the Minister of Interior and the Public Prosecutor closing the Forum premises.

The Vice- President of the Bar Association affirmed the involvement of the Bar Association in the defense for the Forum. As regard to the expected decision by the court Biso said that "the situation is difficult under the conditions we live", adding that "the Ministry of Interior is not entitled to close the Forum without considering any complaint lodged thereby".

Time has come to suspend imposition and execution of death penalty

The Palestinian Center for the Independence of the Judiciary and Legal Profession issued on 4/5/2011 a memorandum of stance published on media reassuring its stance calling for immediate suspension of imposing and executing the death penalty. This came in the wake of executing the death sentence against the 35 years old citizen A. Sh. in Gaza.

In view of the memorandum from the legal point of view "Eye on Justice" hereby publishes it:

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



Memo of Stance

MUSAWA learned that the Ministry of Interior in Gaza government executed on Wednesday morning 4/5/2011 a death sentence by shooting against the 35 years old citizen Abdulkarim Mohammed Al-Abed Shrair a former police personnel who was charged with high treason and intervention in killing in accordance with the Revolutionary Penal Law (Military) for 1979.

MUSAWA affirmed the execution of the death penalty against this citizen constitutes a violation to the Basic Law, which stipulates the endorsement of the President of Palestinian National Authority, the thing which could not be satisfied and might not be justified by reason of the political division as well as judgments rendered by Military Courts against civilians do not provide any guarantees for fair trials.

MUSAWA pointed out that the execution of the sentence came without reckoning with the urgent claims by civil society organizations for canceling this penalty being a harsh and humiliating conflicting with the idea of the corrective part thereof. Further, it is not the only a means that realizes the purpose of the penalty as the legislative, judicial and executive decision makers could have replaced it by life imprisonment by virtue of the fact that the judgment prescribing a penalty is a human interpretation which may involve the right and error and does not represent the truth.

MUSAWA repeatedly affirms its urgent demand for the necessity of immediate suspension of implementing the death penalty and further appeals to the decision makers to take all legislative and judicial actions and requirements to prevent adjudication on death penalty particularly the same has been legislatively abolished in 1968 and the order canceling it has not been revoked.

MUSAWA invites all civil society organizations dealing with human rights and governance operating in Gaza Strip to consolidate efforts in urging all relevant agencies to stop immediately and urgently the execution of such sentence in order to avoid any negative impacts that may arise out from continuing in imposing it and attempt to replace it by a penalty realizing justice within the framework of the criminal and humanitarian philosophy.

MUSAWA



Nevertheless the demands by MUSAWA and civil society organizations operating in the area of human rights calling for immediate suspension of the execution of death penalty and despite the imposition of the same constitute one of the national dialogue issues relating to the National Reconciliation, the factual reality indicates that the imposition of such sentence still continues as other citizens were executed on 26/7.2011.

These require renewal of such demands and consolidation of efforts by all lawyers and political and social bodies to press on the political and executive decision makers to put an end to the phenomenon of imposing and executing the death sentence, is there any body who may answer?

Looking forward to emulating

Tunisia announced its accession to the International Protocol on abolition of death penalty as from February 2011.

MUSAWA's values the wise decision of the Tunisian government and hopes that the political and legislative decision makers will follow the steps of Tunisia and accelerate accession to the said Protocol together with suspending imposition and execution of death penalty reminding that Tunisia is an Arab country and its official religion is Islam.

Relieve me

The Palestinian center for the Independence of the Judiciary and the Legal Profession MUSAWA received a copy of a memorandum sent by the citizen Hazar Mohammed Ismail to the President, the Prime Minister, the Minister of Justice and President of HJC under the heading "Relieve Me from Palestinian Judiciary".

In view of the legal importance of the citizen's letter, "Eye on Justice" hereby publishes it:

His Excellency President of the State of Palestine / the Protecting Father Abu Mazin
Prime Minister Dr. Salam Fayyad
HE Minister of Justice Dr. Ali Khashan
Chief Justice Fareed Al-Jallad

Relieve me from Palestinian Judiciary

I am Hazar Mohammed Rasheed Ismail from Bait Ikka. I am the eldest of nine other sisters and financially supporting them as one of them suffering from retardation following the death of my father. I do not have any uncles and relatives in the country. I purchased a vehicle on installment basis to assist my sisters with taking them to their university in Ramallah. Before 5 days from the accident I have collected the pocket money of my sisters to fill the vehicle with fuel.

Before 5 days while I was driving my vehicle at a speed not exceeding 20km behind the Ministry of Interior and beside me was my friend Jehan Mohammed Atta Mohsin from Abu Dees, another vehicle violently hit me and did not stop at the stop signal on the former National Security Road. I lost my consciousness and my friend nose was broken. I woke up only at the hospital and my friend still in Arab Care Hospital suffering from a concussion. I suffered from painful bruises.

Five days passed I continued borrowing from people to cover the treatment expense noting that I maintain a comprehensive insurance for my vehicle. According to the insurance procedures the payment will be made upon submission of the treatment bills and this will require time and later the bill will be submitted to the insurance for the driver of the vehicle who was not injured and his car was not affected but my vehicle was damaged. I learned that while the ambulance was taking us to the hospital from the accident site the driver was fixing the plates of his vehicle giving no attention to us as if he had hit an insect. Days passed without coming to check our condition or assist me financially until I receive my dues from the insurance and return back his money as per our Palestinian norms, ethics, traditions and values and generosity of Palestinian men.

Once I felt the alienation of the driver I lodged a complaint with the police including a complaint as well from my friend. A bill of incitement against the driver in question was filed containing the following charges (failure to give priority right/failure to stop at the halt signal/ causing material damages/bodily injuries). Before two days i.e. on 2/3/2011 we went to the court hoping that the justice which I have lost will be realized putting all my hope and confidence in the national judiciary. I was surprised while sitting at the waiting room by the driver telling his wife who was sitting beside me that he had talked to the judge and told him that his file would be brought in advance to the other files and complete the file within 5 minutes so that he might travel on that day to Jordan.

Actually, it was only five minutes until we were called by the court orderly and entered together with the lawyer and a colleague from my office including the accused driver and his wife. I was expecting that the judge would call the parties of the case to identify us but he called the accused party before the complainant as if he knew him and said to him "Mohammed be careful next time and pay JD 90 and may Allah make it ease for you and go so that you may not be late for traveling".

I tried to draw the attention of the judge to my presence as a complainant in the case but the judge said tom "silence, silence I do not want any talk this is a first verbal warning the trial is finished ..?" as if I was not existed.

I went out from the court astonished, shocked, subdued, sad and humiliated saying to myself that very strange were we in a real court room or was it a part of an Arabic film badly directed and written , which became worst when the actors failed to play their roles precisely. Was this the Palestinian Judiciary of which I was proud? What a calamity . . . What happened? How this takes place and we are in the process of declaring our state in defiance of the occupier with institutions to be proud of before nations and fair judiciary? I believe we should have to think thoroughly before taking such step Because if we were in a real court, such court within the limits of my knowledge should have to be as the following:

Firstly: The court should have waited for our turn which was the file No. 5 case No. 1510/2011/Penal/ Ramallah.

Secondly: The judge should have as soon as we entered called us advancing the complaint to the accused party before him for listening.

Thirdly: The judgment as per Palestinian Law should have been DJ 900 and not JD 90 as if he hit a cat and did not damage a vehicle completely throwing two girls into a hospital for one week.

Fifthly, and most importantly, the judgment should have been postponed because the final medical report has not been issued and the existence of an injured party in the hospital. It has never taken place that a judge rendered a judgment and one of the parties to the case still being admitted to the hospital.

What has aggravated my shock was the telephone call made by the accused party to the judge while leaving the court to thank him and demonstrated himself before me the appearance of the great conquer in a provoking manner indicating some sort of power and pride of his relations and number of calls even his mobile was ringing in the holiest places as I was trembling in fear of the sanctity of the place before the judgment?? Afterwards I believed that I was in another place and no longer trembling in fear but subdued??

I do hereby appeal to you to do justice to me against the injustice I sustained. God protect you to remain a support for us against the oppression of tyrants.

Hazar Mohammed Ismail
Mobile: 0598206491

MUSAWA Trustworthy

The Palestinian Center for Independence of Judiciary and the Legal Profession "MUSAWA" received a request from the Ministry of Interior and National Security in Gaza for organizing a training course dealing with developing the Ministry of Interior employees' capacity in legislative formulation stating as follows:

**Palestinian National Authority
Ministry of Interior & National Security**

**President of the Board of Palestinian Center for
Independence of Judiciary and Legal profession
"MUSAWA"**

Subject: Training Course entitled "Legislative Drafting"

Dear Sir;

First, we extend our greetings, wishing you are in good health.

Proceeding from the integrated relationship between civil society organizations and public sector and seeking to develop the capabilities of the Ministry of Interior employees, your approval is hereby kindly requested for conducting a training course titled "Legislative Drafting" for the legists within the Ministry in accordance with the facilities and suitable time available to you.

We have a training room available to us.

Mr. Kamel Abu Madi
Undersecretary of the Ministry of Interior & National Security
(Seal + Signature)

MUSAWA will make its efforts to satisfy and fulfill such invitation according to its available capabilities.

To Whom It May Concern

The Palestinian Center for Independence of Judiciary and legal profession "MUSAWA" received a written complaint from Jamal Ibrahim Ali Abu Eid from Ramallah Bedouins regarding a case of torture towards detainees pending a criminal case.

In view of the importance and seriousness of the complaint, "Eye on Justice" hereby publishes it:-

Handwritten Letter:-

Brothers at MUSAWA Center Esq.

Applicant: Jamal Ibrahim Ali Abu Eid – Bedouin – Mobile (0595506368)

Subject: Torture of my nephews at Betonia Prison and assaulting them by severe beating inside the prison (Abdullah Aziz Abu Eid and Ibrahim Aziz Abu Eid)

Dear Sirs;

M/S MUSAWA the forum of justice

My nephews are detained in Betonia prison pending the criminal Case No. (52/2007) since four years. As alleged by the prison administration they were intending to escape from the prison despite the tightened guardianship from which no body can escape.

On the evening of Friday 10/12/2010 they were severely beaten (pressed on their head by police feet) and hit on their faces causing them severe injuries. The detainees were inflicted by a state of fear affecting their psychologies together with sustaining sever beats in their faces and all parts of their bodies. I do hereby present to you the violation of the simplest human rights to live in dignity even inside detention centers, which are guaranteed by Palestinian and international legislations and laws. Furthermore, they were exposed to beating by the police with no respect whilst taken from the prison to the court.

M/S MUSAWA

Being a forum of justice and protectors of the country, you are kindly requested to assist our sons as much as you can.

Thanks

Date: 16/12/2010

Applicant: Jamal Abu Eid

MUSAWA hopes from the concerned decision making parties to have a clear stand from the aforementioned complaint and to take the necessary legal action against those committed such acts therein and to provide guarantees for the commitment with respect to the provision of law by those entitled to enforce thereupon.

Till when..... ?

The Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA" received a written complaint from Hamid Jabr Hamid Bsharat from Tammon, Tubas Judiciary pointing out that his freedom is restrained by Judgment Execution Police in Tubas despite that he has executed what was required from him to be duly executed.

In view of the importance of the complaint from the legal point of view, "Eye on Justice" hereby publishes it:

His Excellency the President of the High Judicial Council

Dear Sir;

Applicant: Hamid Jabr Hamid Bsharat / Tammon

Subject: Criminal Case 702/2005/ Tubas/Penal

I have been convicted under the criminal case numbered hereinabove where a judgment was rendered sentencing me one month imprisonment. I applied for replacing the detainment penalty by a fine that I have paid on 10/5/2010 under which I should have executed the adjudicated penalty under this case.

On 13/11/2010, I was arrested and imprisoned by Tubas Execution Police pending the said file No. 702/5/2005/Tubas/Penal for which I paid a fine, on 10/5/2010, under receipt No. 4/0302916.

I was released on 14/11/2010 after they have provided by the Public Prosecution with a letter requesting for returning the judgment memo as I have paid the fine.

His Excellency the President of the JSC

I was released after my freedom had been restrained for one complete night in Tubas Prison without any justification or legal requisite. It turned out later that Tubas Magistrate Court has not provided the Public Prosecution with what proves the payment of the mentioned fine until 14/11/2010. I do hereby submit this letter to treat me with justice by reason of restraining my freedom. I have the right to compensation against the material and moral damage caused to me due to this and to determine whatever you deem appropriate in this respect. I am confident that you will strive to take the necessary actions that may ensure my protective right.

Regards,,,,,

Date: /1/2011

Signature: Hamid Jabr Hamid Bsharat / Tammon

0598-221295

0599-934631

MUSAWA mentioned that on 17/5/2010 it has sent a memorandum to the President of HJC pointing out therein to the litigants' suffering similar to that of citizen Hamid Bsharat, which stated (... further, several litigants complain of being summoned to the Execution Police Stations, Execution Circuits or the Court Clerks based on invalid and legally unjustified subpoenas causing damage to citizens stability and their interest the thing , which requires reconsideration of regulating the relationship and rapid exchange of information between Courts Clerks and Execution Circuits from one hand and the Execution Police from the other hand).

So far, MUSAWA has not received since 17/5/2010 a reply to its said memorandum published in the 11th edition of "Eye on Justice" issued on 13/12/2010.

The complaint by Hamid Bsharat indicates failure to rectify the recurring problem. Till when such conditions will continue to occur?

Point out

The Palestinian Center for the Independence of the Judiciary and the Legal Profession MUSAWA received a written letter on 20/6/2011 from Judge Dr. Hani Abdul Rahman Ghanim from Gaza stating that he has delivered a working paper titled "Control over Constitutionality of Laws" for the benefit of participants taking part in a training course organized by MUSAWA Center on Constitutional Court Law and he has obtained a permission from the author of that paper Dr. Saleh Qandil but was surprised that the paper was published in his name in the 11th edition of "Justice and Law" magazine issued by MUSAWA Center.

"Eye on Justice" hereby publishes the letter and points out once again to the unintended technical error in the 11th edition of "Justice and Law" magazine.

M/s. The Palestinian Center for the Independence of the Judiciary and the Legal Profession – MUSAWA Esq.

Dear Sirs;

Applicant: Judge Dr. Hani Abdul Rahman Ghanim

Subject: Correction of a Material Error in the 11th Edition of "Justice and Law" Magazine

Details

We would like to inform your Excellency that we submitted a working paper entitled "Control over Constitutionality of Laws" by way of seeking assistance only at one of the workshops of the constitutional court projects. I was not aware that the paper will be published noting that I have obtained a permission from its author Raid Saleh Qandil.

While I was surprised by the publication of the said article in the 11th edition of "Justice and Law" magazine, you are hereby kindly requested, for the sake of preserving others' rights, to point out in the next edition to the correction of such error stating that the study was carried out by the researcher, Mr. Raid Saleh Qandil.

Thank you for your cooperation

Date: 20/6/2011

Applicant: Dr. Hani Ghanim

"Eye on Justice" pointed out that an unintentionally printing mistake occurred regarding the name of the Public Prosecutor in Gaza Mr. Sharif Ba'lousheh in the legal study prepared to MUSAWA Center and disseminated in the training guidebook no. (6), with respect to building capacities of female advocates at the administrative judiciary and counter corruption. The guidebook was issued by MUSAWA in December 2010 where the name mentioned was Ashraf Ba'lousheh instead of Sharif Ba'lousheh.

Controversial decision of law to amend the Penal Law

The President issued the decision by law No. (W) for 2011 dated 15/5/2011 canceling Article (340) of the Penal Code regulating the cases of excuse relieving from punishment relevant to killing, injury or harm crimes and also events of mitigating excuse relating to the same crimes, which are termed as crimes of honor. Further the decision cancelled Article (18) of the current Penal Code in Gaza Strip and superseded whatsoever conflicting with the provisions thereof. It indicated its entry into force as from the date of issue and to be published in the official gazette and presented before the Legislative Council at the first session for ratification. In view of the importance of the decision by law from the legal and judicial point of view, "Eye on Justice" hereby publishes it:

**Palestinian Liberation Organization
Palestinian National Authority**

The President

Decision by Law No. () for 2011 concerning amendment to the Penal Code in force in the northern governorates and the penal code in force in the southern governorates.

**President of the State of Palestine
President of the Palestinian Liberation Organization's Executive Committee
President of Palestinian National Authority**

After having perused the amended basic law of 2003 particularly the provision s of Article (43) thereof;

And the Penal Law No. (16) For 1960 and amendments thereof in force in the northern governorates;

And the Penal Law No. (74) For 1936 and amendments thereof in force in the southern governorates;

And the council of Ministers` decision No. (CM/SF/13/37/07) of 2010 ascribing the suspension of the Articles of Law relating to crimes committed on the background of "the honor of the family" to the President of the National Authority;

And subject to the powers vested thereupon;

And for the benefits of realizing the public interest;

And in the name of Palestine people;

Issues the following decision by law:

Article (1)

Subject to the provisions of this decision, Article (340) to the first chapter of section (8) of the Penal Law No. (16), for 1960, in force in the northern governorates shall be cancelled.

Article (2)

The provision of Article (18) of the Penal Law No. (74), for 1936, in force in the southern governorates shall be amended by adding in last Article the expression: "shall not include crimes of killing women in the name of honor killing".

Article (3)

Whatever conflicts with the provisions of this decision by law shall be cancelled

Article (4)

This decision by law be shall presented before the Legislative Council at the first session it convenes for ratification.

Article (5)

All competent agencies, each within the scope of its competence, are to implement the provisions of this decision by law and shall become valid on the date of its publication in the official gazette.

Issued in Ramallah, on 15/5/2011

Mahmoud Abbas

President of the State of Palestine

President of PLO Executive Committee

President of Palestinian National Authority

(Signature)

This decision by law, which was issued in the wake of the atrocious murder of a young woman in the village of Yatta in Hebron governorate, has raised a legal debate with variant opinions thereon particularly on the validity of Article (98) of the Penal Law in force in West Bank, which stipulates that "he who commits a crime in a state of great anger (fit of fury) resulting from a wrongful and dangerous act on the part of the victim shall be liable to a lesser penalty". This will allow perpetrators, on the background of honor, to benefit from such mitigating excuse, making the decision by law unable to realize the results for which it has been issued. Apart from this, the amendment to the Penal Law itself, which complements the constitution, is based upon results of social dialogue.

The amended legislation of such laws that supplement the constitution usually takes place within the normal legislation through the legislative council and not as a result of the occurrence of crime itself. Particularly if we take into account that the cancelled provision in order to be evidenced will require several conditions, all of which will be subject to the court's discretion when settling the suit referred thereto in accordance with normal legal rules.

By referring to the provision of Article (340), it appears that the events of the relieving excuse will require proving adultery or proving the involvement of the wife or one of the parents, descendants or sisters of the accused party with another party. These matters are related to the facts and their proof and cannot be evidenced just by allegations. By comparing the above stated provision of the provision of Article 98, the proof of severity of anger found to be easier than evidencing red-handed adultery.

Before resorting to amend the law by decision, legists believe that it was useful to study relevant legal articles associated with the cancelled articles before proposing amendment or alternative provisions to redress the legal requirement regulating penalties and crime judgments, the subject of this decision by law. Amending the Penal Law in more than a position becomes a need. On one hand, the legal framework that guarantees women's rights should be considered. While on the other hand, they should seek new penal philosophy targeting social integration, avoiding the philosophy of prevention and punishment.

The Ministry of Justice prepared a draft law amending the Penal Law, which is still under wide debate, thus, requiring further dialogue with the objective of securing largest possible social agreement by introducing additional amendments thereto before referred to the legislative council for ratification in accordance with normal procedures.

MUSAWA discussed the decision by law in question with Judge Hassan Al-Ouri where it pointed out to the reactions and differences aroused by the decision by law prompting to have contents of such decision looked into and reconsidered in such a way that will ensure realizing the desired purpose for any amendment to the current laws.

Controversial decision to amend the Law of Associations

The President issued the decision by law No. (W), for 2011, dated 27/4/2011, amending Article (39) of the Charitable Associations and Civil Society Organizations Law No. 1 of year 2000.

Under the said amendment and in the event of dissolving the association or organization, the Department for the registration of Associations and Civil Society Organizations at the Ministry of Interior shall appoint a paid liquidator, and upon the completion of the liquidation, the Ministry of Interior shall transfer the Association's movable and immovable properties to the public treasury of the Palestinian National Authority or to a Palestinian Association of similar objectives subject to the salaries, rewards and entitlements of the dissolved Association or National Organization employees, which will be excluded from the referral process.

The decision by law in question obligates the registered Associations and Civil Society Organizations before entering into force to rectify their positions "amend their Articles of Association" in such a way that will correspond with this amendment.

The law provides for its entry into force as of immediate effect, and to be published in the official gazette and presented to the legislative council. In view of the importance of the mentioned decision by law, "Eye on Justice" hereby publishes it:-

Palestinian Liberation Organization

Palestinian National Authority

The President

Decision by Law No. () for 2011 concerning amendment to the Charitable Associations and Civil Society Organizations Law No. (1) For 2000 President of Palestine State

President of Palestinian Liberation Organization Executive Committee

President of Palestinian National Authority

After having perused the amended Basic Law of 2003 particularly the provisions of Article (43) thereof;
And the Charitable Associations and Civil Society Organizations Law No. 1/2000
And subject to the powers vested thereupon;
And for the benefits of realizing the public interest;
And in the name of Palestinian people;

Issues the following decision by law:

Article (1)

For the purposes of this amendment the Charitable Associations and Civil Society Organizations law No. (1) For 2000 shall be referred to as the original law.

Article (2)

Article (39) of the original law shall be amended as to become as the following:

If an association or civil society organization is dissolved, the department shall appoint a paid liquidator who will inventory its properties and assets. When liquidation is completed, the Ministry of Interior shall transfer movable and immovable properties to the public treasury of the Palestinian National Authority or to a Palestinian Association of similar objectives taking into consideration salaries, rewards and entitlements of the dissolved association or the organization employees, which will be excluded from the transfer process.

Article (3)

The Ministry shall rectify the positions of the registered associations and organizations before this law enters into force in such a way that will fit with its provisions and the associations and organization will be notified accordingly.

Article (4)

Whatsoever conflicts with the provisions of the decision by law shall be cancelled.

Article (5)

This decision by law shall be presented before the Legislative Council at its first session for ratification.

Article (6)

All competent agencies, each within the scope of its competency, are to implement this decision by law that will be entered into force as from the date of issue and published in the official gazette.

Issued in Ramallah, on 7/4/2011

Mahmoud Abbas

President of the State of Palestine
President of PLO Executive Committee
President of Palestinian National Authority
(Signature)

This decision by law incited debate and various opinions, particularly within the civil society associations and organizations, which sent a memo to the President demanding cancellation of the decision. Furthermore, it has raised several questions regarding a number of facts, including the properties of the associations and civil society organizations are neither public fund, government properties nor included in the PA's general budget and their source is not Palestinian government of National Authority despite their disposition and spending are governed by public fund payment and spending rules i.e. they are neither public fund nor private properties and cannot be treated as such.

These properties are of special nature relating to civil society associations and organizations but their spending is subject to public fund spending rules and governed by the Financial and Administrative Audit Department. Such governance does not transform them to a government public fund and depart them from their capacity. Such properties are often owned by donor agencies whose governments and parliaments establish them and specify their aspects of spending in view of the fact that they are deducted from payers in the donor countries. The decision by law may lead to prejudicing the interests of several parties.

The decision by law, in addition to the serious danger it constitutes to the independence of the civil society organizations, which if lost, their existence will be unjustifiable, represents unconstitutional provisions that are inconsistent with the constitutional guarantees granted to civil society organizations and associations and their constitutional role in development and monitoring. According to the memo addressed to the President, the decision was issued without any dialogue or discussion or with civil society organizations. The above mentioned memo points out the absence of the statement of dire necessity, which does bear any delay together with the absence of the conditions for putting into operation Article 43 of the basic law, which regulates the powers of the President in connection with his issuance of decisions by laws. Further, the memo indicated the necessity of dialogue on the basis of the community partnership in building an integrated action according to the interest of Palestinian people in proposing any amendment to the law regulating the operation of civil society associations and organizations.

In their memo, civil society associations and organizations drew the attention to the risks arising out from the Executive Authority delving into the business of the civil society associations and organizations. Article 39 of the Charitable Associations and Civil Society Organizations Law, which was operative before the amendment provides for the following:

1. Without prejudice to the provisions of this law, an association or organization if dissolved, a paid liquidator will be appointed to inventory its properties and assets and any disposition thereof will be in accordance with the

provisions of its Articles of Association, and if such Articles of Association do not provide for the manner of disposing of the properties thereof, the Ministry will transfer the properties of the dissolved association or the organization to associations and organizations of the same goal taking into consideration the salaries, rewards and entitlements of employees of the dissolved Association, which will be excluded from the transfer.

2. In the event of dissolving the association or the organization, all its cash and in kind properties shall be devolved to a Palestinian association of similar objectives to be specified by the dissolved association or organization.
3. In all cases the monies and properties of the dissolved association or organization must be spent in accordance with its objects within limits of Palestinian territories.

In the light of foregoing provisions, the competent agency to determine a Palestinian association similar to the dissolved association or organization, in terms of objectives, is the dissolved association or organization itself and not the ministry or the registration department.

Furthermore, the spending of the taxes is to be in accordance with the objective and purposes of the dissolved association or organization and not for any other purpose. When enacting such provision, the legislator has to take into account the particularity of the civil society associations and organizations properties relating to the interests of several parties, such as, the public interest for national security. This makes the dialogue on the adequate legislative mechanism for observing these considerations to be the proper and actual legal approach, which when followed may put an end to the difference, variance and conflict in visions and interests.

An adequate professional legal dialogue would therefore be required as to amend the decision by law in such a way that will correspond with the purpose for which it has been issued and maintain the independence of the civil society organizations observing the nature of their properties and find legal solutions for the public interest considerations.

A third decision by law amending Bar Association election system

The President issued a decision by law amending the election system of the Bar Association council under which the West bank and Gaza Strip will be regarded as one electoral district. This decision by law sparked various reactions in the Bar Association Council and a severe difference among lawyers and their Bar blocks. The election was therefore cancelled and has not yet been held.

A Transitional High Judicial Council (HJC): the Only Way to Solve the Crisis in the Justice Sector

MUSAWA learned that the President responded on 9/9/2010 to a written memo submitted by the legal advisor to the President Judge Hassan Al-Ouri concerning the adoption of the idea provided by the Undersecretary of the Ministry of Justice to Judge Al-Ouri calling to hold several meetings between official agencies in charge of justice namely; HJC, Ministry of Justice, Public prosecutor, Bar Association and Military Judiciary Commission. According to the memo, the meeting will be attended by Judge Al-Ouri in person as a representative of the President in order to finalize the pending matters between the official agencies in charge of justice, unify the legal understanding on the limits and powers of each agency and look into areas of defects and the legislative requirements.

MUSAWA learned that Judge Al-Ouri took part in two meetings for the justice agencies of which the first were held between representatives from HJC, Ministry of Justice and Public Prosecutor, while the second meeting took place between representatives from the three agencies and the Chief of Bar Association.

Judge Al-Ouri invited representatives from civil society organizations including "MUSAWA" to a meeting with the legal expert Salah Al-Bashir, former Jordanian Minister of Justice, aiming at looking into the situation of justice and civil society organizations concepts over the mechanisms and tools guaranteeing remedial of defect in justice performance system with recommendations to be made by the expert and submitted to the President. MUSAWA learned that among the mechanisms currently being discussed in a bid to redress the defect was a proposal provided by the Undersecretary of the Ministry of Justice for organizing "KHOLWA" between the official agencies in charge of justice to be held outside the country.

MUSAWA hopes that Judge Al-Ouri, before submitting the expert's report to the President, will return back to all relevant stakeholders, including civil society organizations, and provide them with a copy of the expert's recommendations as to be discussed again before the submission along with comments by the civil society organizations. Musawa looks forward to taking adequate and effective actions towards rectifying the error.

MUSAWA ascertains that it has previously, together with the majority of legal stakeholders, identified error and submitted their concept based on the impossibility of a solution by the justice agencies themselves to relevant decision makers. Consequently, they called for amendment of Article (81) of the Judicial Authority Law by establishing a transitional HJC to be responsible for appraising the performance of whoever is undertaking a position in the judiciary or public prosecution, in accordance with professional criteria together with re-establishing the judicial staff. MUSAWA points out that a legislative amendment well has replaced the current Judicial Authority Law by a new law, No. 15/2005, providing the necessary legal base for reforming the justice system.

Nevertheless, five judges in Gaza, presuming the status of the constitutional court, adjudicated that the new law is unconstitutional, which deemed to be a complete and integrated law in lieu of the Judicial Authority Law.

Palestinian National Authority complied with that judgment, which raised wide legal debate over the extent of its legality and legitimacy and the power of the court rendered it together with its applicability. MUSAWA maintains that the discussion over the status of justice in Palestine has been taking place since the first presidential decree was issued, hence, establishing the first HJC, which described by several legists as illegitimate, including those who previously assumed positions of Chief Justice and President of HJC. Voices were raised, calling for establishing a transitional HJC. MUSAWA seizes the opportunity of the President's approval for studying and rectifying the defect to which his legal advisor was entrusted, to renew its demand for re-establishing a transitional HJC to undertake the duties shown hereinabove within a period of time not exceeding six months, provided that its power will expire once its mission is completed as to have the HJC re-established in accordance with the provisions of law as a single legal way out for the justice crises in Palestine.

Awaiting a Response from the Minister of Justice

On 25/3/2010, MUSAWA filed an application expecting the Minister of Justice to exercise his legal powers. The application was put before the High Court of Justice to which the functions of the constitutional court are assigned until established for the purposes of interpreting the provision of Article (101) of the basic law, which specifies the jurisdiction of the Military Judiciary.

As published on "Eye on Justice", the Minister of Justice, on behalf of the government, has underlined, in his speech on the National Day of Human Rights, published elsewhere herein, the government's commitment to cease referral of civilians to the military court and military judiciary, as the phenomenon of these referrals continue. This makes the demand for interpretation to be a necessity for providing the legal ground that may enable the government to enforce its duties and powers toward performing its obligations, declared on the National Day of Human Rights.

First Step in the Right Direction

On 27/2/2011, MUSAWA sent a memo to the legal advisor to the Preventive Security Service demanding them to declare their compliance with the provisions of the Basic Law and the Criminal Procedures Law, together with referring detainees therein to the Public Prosecution and the regular judiciary as per rules.

In view of the importance of this memo, "Eye on Justice" hereby publishes it:

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



Raid Taha

Legal Advisor to the Preventive Security Service

Subject: Referral of Detainees by Preventive Security Service to Regular Courts

Dear Sir;

Following the announcement by the General Intelligence Service its intention to cease referral of detainees to the Military Prosecution and Military Courts determining to comply with the provisions of the Basic Law and Criminal Procedures Law in a way that detainees will be referred by the General Intelligence Service to the Public Prosecution and regular courts, the Palestinian Center for the Independence of the Judiciary and the Legal profession "MUSAWA" issued a statement inviting all security services to imitate the General Intelligence service and abide by the provisions of the basic law and Criminal Procedures Law together with referring detainees to the civil Public Prosecution and Civil Judiciary particularly the Preventive Security Service and the Military Intelligence Service.

We, in Palestinian Center for the Independence of the Judiciary and the Legal Profession look forward to seeing your Service announcing its compliance with the provisions of the basic law and Criminal Procedures Law and referring detainees therewith to the Public Prosecution and regular judiciary as per rules.

We hope that your announcement will be produced soon and let us know your view in this respect.

MUSAWA

CEO

(Signature)

Date: 27/2/2011

Further, MUSAWA sent a similar Memo to the legal advisor to the Military Intelligence Service. The media reported that the General Intelligence Service announced its commitment to cease referring civil detainees to Military Prosecution and courts, intending to refer them to Public Prosecution and regular courts. Such announcement was welcomed with relief by civil society organizations, hoping that a written decision would be issued in accordance with the usual procedures to ensure full compliance with the referral of all civil detainees by security services to the public prosecution and regular judiciary. MUSAWA received a telephone confirmation from the protective security service informing referral of civil detainees therewith to the public prosecution and regular judiciary, but is yet to receive a written confirmation in this respect. Further, MUSAWA has not received a reply to its memo from the Military Intelligence Service.

Controversial Complaint

MUSAWA received a written complaint from the attorney of a civilian citizen who was detained on 1/7/2010 by the General Intelligence Service. Despite the passage of nearly two months since the civilian's arrest, the attorney was informed, by the Military Prosecution, that the civilian has been released since 25/8/2010; yet, the General Intelligence Service refrained from executing the Military Prosecution's decision. The attorney was, therefore, prompted to recourse to the High Court of Justice filing a suit demanding the release of his client. Accordingly, the said court rendered a judgment for the citizen's release on 14/11/2010, but the General Intelligence Service refrained again from executing the judgment of the High Court of Justice.

MUSAWA learned that the General Intelligence Service released the citizen in question after some time from the receipt of MUSAWA's memo of 12/12/2010.

In view of the importance of the complaint from a legal point of view, "Eye on Justice" hereby publishes it in the form in which it has been received, appended by a recommendation from the Military Public prosecutor on releasing the detained citizen and submitted to the Assistant Military Public Prosecutor on 25/8/2010 who referred it to the Chief Military Judiciary on 26/8/2010.

ADVOCATE

Sebawaih A. B. Anabtawi
Nablus – Anabtawi Building
Tel / Office: 09-2388355
09-2381506

To: M/s. MUSAWA

Dear Sir;

I present to you that Imad Mahmoud Najeeb Abu Al-Rob from Jalboun – Jenin, has been detained by Palestinian General Intelligence Service since 1/7/2010. Upon contacting the Military Prosecution in Jenin, I have been told that the interrogation with him has been completed and the Military Prosecution determined to release him on 25/8/2010 as the General Intelligence Service failed to provide any seizure reports on weapons, money or seizing a crime of a military nature. The General Intelligence Service did not file whatsoever convicts the detainee as contained in the letter sent by the Military Public Prosecutor in Jenin to the Assistant Military Public prosecutor and the approval of Major General Ahmed Al-Mbayyed the Chief military Judiciary for the same. The applicant was therefore prompted to file the suit No. 763/2010/SC to the High Court of Justice, which issued a decision on 14/11/2010 releasing the detainee. Nevertheless, the General Intelligence Service has received a copy of this decision by hand from the office of the Public Prosecutor and our consistent contacts, the detainee has not been released and they continued detaining him illegally till this date. You are hereby kindly requested to intervene with the General Intelligence and the relevant agencies to comply with executing the High Court of Justice decision and the Military Prosecution decision as non-execution constitutes a serious violation to the law.

Date: 12/12/2010

Advocate official seal + signature

**Palestinian National Authority
Military Judiciary
Military Prosecution**

Date: 25/8/2010

Judge Lieutenant Colonel Abdul-Nasser Abu Own

Subject: The Detainees named as the following:

1. Citizen Imad Mahmoud Najeeb Abu Al-Rob from Jalboun.
2. Citizen Ziad Juma Mohammed Abu Al-Haija from Wad Birqueen.
3. Citizen Muath Hassan Mohammed Turkman from Wad Birqueen.
4. Citizen Mohammed Ahmed Mohammed Abu Tamie' from Rommaneh.
5. Citizen Mohammed Izzat Mohammed Yahya from Jenin.
6. Saleh Abdullah Mutlaq Al-Saadi from Jenin.
7. Ata Mohammed Khalil Jabali from Jenin Refugee Camp.
8. Ammar Jassir Saleh Tazaza'ah from Qabatia
9. Muath Ahmed Saleh Saba'nah from Qabatia.
10. Ahmed Hassan Abdulrahman Nazzal from Qabatia.

Please be advised that the abovementioned are detained with the General Intelligence Service detention center in Jenin under the authority of the Military Prosecution, charged with belonging to illegal armed militias. The detention term of the above mentioned detainees has expired according to the powers legally vested upon us. The General Intelligence Service (GIS) did not provide any evidence to convict the detainees and referring them to the competent court. The GIS failed to provide any evidence on the seizure of weapons, money or any crime of a military nature. Pursuant to Article (103/A) of the Military Trials Rules, I hereby recommend the release of the above mentioned detainees. The matter is hereby presented to take any action, whereby you deem appropriate.

Order is for Your Excellency,
With Our Utmost Regards,

The Military Prosecutor / Jenin
Mohammad Hamarsheh
(Official Seal + Signature)

Handwriting: 26/08/2010 - HE the Major General Ahmed Al-Mbayyed - the Chief military Judiciary – Please have a look over and give your esteemed consent on instructing Jenin Military Prosecutor to release the aforementioned detainees. (Asst. Military Prosecutor / Judge Abdul-Nasser Abu Own)

Once again, the complaint points the necessity and importance of a judgment by the Minister of Justice to be filed to the High Court of Justice by which the legislator is entrusted with the duties of the Supreme Constitution Court until the court is established, for the purpose of interpreting Article (101) of the Basic Law, regulating the Military Judiciary and Military Prosecution. MUSAWA hopes that the General Intelligence Service will comply with its declared decision regarding the referral of civil citizens to the Public Prosecution and regular judiciary to consider and settle whatsoever ascribed to them in accordance with the provisions of the Criminal Procedures Law in force and to respect courts decisions in this regard.

Confidence We Are Proud of

Gratitude and Appreciation

The staff, male and female students of Mustafa Sadiq Al-Refi' Secondary School Deaf extend their appreciation to:

M/S Members of Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"

For their contribution to the success of the activities of the first phase of the Arab Deaf's Week, held in Palestine.

Wishing you continuity and prosperity in serving the Palestinian society

School Administration "Girls"
Jehad Ali Hassan
(Official Seal + Signature)

School Administration "Boys"
Rafeeq Hamdan
(Official Seal + Signature)

Achievement

MUSAWA learned that, until 31/3/2011, the total circulated cases at Jenin's Magistrate Court declined to 442 out of 5406 cases at the said court since 2005.

Also, until 31/3/2011, the number of circulated cases at Jenin's Court of First Instance declined to 312 cases out of 479 cases since 2007.

When shall the rules of implementation amending the Charitable and Civil Society Organizations Law be produced?

MUSAWA learned that the Association Registration Department at the Ministry of Interior in collaboration with representatives from the Civil Society Organizations completed the study of the rules of implementation for the Charitable Associations and Civil Society Organizations and approved rules of implementation amending the first one on 6/4/2011. The Civil Society Organizations are expecting the Council of Ministers to issue the same as per rules. When shall this be done?

Success Story

MUSAWA achieved a significant legal victory in favor of working women, as represented in the Ministerial decision, establishing March 8 as a paid official holiday for women working in public and private corporations, as well as civil society organizations.

This came in the wake of the directives by the President to the competent agencies over the necessity of implementing the Presidential decree No. 13/2006 declaring 8 March as a paid official holiday for working women.

MUSAWA received a written letter from Hassan Al-Ouri, the legal advisor to the President, which stated the following:

**Palestinian Liberation Organization
Palestinian National Authority
Presidency
Legal Advisor**

**Palestinian Center for the Independence of the Judiciary and the Legal Profession
“MUSAWA”**

Dear Sirs;

Subject: Presidential Decree No. 13/2006

We present our complements and with reference to the above subject and further to your letter of 1/3/2011, please be advised that after having presented the subject to the President, he directed the competent agencies to implement the presidential decree No. 13/2006 regarding the announcement of 8 March as a paid official holiday for women working with the government corporations, local organizations and private establishments on the occasion of celebrating Woman International day.

Regards

Ramallah on 7/3/2011

Minister Hassan Al-Ouri

Legal Adviser to the President

(Signature)

On 1/3/2011, MUSAWA sent a written memo to the legal advisor of the President, Hassan Al-Ouri, which stated the following:

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



**The Legal Advisor of the President
Mr. Hassan Al-Ouri**

Subject: Presidential Decree No. 13/2006 published in Palestinian Minutes No. 64 dated 31/5/2006 announcing 8th of March to be an official paid holiday for women working with government organizations

20/11/2011

Dear Sir;

With reference to the letter sent by MUSAWA to you last year, the demand for regarding March 8 to be an official paid holiday for women working with government organizations, and pursuant to the presidential decree mentioned, and the assurances by the Council of the Presidential Court and the Advisory Bureau, that the mentioned decree is still valid and enforceable, the government ministries and department failed to comply with it last year, which deemed to be a side step away from the provisions of the decree and prejudicing material and moral rights of women working with government organizations.

We hope that you will take the adequate legal requisite in a way the will put this decree into force, hence, establishing March 8, 2011 as an official paid holiday for women working with government organizations or adding a payment to their monthly should they work that day and instruct all official departments to comply with the presidential decree and implement it with immediate effect.

We hope that our memo will be responded to, thus, implementing the presidential decree by all official agencies accordingly, as per rules.

With Respect,

MUSAWA



Electronics' Failure at Gaza's First Instance Court and Magistrate Court

Palestinian Center for the Independence of the Judiciary and the Legal professions "MUSAWA" sent a memo to the Chief Justice the President of HJC in Gaza demanding the repair of the breakdown of the electronic operations of the "Rights' Section" at Gaza First Instance and Courts of Magistrate, which continued for a period of 10 days leaving negatives effects on the progress of justice.

In view of the memo, "Eye on Justice", hereby publishes it:

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



Judge Abdul Rauf Al-Halabi
Chief Justice and President of HJC
Dear Sir;

Subject: Electronics' Failure at Gaza's First Instance Court and Magistrate Court

Palestinian Center for the Independence of the Judiciary and the Legal Profession presents its compliments wishing you success and all the best.

With reference to the above subject, MUSAWA learned that there is a failure in the electronic operations of the "Rights Sections" at Gaza's First Instance Court and Magistrate Court that continued for a period of more than 10 days, which may negatively affect the progress of justice for litigants.

MUSAWA urges you to repair the breakdown promptly, and to find an alternative for customers' service as attain justice, in order to realize the principle of the rule of law.

With Respect,

MUSAWA



Despite of several referrals made by MUSAWA to HJC, Musawa did not receive a written respond, whereby the director of the President of HJC office merely responded verbally: "This default is an internal matter and the software has been repaired."

What should be observed by lawyers when filing a suit before the High Court of Justice

The current judicial year witnessed several administrative disputes and an increase in the number of injured parties resorting to the High Court of Justice, demanding cancellation of administrative decisions by the departments of the executive authority.

In view of the role played by lawyers in representing plaintiffs or parties injured by administrative decisions, MUSAWA interviewed Judge Mahmoud Hamad, vice Chief Justice, and Chief Panel of the High Court of Justice to examine the key issues required to be observed by lawyers when filing a suit before the High Court of Justice, as shown below:

Q: What are the most prominent matters that should be incorporated in the lawyer's power of attorney, to evidence the validity of the power of attorney?

A: the lawyer must observe three basic matters to be clearly included in the power of attorney:

1. The capacity of the principal, especially if the principal is one of the legal people.
2. The appellee agency, which must be the initiator of the decision against which the objection has been brought.
3. The appealed decision must be stated in terms of source, capacity, date and contents.

Q: What are the most prominent conditions that must be satisfied in the supreme justices initiatory pleading (objection sheet)?

A. Seven conditions must be included in the objection sheet, as follows:

1. Applicants' name and capacity, in addition to the name and address of the appointed attorney.
2. Name and capacity of the appellee (initiator of the decision).
3. The appealed decision as mentioned hereinabove.
4. Material facts relevant to the merits of the appealed decision.
5. Legal reasons for the appeal as contained in Regular Courts Establishment Law.
6. Demands.
7. Signature of the appointed attorney.

Q: To what shall the attorney pleading before the High Court of Justice pay special attention to?

A: Among the basic matters that must be brought to the knowledge of the attorney pleading before the High Court of Justice are as follows:

1. The appeal period: 60 days from the date of notification, publication or the absolute knowledge.
2. Cases where the appeal period is extended: in case of grievance and force majeure.
3. There are cases where the objection will not be confined to a specific period, such as appeals relating to inexistent decisions in the events of the Authority's coercion and material violation to the law, decisions issued by restricted Authority, negative decisions once their conditions are satisfied, and continuous decisions such as prohibition from traveling.

Q: What are the cases in which the right to bring an objection will become null?

A. The cases where the right to bringing an objection will become null are as follows:

1. In the event of compliance with the decision.
2. In the event of physical execution of the decision.

Q: Does the Supreme Justices suit accept dropping, deletion or abandonment?

A. the nature of the Supreme Justices suit does not accept deletion, abandonment and dropping, it is either accepted and a judgment will be rendered canceling the appealed decision or declined

Assault against Lawyers Must Stop

On 10/2/2011, Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA" issued a statement quoted by different mass media denouncing the assault experienced by Advocate Ahmed Faraj while performing his legal duty at Bethlehem Courts Premises by a number of Policemen.

The statement pointed out the phenomena of assault against judges, lawyers and legal operators as becoming to constitute a dangerous approach indicating policing ruling behaviors.

These represent a serious threat to the security of the country, its citizens, and the state of law requiring earnest intervention to put an end to such infringements and violations, together with referring perpetrators of the assault to justice and imposing deterring administrative and criminal penalties against whoever proved to be committing the same crime.

Furthermore, security and immunity for lawyers, judges and members of the Public prosecution, while performing their legal functions, must be provided along with maintaining the prestige of judiciary, justice institutions and the dignity of their staff.

MUSAWA expressed its appreciation for the consolidated stance taken by Bethlehem lawyers in defense of their assaulted colleague's dignity.

MUSAWA praised the stance of the Bar Association, which announced a strike in protest to the assaults, ceasing to operate before all courts in condemnation of the assault and raising the voice of lawyers who are required to be respected and their dignity must be maintained.

MUSAWA further expressed its hope that rights of Advocate Ahmed Faraj will be guaranteed including the adequate compensations against the bodily and moral injuries caused thereto.

Case of Multi Accused Parties in Committing a Crime

By/ Eyad Jarrar

Legal Assistant at Jenin Public Prosecution

Jordanian Penal Law No. 16/1960 in force in the West Bank classified cases of multi accused parties in committing crimes in three types of crimes as follows: Spontaneous crimes, criminal agreements and criminal participation.

Spontaneous Crime: Means the case where several people commit a single crime spontaneously without an agreement or prior knowledge of the intention to commit it, or on the case where several accused parties enter into the place of the crime, such as entry of several accused parties into a place of crime for the purpose of stealing without having any agreement between them for committing the crime together.

In these cases, every accused party shall be regarded as committing an independent crime for which he will solely be held accountable in view of the fact that the crime is similar to several crimes committed by many people individually, despite that we are talking about a crime that targeted one place.

Criminal Agreement: Means the agreement of people to commit one or more crimes.

Agreement refers to a meeting of two or more people to carry out a criminal act.

Due to the importance of such criminal agreement, the law normally does not punish on the basis of intention or by making a decision, however, the Jordanian Penal Law regards the conclusion of criminal agreement as a punishable crime even though the agreed crime has not been committed.

Among the examples of the punishable criminal agreements in accordance with the provisions of the stated law are as follows:

First – Conspiracy: An agreement between two people or more to commit a crime by certain means against the safety of the country. This agreement is regarded as an assault crime against the country's security, whether the act comprising the crime is complete, incomplete, or attempted to be performed.

The Penal Code in this area encourages conspirators to repentance and relieves them from penalty if they inform the authorities of the conspiracy prior to commencing with any act prepared for execution.

Second – Association of Evils: These shall be realized when two people or more establish an association or make a contract agreement with the intention of committing crimes against people or properties.

The penalty of such agreement in accordance with the provisions of the stated law is provisional hard labor, but if the objective of the association is to attempt to take the life of people, the penalty of hard labor will be a period of nothing less than seven years.

The law relieves whoever discloses the intention of the association or agreement, and provides information about all accused parties, partners.

Third – Illegal Association: A group of people, whether registered or not, inciting or encouraging within their regulations or in connection with the activities, acts or allegations they carry out, to change the constitutional, economic or social entity of the country by using force, violence, revolution or sabotage.

The law regards any affiliation with them as a punishable crime and strengthens the penalty against whoever was proved to be assuming and administrative or executive position therein.

Fourth– Criminal Participation: The commitment of a crime by several people. Until the criminal participation is satisfied in accordance with the provisions of the stated law, the crime elements are to be brought together by a material and a moral unit. The material unit means the criminal result while moral unit means the mental and psychological link between criminals in committing the crime as represented by the knowledge of each of them of the criminal project and devotes its desire towards realizing the criminal result.

The Penal Law distinguishes between the participant and intervener defining the party who acts with another party as participant for the purpose of to play a key role in execution.

The intervener means the accused party whose contribution to the crime will be restricted to a subordinate role. The law confers upon the party who incites commitment of a crime an independent position and regards the concealment of the crime as an independent crime in itself.

The law defines the doer of the crime and its partner as the one who produces the elements comprising the crime or directly contributes to the execution of the same such as the one who uses the knife on the victim. It happens that the principal doers may be several in a single crime when a number of people agree to kill a person and every one of them fires towards him and if

is killed even by one bullet, they all will be charged with killing him even though the owner or the firer of the bullet that killed the person is not known.

The law defines the partner as the accused party, which contributes with other parties to the commitment and execution of a crime such as the one who comes with the party charged with robbery to carry the stolen articles.

The law regards the participant as the principal doer and an independent crime doer while the moral doer (indirect actor) is the one who incites irresponsible person, such as a mad person, to commit a crime or utilizes a person of good faith to commit the same.

Fifth – Inciter: Any person who prompts another party to commit a crime by giving him money, gifts or influencing him by threat, intrigue and deceit or abuse of employment. The law restricts the cases where the person shall be regarded as intervener in committing a crime to six cases provided for in Para (2) of Article (80).

The Penal Law punishes the inciter and intervener with provisional hard labor from 15-20 years if the doers' sentenced to death penalty and with provisional hard labor from 7-15 years if the doers' sentenced to life labor hard or life imprisonment. In other cases, the law punishes the inciter and intervener with principal doers' penalty after reducing its term from third to sixth. The intervener shall not be punished in accordance with the provisions of law unless three conditions are satisfied.

First, the act in which he intervenes must be a felony or misdemeanor and hence the intervener will not be

penalized. The intervener may be punished and the principal doer may not if the principal doer proved to be mentally ill, for example.

Second, there is an agreement between the doer and intervener for committing the crime; thirdly; the intervention is made by one of the means exclusively specified in the law.

Six – Hider: The person who plays his role in the crime after it has been committed without having an agreement with the principal doer for committing the same. The hider's responsibility is independent from the doer's liability in view of the fact that he committed an independent crime which is the crime of hiding or concealment.

If the hider is evidently found to be in agreement with the doer for committing the crime and conceals or hides it, he shall be regarded in this case an intervener and not a hider provided that the hider shall not be punished unless his knowledge of hiding people who committed the crime or article collected from the crime is proved.

The hiding or concealment of a crime is a misdemeanor and not a felony in accordance with the provisions of Article (84) of Penal Law, which provides that the penalty of the concealment crime shall be for a period not exceeding two years imprisonment.

The Penal law relieves the perpetrators' parentages, descendants, husbands, wives, brothers and sisters if they hide their relative away from justice and punishment.

Suffering Continues

By Advocate/ Yara Sameer Abu Seedo / Gaza

The new judicial year entered into force, yet the courts remain poorly represented, which does not fit with their judges and lawyers. The courts buildings in Gaza are still in an extreme bad condition with old exterior and narrow corridors, leaving no room for lawyers and customers.

The court rooms do not allow the lawyer to perform his duty, where he is prompted to wait for longer times with other colleagues and customers until his name is called, which may take hours.

The courts do not give the trainee lawyers area to attend the trial sessions to be acquainted with the litigation proceedings. They are, also, forced to wait for long times outside the court rooms, until an opportunity availed to them to enter. Although, some of the judges' rooms have been expanded, the suffering at the magistrate courts still continues.

The Execution Circuits at Gaza, Deer Al Balah and Khan Younis are still crowded with lawyers and litigants. Moreover, the lack of staff is inconsistent with the number of customers who are forced to line in long queues.

The Execution Circuits lack a dedicated place for litigants and another for lawyers. This makes the lawyer compete with the customer to complete his transaction.

Further, the Execution circuits suffers from lack of competencies among staff who are, in majority, appointed under the unemployment vote and once are learned and having absorbed the business processes and procedures their term of employment expires and they return back to the unemployment market with the return the suffering with other new employees appointed under the same vote.

These are apart from the loss of lawyers and litigants' files concerning social, humanitarian and economic cases, of great importance, along with their legal significance, such as alimony, house furniture, detention orders etc.

In regards to the slowdown at the Execution Circuits found to be leading in many cases, led to missing out the

opportunity for rights owners, and negatively affecting serving the notifications and those relevant of execution disputes.

Several lawyers and litigants attribute the slowdown in the course of actions, particularly those relating to detention orders and their execution to factional and political reasons irrelevant to the rule of law.

The tragedy also extends to include courts employees performance whose incompetence has prompted lawyers to instruct and direct them to perform their duties.

Lawyers work in their clients' interest, but the negative style of these employees in dealing with lawyers and customers is not less than that of their colleagues at the Executive Circuits. Several lawyers complain from the injury caused to their status and noble work by such employees, which negatively reflected on their dignity and position.

Judiciary still suffers from inefficient employees and in-credibility in appointment where in many times we hear from employees saying **"we work voluntarily"** or **"we work under the unemployment vote"**.

The same condition can be found at the Notary Public Circuits. Rafah Magistrate Court lacks a Notary Public. This prompted lawyers and litigants to go to Khan Younis in order to complete their legal transactions. Imagine the exhaustion and cost sustained by them by reason of lack of a Notary Public.

Female lawyers on their part suffer as well from mistreatment by some of policemen, in discrimination between them and male lawyers, in addition to the style of treatment by such policemen with litigants or detainees. The courts' rooms witnessed several cases in which policemen beaten such detainees in front of citizens, lawyers and judges especially when transported to and from detention center.

Clearly, the suffering still continues and its impacts are evident in Gaza Strips' Courts of their different Circuits, when will the suffering end?

Gaza lawyers' Vision on the Performance of the Pillars of Justice

With the beginning of the new judicial year "Eye on Justice" made a number of interviews with some lawyers in Gaza to hear their views on the Performance of the Pillars of Justice.

Lawyer Safi Al-Dahdoh said that the performance of the Judicial Body over the last four years was moderate for the following reasons: the judges who have been appointed were not at the required efficiency and experience. The administrative body of the judges lacks the expertise and knowledge especially in dealing with lawyers and litigants. He pointed to the increasing phenomenon of referring the suit from one judge to another, even after the suit is retained for judgment, together with the phenomenon of producing the investigations reports altogether without hearing the parties who prepared them and giving the opportunity for the defense to discuss it with them.

He added that the situation at the public prosecution is not greatly different from judges' position. The public prosecution suffers from lack of qualifying its members properly inline with their job requirements and the selection of prosecutors was improper.

He referred to the deprivation of the right to plead before the Public Prosecution together with depriving the lawyer of meeting his client, lawyers waiting for longer time to meet the a member of the Public Prosecution and the intervention by the Public Prosecution in judgments rendered by courts indicating that some cases have occurred such as the intervention in judgments relating to accused parties being his clients noting that one of his client has been detained twice on the same charge despite a decision releasing him once bail was issued.

Al-Dahdoh said that the Bar Association is forced to deal with the judicial body as maintain lawyers and litigants' rights by participating personally in sessions held between representatives from the Bar Association, Judiciary and public prosecution to resolve problems facing lawyers, while performing their legal duties especially the decision imposing veil on female lawyers, which some lawyers and civil society organization prompted were successful in prompting those in charge of the judicial body to withdraw such decision.

Lawyer Adham Al-Toum stated that the judges do not have the expertise and competence, and he feels that the employee is more important than the judge. To address the judge is easier than addressing the employee. This is attributed to inefficiency of employees and their lack of knowledge of rules of dealing with lawyers and litigants indicating that judges ignore several complaints lodged by lawyers in protest to the employees' style of dealing with them.

He added that the Execution Circuits suffer from a great work pressure due to lack of employees and their high turnover. The judges, who deal with criminal cases, adopt an inconsistent approach with the rule of law by demanding the accused parties to admit that they are guilty for the purposes of finalizing the suit quickly despite in fact they may be innocent or the court may

adjudicate their innocence if they are able to file their evidence as per rules.

He maintained that such judges' behavior may be attributed to the work pressure before the criminal judiciary and their desire to settle the highest possible number of criminal suits.

Al-Toum pointed out to the poor relationship between lawyers and judges who recourse to address lawyers inadequately, which may cause injury to the lawyer's professional dignity before his clients and litigants.

He said that a great fear on the part of judges of the Public Prosecution members has been noted, which a dangerous matter as I have previously seen that the court janitor bringing coffee to the judge and the Prosecutor during the session and the lawyers were present in court room. Some judges do not dare to conduct the trial in the absence of the prosecution representative even though his absence without a valid reason despite the Prosecution deemed to be a litigant in the suit.

He added that the Public Prosecution uses his powers towards the prosecution members without leaving any room for them to provide an opinion.

He affirmed that the Bar Association Council was mistaken in failure to represent the Bar in the High Court of Justice in connection with the demand relating to the election describing such error as a material and great default especially there are financial cases filed to the Bar in conjunction with the said demand, which preoccupied senior lawyers with financial case cannot be measured and mentioned as compared to the election issue.

Lawyer Shaban Al-Jarjeer said that the lack of efficiency and work experience among some judges is represented in the poor management of hearings, in addition to confiscating the defense's right and intervening in discussing the witnesses and lawyer's pleading, in such a manner as, abolishing the lawyer's role in defense, as well as, ignoring lawyers demands regarding the summoning of witnesses where we find that some judges close the door of hearing the evidences in the event of absence of witnesses without pay any attention to lawyers' demands.

He indicated that the court rooms are very small and insufficient to accommodate the seating of lawyers together with inability to provide them with opportunity for due pleading pointing out to cases in which judges determined to write off the suit because the lawyer failed to hear his name due to the crowd in the court room.

Furthermore, a number of employees at the Execution Circuits and Court Cashier found to be inconsistent with the volume of work and the electronic archive at the Executive Circuits is inexistent as in many times we drop there for checking our files but in no vain.

He said that the Public Prosecution in Gaza has created the

term "Charge is pending investigation" despite the nonexistence of such term in the Penal Law. This is for the purposes of using such term for exceeding the detention period allowed by the Public Prosecution and objecting to the release of the accused party on bail.

He described the Bar Association in Gaza as the silent council, which failed to adopt any case relating to the rule of law saying that: "The Bar Council has no effective role in addressing the violations experienced by lawyers".

Lawyer Mahmoud Abu Dan pointed out that there are great turnouts at the courts by litigants to settle their disputes through the judiciary system. This positive attitude results in more positive community culture and citizens awareness about the importance to recourse to judiciary for the disputes' settlements.

Further, there is a positive development with respect of the execution of judgments by courts, following the application of the new Execution Law, which allows the execution of several obligations that are not regarded as judicial rulings, such as executive bills, commercial notes and customary bills, in addition to overcoming the problem of executing judgments through the security services and influential families as well as increasing the judicial working days resulting from reducing the vacations and administrative deferral.

He said that beside these positive aspects, there are constructive critiques such as lack of efficiency and expertise among some judges and their number which is inconsistent with the volume of work and number of cases brought forward to judiciary. These have contributed to the congestion of cases, judicial accumulation and shortage of judges at the High Court of Justice indicating that he is an attorney in several suits whose consideration at lower courts took five years and referred to the Supreme Court justice, which failed to fix an appointment for consideration till the date of this interview. This hinders the progress of justice and courts operations.

He added that there is a problem with respect of shortage of employees at the Executive Circuits together high turnover, thus transferring the files from one judge to another, or from a judicial body to another in such a way deemed to be unjustifiable.

He maintained that there the license for practicing legal profession are given to people who do not satisfy the conditions required by law. He indicated that the bar Associating in Gaza defends lawyers only on selective basis and according to the proximity or remoteness of the interest from the interests of members of Bar association council or the political organizations. There is a clear distinction in holding the examinations for practicing the legal profession for trainee lawyers.

Freedom of expression prejudiced

Palestinian Center for the Independence of the Judiciary and the legal profession "MUSAWA" expressed its condemnation over the severe beating by the security service personnel against the strikers at Al Katiba Yard on last 15 March in a strike organized under the slogan of Ending the Division and Realizing National Unity.

MUSAWA pointed out in a press statement published, on 20.3.2011, that according to reports by a group of lawyers, friends of MUSAWA, taking part in the strike reflected that more than 150 male and female lawyers took part in the strike, such as representatives from civil society organizations, journalists, university students, detainees' relatives, representatives from professional associations and youth.

The lawyers' participation was through a tent they erected in Al Katiba Square while flying the Palestinian flag. The security services personnel demolished the tent and assaulted lawyers by insulting and beating them without any distinction together with lowering the banners carrying Palestinian flag; this led to severe injuries.

The statement maintained that the behavior of the security services towards lawyers and strikers represents a gross violation to the provisions of the Basic Law and the laws in force, which guarantee citizens' freedom of expression and peaceful assembly.

MUSAWA urged in this respect several civil society organizations, Bar Association and the Independent Authority for Human Rights to initiate a public and transparent investigation over the said accident and refer the perpetrators to trial, together with immediate suspension of injuring the citizen rights eliminating freedom of expression.

In a subsequent development and under an initiative by MUSAWA, a legal committee for the protection of strikers at peaceful gatherings was established with membership of representatives from Bar Association in Gaza, the Independent Authority for Human Rights and Palestinian Center for democracy and settlement of disputes, The Center for Democracy and Workers Rights in Palestine and Journalists Association in addition to a representative from MUSAWA. This resulted in a dialogue organized by MUSAWA, at its premises in Gaza, on 20.3.2011 under the title "Collective Action Mechanisms for the Protection of Peaceful Strikers".

Voluntary Activities

Under an initiative by the groups of “Lawyers for Rule of Law” Friends of MUSAWA in Gaza strip, Palestinian center for the Independence of the Judiciary and legal profession “MUSAWA” witnessed several voluntary legal workshops including a voluntary training course titled “Shar’i Judiciary” continued for 3 days from 27 – 3-/2011 in which 30 male and female lawyers benefited including 13 lawyers who participated in the course as part of their preparation for Shari’ Advocacy License Examination. Shar’i Judge Salah Abu Hashish delivered lectures at the event. A workshop on Insurance Law and Labor Law was conducted on 31/3/2011 for two hours from which 18 male and female lawyers benefited as part of their preparation for Regular Advocacy License Examination.

The workshop discussed compensation of road traffic accident injured parties and work injury compensation in accordance with Insurance and Labor Laws in force on Palestinians territories. The legal advisor to the National Group Insurance Company Sameer Al-Madani delivered lectures at the workshop.

Five members of “Lawyers for Rule of Law” group, Friends of MUSAWA delivered lectures at a training workshop discussed in details Palestinian Handicapped Rights Law No. 4/199 targeting 60 people being parents of male and female deaf

students. The workshop was conducted on the occasion of the Arab Deaf Week aiming at identifying deaf rights provided for in Palestinian Handicapped Law and the available legal mechanisms for guaranteeing these rights.

The workshop was held in collaboration with the National Center for Community Rehabilitation on 23/4/2011 at Mustafa Al Refai’ Deaf School in Gaza.

On 31/7/2011 MUSAWA hosted a seminar on the book of Tactics in the Field of Human Rights in collaboration with Free Culture and Thought Association in which Researcher Salah Abdul Ati took part with the participation of 29 activists in the field of human rights.

On 25 of July 2011, MUSAWA conducted a second training course titled “Road Traffic Accidents and Labor Injuries” in Gaza by which 38 advocates and trainee lawyers benefited and some of them took part for the purpose of the Examination of Practicing the legal profession. The duration of the new course is three days on 25 and 27/09 and third day is expected to be conducted on 5/10. Sameer Al-Madani the legal advisor to the National Insurance Company who praised the work made by MUSAWA and expressed willingness to cooperate with it in future, delivered lectures at the training.

Solution is to proceed to competent courts and Judicial Inspection Department

Palestinian Center for the Independence of the Judiciary and the Legal Profession “MUSAWA” received a written complaint from citizen Mahmoud Asad Sawalha from Asera Al-Shamaliyeh, Nablus Judiciary complaining from regulatory decision issued by Asera Al-Shamaliyeh Municipality. MUSAWA believes that the subject of the complaint is a legal dispute and advises the applicant to appoint a lawyer and recourse to judiciary to settle the dispute as per rules. Furthermore, MUSAWA received a complaint from Yousif Al-Sha’ir from Hableh Qalqilia Judiciary complaining of the withdrawal of calligraphy expert from a report he prepared upon a judicial decision. MUSAWA believes that it impermissible to intervene in the judiciary business. The lawyer of the complainant may wait for a judgment on the suit and take an appeal for cassation as per rules if the judgment is not issued in his favor.

MUSAWA received a copy of the complaint lodged by Mohammed Taher Abbas Ghanim from Jabaa, Jenin Judiciary to the President of HJC containing 9 pages relating to a judicial mistake caused to him a gross material and moral damage in the judgment rendered against him, which included in its consequential Para that the person admitted the charge ascribed to him contrary to the case investigation reports, which indicate that Mr. Moh’d Ghanim denied the charge ascribed to him. In a related story Palestinian Center for the Independence for the Judiciary and Legal Profession “MUSAWA” received a copy of the written complaint lodged by Ibrahim Hefthi Al-Sabah to the President of HJC complaining from a judge who treated him in a high voice saying: “When you are here with me you should say Mr. Judge and take the glasses out of your pocket. Were you not with Mr. Beck? – he means the Prosecutor- I could have taken another action against you”. MUSAWA believes that the complaints of the said citizens fall within the core jurisdiction of the Judicial Inspection Circuit and hopes that the President of HJC would have referred the complaints to the Judicial Inspection Circuit, which might have said its word as per rules as well as the possibility of instituting a suit in the case of the second complaint. In accordance with observed rules contained in the civil and commercial trials law in force.

Required Mechanism

"Eye on Justice" learned that an execution judge sent a memo to the president of HJC pointing out to the inability of his Circuit to execute a judgment for violating the Division of Joint Immovable Properties Law requesting the mechanism that to be followed in such case.

On the same subject, "Eye on Justice" learned that the attorney of the convicted party in the same executive suit lodged a complaint to the president of HJC requesting for referring the same to the Judicial Inspection Circuit relying upon the occurrence of violations to the rule of law and the actions taken by the first executive judge before the said executive judge.

MUSAWA hopes that the President of HJC will refer the complaint to the judicial Inspection Circuit and looks forward to having the said circuit taking adequate legal action towards.

Contradicting interpretations

Palestinian Center for the Independence of the Judiciary and the Legal profession "MUSAWA learned about two interpretations concerning the applicable procedure for dealing with suits where 60 days have passed from the date of the decision deleting them without being renewed.

The first interpretation concerning the comments written by the Court Clerk to the Judge of merits regarding the suit as if has not been existed. The judge under such writing issued a decision regarding the suit as if has not been existed.

The second interpretation concerning the determination by the judge excluding the suit file from the schedule of the cases under consideration until an application for return it to that schedule is filed.

Sources at the Judicial Inspection Circuit informed "Eye on Justice" that such difference in interpretation exists and have proceeded to SJC requesting a solution for such contradiction. They are still waiting for the solution.

Legist Ahmed Al-Milaiji's Death

The Arab and international legal family suffered the loss of a great figure of law masters and an inspired legist Dr. Ahmed Al-Milaiji whose publications deemed prominent juristic references for Palestinian lawyers and judges who died in Cairo on 9/4/2011.

MUSAWA announces the death of the great deceased figure and extends to his family, relatives, colleagues, students and Palestinian and Arab legal family consolation and comfort praying may Allah Al Mighty gives him peace, rest and paradise and give his relatives strength and fortitude to bear this irreparable loss.

MUSAWA reserves the favors of the deceased towards it and Palestinian lawyers as represented by his effective participation in legal courses and international symposiums conducted by MUSAWA and in commenting on judicial judgments together with providing advice and proper opinion on every matter or issue directed to him by MUSAWA being an incessant supporter by virtue of his profound belief in the principle of rule of law and the right of Palestinian people to liberation, independence and building the state of law

Successful Recommendation

An execution officer working with Jenin Execution Circuit to the presiding judge of Court of First Instance for demanding from the Chairman of SJC to accept depositing the execution Circuit trusts in the court's cashier directly with no need for instructing the respective citizens to deposit the same in the bank.

The recommendation by the said employee was accepted by the presiding judge who referred it to the SJC, which approved it.

The recommendation received with great satisfaction by the Executive Circuit customers.

MUSAWA believes that the recommendation of the officer deserves appreciation and encouragement and hopes that all employees will contribute with suggestions, ideas and initiatives that may pave the way for citizens to access justice.

Expecting a Decision from HJC

Eye on Justice learned that members of a court of First Instance were surprised by receiving a draw of their attention from the President of HJC for determining to release an accused party who served the sentence adjudicated against him, by reason of their alleged legal violation.

The judges whose their attention has been drawn objected to such draw of attention regarding it as an intervention in their judicial business particularly they have issued their judicial decision unanimously based on the referral of the file to them by the court clerk as per rules and by virtue of the provisions of the Criminal Procedures Law and their decision deemed to be judicial falls within the core of their judicial business.

Eye on Justice learned that the judges met the president of HJC demanding the cancellation of the penalty. The president of HJC promised them to refer the matter to the HJC, but they are still waiting for the cancellation of the penalty by the HJC.

Judgment on a Letter

Eye on Justice learned that the Court of Appeal rendered a judgment regarding one of the suits as if has not been existed.

The judgment came in a form of explanatory notes written on a letter sent to the Chief of the court by the head of the court's council stated that "I would like to inform you that the file has been written off on 6/12/2010 and no action has been taken towards it since that date until today's date 24/2/2011. The matter is therefore submitted to you to take whatever actions you deem appropriate and let us know the actions that we should take."

The said judgment aroused debate among legists, particularly as it was not issued upon the request of the parties and inquired about the legal value of the letter by the head of the courts council and the extent of the validity of being marked by the stamp of the applications filed by the interested parties in obtaining a judgment regarding the suit as if has not existed.

When will the President's directives, Interior Minister's decision and High Court of Justice judgment will be implemented?

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA" sent a written memo to Major General Mohammed Yousif, Head the Organization and Administration Authority, regarding failure of implementing a final judgment issued by the High Court of Justice and not responding to a written memo sent to him by the Chief of the Council of the Presidency Dr. Hussain Al-Araj concerning a request for executing the judgment and return the policeman Noor Eddin Saleh Hamad from Salfit judiciary guard to his work with the police.

In view of the legal importance of MUSAWA memo, "Eye on justice" hereby publishes it:

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA"



Major General Mohammed Yousif
Head of Organization and Administration Authority

Subject: Execution of Judiciary Judgments

Dear Sir;

Palestinian center for the Independence of the Judiciary and legal profession "MUSAWA received a written complaint from Noor Eddin Saleh Mahmoud Hamad from Salfit Judiciary Guard informing that the High Court of Justice the highest Judicial Authority whose judgments are final and executable has rendered a judgment returning the above mentioned citizen to his job with the police, and has obtained Interior Minister and Police commander's approval for returning him to his work. The High Court of Justice judgment was rendered on 22/4/2009 and a letter was sent to you on 6/9/2011 by The Chief of the Council of the Presidency for the purposes of responding to the court's judgment and executes it.

We, at MUSAWA center hopes that you will accelerate the execution of the judgment of the Supreme courts Justices pursuant to the provisions of the basic laws and the Judicial Authority law together with the desire of the President and the several decisions issued by the Council of Ministers.

Surely, you will share us our opinion that compliance with the Basic Law, the relevant laws and judiciary judgments are a pillar for our independent state, rule of law and human rights. This was underlined by the President in his speech before the UN General Assembly concerning Palestinian demand for the recognition of Palestine state, the member state number 194 of the international family.

We hope that you will execute the judgment of the High Court of Justice as the judiciary final judgments deemed to be a legal duty and refraining therefrom is legally prohibited.

Date 9/9/2011

MUSAWA

Attachments:

Noor Eddin Hammad Complaint

Letter from the Chief of Presidency Council

MUSAWA received a written complaint from the said policeman stated as the following:

Subject: Execution of Judiciary Judgments

I, Noor Eddin Saleh Mahmoud Hamad from Kefa Haris village, Salfit judiciary, holder of ID No. 984554238, submit this letter appealing your intervention to ensure the execution of the High Court of Justice judgment attached hereto, which determined to be returned to my work with the Police Service.

Since the said decision has been issued on 22/4/2009, the Organization and Administration has not yet responded and failed to execute the court's judgment.

They have not returned me back to my work despite the written letter from the Chief of the Presidency Council Dr. Hussain Al Araj to the Head of Organization and Administration Authority for the purposes of complying with the judgment as well as the approval that I obtained from the Interior Minister and the Police Commander.

I do hereby request you to assist me based on the renowned activities of your Center in support of the rule of law and citizen's right.

Date: 29/9/2011

Signature: Applicant

Eye on Justice received a copy of the letter sent by the Chief of the Presidency Council Dr. Hussain Al-Araj to Major General Mohammed Yousif.

In view of the importance of this letter from the legal point of view, "Eye on Justice" hereby publishes it:

**Palestinian Liberation Organization
Palestinian National Authority
Office of the President**

**Major General Mohammed Yousif
Head of Organization and Administration Authority**

Dear Sir;

**Subject: High Court of Justice Judgment No. (178/2007) Concerning a Return
of citizen Noor Eddin Hammad to his work with the Police Service**

We present our compliments and with reference to the above subject and further to the judgment of the High Court of Justice with respect of the case no. (178/2007) determining the return of the citizen Noor Eddin Saleh Mahmoud Hamad and the approval of the Director General of Police and Interior Minister for returning the said citizen to his work pursuant to the said judgment of the court and by virtue of the President's directives to implement the rule of law and in respect to the rule of separation of powers.

You are kindly requested to execute the said judgment of the court and let us know whatsoever affirms the execution of the judgment unless there is a legal prohibition preventing the same.

With Respect,

**Ramallah, 6/9/2011
Dr. Hussain Al-Araj
Chief of Presidency Council**

Attachments:-

Letter from HE Minister of Interior in this regard

Letter from Director General of Police in this regard

CC:- Legal Advisor of HE the President

Palestinian Center for the Independence of the Judiciary and the Legal Profession "MUSAWA" hopes that the Head of Organization and Administration Authority will speed up the implementation of High Court judgment in its capacity as the highest judicial reference of the State and to implement the President's instructions as well as the decision of HE The Minister of Interior, taking into consideration that two years elapsed before implementing the judicial judgment since its issuance.

MUSAWA did not receive any respond thereof.

Is it Correct...?

The Performance of the Pillars of Justice in West bank

- The public prosecution refused to enable an attorney of accused party in a criminal suit to photocopy the investigation file.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: Incorrect, the defense lawyer attended the investigation sessions and perused his client's file, in the beginning we refused to give him a permission to photocopy any article not related to his client.

- A number of prosecutors filed a suit to the Supreme Court demanding their seniority to be determined and then promoted together with canceling a number of decisions issued by the public prosecutor relating to the rules of commencing the work at the Judicial Inspection circuit in the Public prosecution and the procedures for appointing prosecutors.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: Yes, a suit was instituted and we filed a submission. The matter is now in the hands of the court.

- A judge of a Court of First Instance filed a suit to the High Court of Justice objecting to decisions issued from the Chairman of the Supreme Judicial Council and a seconded presiding judge of a Court of First Instance concerning a draw of attention sent to the said judge contrary to the rule of law and his suit.
- A great number of road traffic offences were reported during the period from 1/1/2011 to 30/6/2011 were lost and have not been referred to the court.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: No one contacted us in such subject and we have no information. It is supposed that all offences are referred to the court. We cannot initiate any investigation without a complaint. I will investigate this matter based on this question.

- The number of appeals and applications filed to the Court of Cassation, which have been circulated as from the last judicial year to the current judicial year accounts for almost 1500 suits and applications.
- A number of judges, including judges at the Supreme Court demand the reestablishment of the HJC and elect two members therefrom in accordance with the provisions of law as a longer period has passed since the membership of the SJC has been filled by two members before almost 6 years.
- More than 100 cases relating to the dismissed teachers from their jobs for security safety reason was not dealt with by the Supreme Court despite that they have been deposited with the court clerk since early 2009. Is it true that a number of these suits were filed by the Supreme Court for judgment?

- A great number of suits filed by judges demanding their job entitlements are still kept waiting to arrange an appointment for their consideration despite they have been deposited for nearly two years.
- A judge from the Supreme Court filed a suit three years ago objecting to decisions issued from the President of Palestinian national Authority, the Chairman of the SJC and the SJC relating to the judicial promotions. Is it true that the suit was left unintended to by the Chief Justice throughout this period where the judge was prompted to file a written application demanding abandonment of the suit justifying his demand that the remaining of the suit for a longer period without being referred to a judicial panel for consideration, and settlement falls within the limits of the justice denial, and the suit loses the purpose for which it has been filed as represented by realization of justice. Is it true that the demand of the judge included an expression that the realization of justice no longer exists under the justice denial?
- The Bar Association is in the processes of preparing a draft law amending the regular lawyers' law and intends to submit it to the President for the purposes of issuing a decision by law in order to overcome the problem of repeated postponement of the Association's council.
- The General Assembly of the Bar Association decided to establish subcommittees through elections and its said decision has not yet implemented.
- Lawyers are complaining that the determination of specific days for their appearance before the Execution Departments will lead to accumulation of their works and affecting their clients' interests.
- Lawyers and litigants suffer from slowdown in the notification procedures.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: With respect of the notification procedures it is true in some cases with the public prosecution, for reasons beyond our control.

I advise those who face any delay to lodge a complaint to us.

We have received several complaints in this regard and handled them. I would like to point out that the slowdown in the notification procedures is not the responsibility of the public prosecution, which communicates with the relevant agencies.

- From our part, we communicate immediately with whoever has a relationship in the matter.
- I would like to affirm once again that we are willing to find solutions for any complaint relating to this issue.
- Today, for example, we received two complaints and sought to handle them in the correct manner.
- The prosecution assistants are still appearing before courts who are holder of writ for legal assistance only.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: The public prosecutor instructions in this respect are clear as the assistant prosecution must retain a copy of the suit file when appearing or pleading before the court for the purposes of relying upon it in all litigation proceedings. We will track this issue by virtue of this question to ascertain that the public prosecutor's instructions are implemented.

- The signboards of the judges offices affixed onto their offices when they were lawyers are still in their places without being removed.
- The phenomenon of the lawyers' complain of withdrawal of their cases for the purposes of appointing lawyers children of the judges has increased and a number of lawyers practicing the profession of the judges' children has increased as well.
- A severe dispute broke out between a presiding Judge of a Court of First Instance and lawyers operating within its circuits made the lawyers to refrain from appearing before him. The dispute was conveyed to the mass media before the Bar Association and the Courts Administration could reach an understanding between the parties.
- The HJC suspended the printing and publication of a manual guide for litigants prepared by the Courts Administration on the pretext that it is no longer needed.
- 650 complaints have been lodged to the Complaints Section at the bar Association since April 2007 until the end of May 2011, as well as 200 complaints circulated since years preceding 2007, together with 630 complaints decided to be written off and referral of 125 complaints to the Disciplinary Board and 16 complaints to the Fees Committee.
- The Bar Association Council sent the penalty of warning to 19 lawyers and the training periods to the lawyers under training together with issuing 42 decisions prohibiting the practice of the profession.
- The cost of the 4th Judicial Conference exceeded USD 100000.
- 811 cases are still pending in the courts since several years ranging between 12-25 years and the circulated cases before the courts of First Instance since the last judicial year to the current judicial year account for 32284 cases while the number of circulated cases at the Execution Department is in thousands.
- Judges are complaining from receiving threats from heads of courts over their judgments and such complaints were expressed at the 4th judicial conference.
- The method of selecting the judges and members of the public prosecution for taking part in overseas events aroused dissatisfaction and critique by a number of judges and members of the prosecution.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: As regard to the public prosecution, every issue is being deeply and thoroughly studied.

- Suitable and specialized people are selected observing in this respect that the courses will include members of the different prosecutions.
- We have clear procedures and there is a specialized committee supervises the selection process under the chairmanship of the public prosecutor and an official form the training department.
- All members of the prosecution except for the assistants took part in local and international courses.

The selection for international participation is a precise and sensitive issue particularly the prosecution cadre is inconsistent with the remarkable increase in the number of judges.

- The Judicial Inspection Department complains from absence of topics in the judicial training relating to inspection.
- Judges demanded the amendment of the judicial behavior rules and the adoption of Arab Judge Ethics Code in lieu of as the latter includes rights and guarantees for judges were not referred to in the regulations issued by the SJC council.
- A panel of a Court of First Instance decided to respond to a demand for suspending a penalty against an accused party being desirous to take an appeal against the judgment convicting him of committing murder and sentenced to a life of hard labor, despite the refusal of the court rendered the judgment to the said demand.
- A lawyer attacked his colleague and attempted to assault him by beating in the lawyers' room at one of the courts. The incident took place in the presence of tens of lawyers due to factional fanaticism of the aggressor?
- A lawyer filed a criminal suit for submitting a cheque without sufficient fund against an accused party having committed based on a special power of attorney from the victim. The accused party waited for the lawyer and immediately assaulted him. He was hospitalized and later released.
- An agreement was made between a prison manager and a member of the bar association for the arrangement of lawyers visits to their clients at a prison, which was determined to be 3 days a week under the agreement. The agreement was strongly objected by lawyers by reason of violating the law. Some lawyers said that the agreement was presented to the Bar Association council.
- The judicial secondment for a number of judges from magistrate courts to courts of First Instance has exceeded the legal period.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: The President of HJC will cancel all judicial secondment violating the law.

- Courts police stops traffic on the main road whilst the President of HJC departing his office.
- The quorum of convening the High Court of Justice still a subject of debate and a number of lawyers and judges believe that the High Court of Justice convenes contrary to the law.
- Newly practicing female lawyers are operating with advocates' offices free of charge or in return for retaining the legal fees of suits in which litigants insist on their appointment?
- The contradiction impaired the judgments rendered by High Court of Justice Panels on cases relating to judges' salaries and calculation mechanism has not been referred to a public panel to remove such contradiction and establish a conclusive judicial rule for the dispute.
- A Court of First Instance presiding judge issued a penalty drawing the attention of a judge of a conciliation court by reason of postponing hearing a witness at a next session? Is it true that the judge whose attention was drawn and his colleagues at the conciliation court objected to such penalty and considered it an intervention in the judge business?
- The attention of a judge at a conciliation court was drawn by reason of rendering a judgment handing over a vehicle of one of the litigants in an executive suit.

- A presiding judge of a court of First Instance accused a judge at his court with being impolite. Is it true that the said judge lodged a complaint to the President and Vice-President of HJC objecting to the way of treatment by the presiding Judge towards his colleagues, the judges? Is it true the complaint expressed a discontent about the said presiding judge allowing the judges to view their appraisals and demanding from them to say to the President of HJC that the presiding judge's performance deemed to be good and excellent?
- A head of court reads the judgments solely in the absence of his judicial panel.
- A monthly mobile telephone calls allowance amounting 200 shekel has been paid to a seconded presiding judge of a court of First Instance. Is it true a laptop and telephone bill allowance have been issued for a High Court of Justice judge exclusively?
- The High Court of Justice judges and members of the public prosecution have retained their government vehicles despite the Council of Ministers' decision regarding withdrawal of government vehicles and no judgment was rendered excluding them from the decision?

Assistant Public Prosecutor Abdul Ghani Al Aweewi: For the public prosecution no answer. You are not entitled to ask this question. Such question is irrelevant to the public prosecutions legal work. These are administrative Government matters you have nothing to do with them.

- The election of a new board of directors for the Judges club restored the issue of the unification of the judges association and club in one body to the first point.
- Some lawyers and judges inquired about the suitability of designing courts clerk room dedicated for retention of suits files and documents thereof as to be made up glazing under several incidents in which courts building were raided and burnt despite the existence of police and administrative officers therein.
- A judge occupying a senior position in the judiciary authority holds a forged PhD. Certificate and his service was terminated for such reason.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: True, the said judge, has not used such certificate.

- The HJC demands from one of its members (Undersecretary of Ministry of Justice) to ask the government for increasing judges' salaries.
- Some lawyers complain from a High Court of Justice Panel rejecting their cases earlier within a time not later than 10:30 AM causing a severe damage to their clients' rights and harming their creditability before them.
- The public prosecution suspended referral of seizures in drugs consumption cases to the university approved laboratories under a presidential decision by reason of their higher financial cost.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: Not true, we have not suspended them. There is a delay in the referral of financial dues to the universities, which caused a suspension of one report. To the best of my knowledge the problem has now been resolved. We refer the seizures relating to drugs trafficking and possession while those relating to drug consumption are not referred. I mention

here that it is not permissible to abstain from referring any technical evidence upon which the criminal suit relies.

- A judge being a member of the Judicial Inspection Department has been referred to the disciplinary board.
- The HJC members at the Judicial Institution were surprised by their replacement without being notified of the replacement decision.
- The President of HJC sent a circular to the heads and judges of regular courts No. 2/39 dated 9/1/2011 stated that ((we send to your Excellency the letter of the Police Director General to consider the contents therein)) administration is headed by an administrative officer since last February while the Rules of Implementation of the Judiciary Authority Law issued by the HJC stipulates that the headship of the said Administration shall be for a judge whose grade is not less than an appeal judge.
- The public prosecution prevents lawyers to contact their clients at the court premises or the prosecution only under a special permission from the public prosecution addressed to the police? Is it true that it was preventing them to talk to their clients even though the subject of the talk is restricted to the detained party's signature on its lawyer's power of attorney.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: I believe this subject implies a falsity but some matters require the prosecutor to know who contacts the detained party especially at the initial stage of investigation. It is necessary to consult the public prosecution to ensure that the lawyer who demands to meet the detained party is a lawyer and the attorney of the detained part. The police cannot distinguish the character of the lawyer. This procedure is correct and does not hinder the lawyer's work. I mean by falsity as I said above the absolute prohibition of the lawyer from contacting his client.

- A lawyer and his father lodged a complaint with the public prosecution against a military citizen. From his part, the military citizen lodged a complaint with the public prosecution against the lawyer and his father who were surprised by a force from one of the security services at the public prosecution premises arresting and taking them to one of the security services premises.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: The said fact in such question has taken place outside the offices of the public prosecution and no member of the public prosecution has seen the same, which was brought to its knowledge after has taken place. It is not true as regard to the implication of the question that the public prosecution was in default.

- A lawyer has filed a power of attorney to the court and proceeded with suit and after several sessions the judge was surprised that the same lawyer has filed another power of attorney as representing the other party in the suit.
- A conference organized by the Ministry of Justice to discuss the Penal Code draft bill was reported to cost the treasury about USD 30.000? Is it true that the said draft bill stopped at its second phase?
- The incidents of civilians arrest by security services without adhering to the provisions of the Criminal procedures Law and their referral to Military Prosecution are still continuing.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: I

am not in pursuit of such matters but the stance of the public prosecution is the necessity to enforce the criminal procedures and impermissibility of referring civilian to Military prosecution or courts

The allocation of a new office for the Public Prosecutor and the higher cost of furniture thereof aroused a legal debate and described as non-commendable.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: Completely to the contrary, the trend of the public prosecution in this respect is commendable and I hope that all government agencies and bodies will imitate the public prosecution. I would like to confirm that this building is a public domain and not leased whose price does not exceed the two years rental of the old leased building. The furniture and logistic requirements were supplied by the financiers without burdening the public treasury with any costs.

- The phenomenon of criminal acts has recently increased.

Assistant Public Prosecutor Abdul Ghani Al Aweewi: regrettably it is true especially the crimes of theft, dishonoring and suicide have remarkably increased. I call upon all official and civil society organizations to speed up studying the matter to look into the reasons and factors thereof and find adequate solutions.

- The number of parties accused with criminal acts was 1960 in 2009.
- The rules of implementation of the Anti-Corruption law, which organize the Anti-Corruption Authority operations, have not yet produced by the Council of Minister.
- The instructions relating to the judicial studies diploma at the judicial institution have not been published in the official gazette contrary to the provisions of theses instructions.
- The withdrawal of the decision on taking in possession a plot in Ram Allah allocated for the construction of the Courts new building and the search of an alternative plot in Al-Bireh has aroused a gross dissatisfaction and objection preventing the issuance of a decision seizing the plot in Al-Bireh.
- The public treasury spent about USD 200.000 to cover the value of repairing the electrical installations at the former High Court of Justice building, which was damaged by of no reason while shifting to the current building of the High Court of Justice.
- The Central Election Commission incurred losses estimated at USD 2 million by reason of the recurrent postponement of

local elections. The election ink value exceeded Euro 100.000 and the expiry period of its usage is temporary.

- A great number of a Municipality Council submitted their resignations in protest to the postponement of the local election and members of the executive committee deny their consultation and prior knowledge of the postponement.
- The Customs Force pursues lawyers at the governorate.
- The Handicapped Association demanded that the exemption from duties and taxes should include vehicle purchased by all handicapped people and not to be restricted to immovable handicapped. They are still expecting a response to their demand.
- Some stone saws factories employ children whose age is below 15 years.
- A great number of women at the Governorate of Salbit have the feeling of pain and anger towards the opening of Land Registration Department in Salbit, which regarded from their point of view a facility for infringing their inheritance rights.
- The number of the registered marriage contracts in 2010 with Shar'ia and Ecclesiastical Courts in West Bank was 20102 contracts whereas the number of registered divorce cases in the year was 3272? Is it true that Nablus Governorate recorded the highest cases of marriage and the highest number of divorce cases?
- The percentage of labor force of adult citizen of 15 years old was 41.1% in 2010. Tubas Governorate recorded the highest percentage of participation as compared to northern governorates of the West Bank. Is it true the rate of unemployment among the male labor force was 23.7% in the same year?
- The percentage of citizens of 10 years old and above who read newspapers represents is 31.5%.
- The rate of poverty in West Bank for 2010 was 18.3% and 8.8% of citizens suffer from miserable extreme poverty.
- The minimum wage for the working woman is 60 Shekel and the minimum wage for the worker is 73 Shekel? Is it true that the percentage of employing the male workers was four times the of the woman employment percentage? Is it true the working hours with many Tailoring workshops in North West Bank accounts for 12 hours per day.
- A great number of working women with civil society organizations demand for a guarantee for their rights to establish an association and their request was not responded by those in charge of such organizations.

Pillars of Justice

The courts buildings are not adequate as many of their rooms seem to be narrow with small corridors in areas suffering daily from daily severe congestion of lawyers and clients who are complaining from noise due to the use of loud speakers for calling them.

The execution officers are employed under the unemployment vote and their contracts expire after they have understood the proper work procedures as well as the deemed to be few in number.

Some Execution Departments customers complain from mistreatment by the employees.

Some Execution Departments customers complain from failure of executing detention orders against their litigants and faced some employees saying to them that the file is missed, the file is lost, or the file is not available.

A number of lawyers suffer from mistreatment of some judges, where they mock lawyers or address them in a provoking manner.

A number of lawyers complain from the adjournment of sessions by certain judges for a break several times a day and some of them adjourn the same for the purposes of smoking, which is prohibited within government facilities.

Some lawyers complain from delay in hearing their files by some judges causing them to remain in the Courts building until very late in the day.

Courts customers and lawyers complain from the severe crowd at courts cashier prompting them to queue and complaining as well from the shortage of the cashier employees.

A number of female lawyers complain from mistreatment by judicial police services towards them in distinction in dealing with them and male lawyers, despite the fact that a room is dedicated for female lawyers.

The working hours at the Execution Department (3 hours a day) and the Court Cashier (4 hours a day) do not correspond with the volume of customers.

The Technical Office of the Supreme Judicial Council is inactive,

which affect lawyers' ability to examine the Supreme Courts precedents.

Rafah conciliation Court lacks a Notary Public, which burdens citizens and lawyers prompting them to recourse to Khan Younis Court despite Rafah Conciliation Court had a Notary Public four years ago.

Taking files and executive suits out from storage takes time, causing delay in returning them to schedule of other cases.

Customers and lawyers are demanded certain services from the judges, however, the judges are yet to approve their demands.

Lawyers complain from inability to meet their detained clients with the Public Prosecution, and only within specific days, which harms the lawyer's ability to contact his client and the client's ability to contact his lawyer.

Lawyers have complained of the interrogation initiated by the public prosecution to their clients in the presence of the court police, which affect the safety of procedures as their presence may constitute coercion or affecting the accused party while giving his statement.

Lawyers complain about the inability to visit their clients during the investigation period before the public prosecution where they are only allowed to meet them before the court.

Lawyers complain from the lack of cooperation by the public prosecution in respect of their demands for transferring their clients to the medical examination that they are prevented from photocopying the papers relevant to the investigation.

The Bar Association Council is unable to solve the problems from which lawyers suffer during the performance of their professional duty before judiciary and public prosecution.

The Bar Association sub-committees are inactive and the Association council complains similar to the West Bank Association Council from lawyers' abstinence from taking part in the General Assembly and the Bar's different activities.

The Bar Association's Library lacks legal references.

"Eye on Justice" editorial staff hoped to write down the public prosecution answers to the questions, the subject of this section, in their exact words.

The Supreme Judicial Council, which preferred not to give answers, met MUSAWA Board of Directors and discussed MUSAWA memoranda, publications and ways of joint cooperation.

MUSAWA, ensuring its professional role in monitoring and community mission, was in the opinion that not to publish a number of other questions whose publication may arouse personal sensitivities and problems and understood in such a manner that will be inconsistent with the purpose for which they have been published.

