

## Editorial

### Pressing Need for Reforms in Judicial Training Institute

The Palestinian Center for the Independence of the Judiciary and the Legal Profession - Musawa has received several complaints highlighting serious flaws in the basic operational aspects of the Judicial Training Institute. These include concerns about the structure of the Institute, its recruitment procedures, its ambit and action plans, the performance of the management, and its training methods (the selection of lecturers and training courses, supervision of the various training committees). The Institute Director has conceded the validity of these complaints (see 'Is this true?' in this edition). Official intervention is required in the form of a professional and objective assessment, along with clear measures to amend the problems and shortcomings and ensure that the Institute operates in the best possible manner. It raises extremely important questions related to the process of training and qualification of future judges and members of the public prosecution, in addition to concerns about how public funds are spent for the work of the Institute. But who will listen???

### Mr. President, These Demands Violate the Rule of Law

A draft amendment to the Judicial Authority Law proposed by the High Judicial Council was overwhelmingly rejected by judges. The proposal is a new attempt to amend Article 34 of the Judicial Authority Law, which stipulates very clearly that it is inadmissible to retain or appoint a judge who is over the age of 70. The proposed amendment was rejected on the basis that it had been designed to fit particular scenarios and violated Article 34 of the Basic Law. An earlier draft proposal presented to the President by the former head of the High Judicial Council prior to him reaching the retirement age of 70 was rejected by the President. Musawa trusts that the President will not respond to this second attempt at a proposed amendment since it is no different from that presented by the Council's previous leaders. The role of the judicial authority is to express non-binding opinions to the legislature on draft laws pertaining to the organization of judicial affairs. It does not have the authority to propose draft laws since this is the core role of the legislative authority.

### Bar Association Elections

The elections for the Bar Association Council are due to take place on April 7 and since the announcement, the Association has witnessed a flurry of activity related to the formation of electoral lists. Musawa welcomes the decision to hold Bar Association elections, albeit a little late in the day, and hopes that professional agreements can be concluded to guarantee the participation of all factions in the Bar Association leadership. This will give impetus to the national and community role of the Association and strengthen relations between the general membership and the Association Council. It will also harness existing potential and experience to create the professional, independent and effective Bar Association that Palestinian attorneys aspire to see.

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In 1983, the Arab countries conducted negotiations in Riyadh and concluded the Arab Agreement for Judicial Cooperation. That was a first important step towards establishing regional standards but the ratification process was very slow.

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### When Will the Structure of the High Judicial Council be Amended?

A legal debate is taking place in the Supreme Court on the extent to which the structure of the High Judicial Council adheres to the provisions of the Judicial Authority Law. In particular, a member of the Council was appointed as deputy head of the Supreme Court and lost membership on the Council in this new capacity.

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## New Appointments

President Abbas has appointed Abdul Latif Suleiman Abdul Fattah al-Ayed as head of the military judiciary with the rank of Major General. He will succeed Major General Ahmad al-Mbayyed.

Major General Abdul Latif al-Ayed was previously a major in the General Intelligence Service before working in the public prosecution and civil judiciary as a judge in the Ramallah Court of First Instance. He worked in the Judicial Inspection Department before assuming his new post.

President Abbas also appointed Ali Mahmoud Abu Diak as Head of the Fatwa and Legislation Diwan with the rank of Higher Court Judge.

The Council of Ministers has appointed Fawwaz Abu Zirr as their legal advisor. Abu Zirr worked as legal advisor to the General Intelligence Service before assuming this new post.

### Attorney General becomes Judge in Supreme Court

President Abbas has appointed the Attorney General, Ahmad al-Mghanni, as a judge in the Supreme Court.

## Contradictory Responses to Legal Monitoring

During the process of preparing the second Legal Monitoring Report for the purposes of monitoring progress in the judicial system in Palestine between 2009-2010 and 2011-2012, Musawa presented the High Judicial Council with a written request for judges and court employees to fill out questionnaires commissioned by Musawa from the Alfa Company for Research and Studies. The questionnaires were designed to ensure a scientific and objective analysis of strong points and accomplishments, along with weaknesses and how these might be tackled without interfering in the work of the judiciary.

Musawa stated in its letter that it would abide by any measures that the High Judicial Council deemed necessary and would adhere to professional, academic and legal standards.

Musawa received a letter from the Head of the Supreme Court and Head of the High Judicial Council, Farid al-Jallad, who stated: "The High Judicial Council discussed Musawa's request in its last session and decided not to allow any external party to canvass the opinions of judges or administrative employees in order not to use the results in a manner that conflicts with the principle of the independence of the judiciary, especially since Musawa tends to criticize the judiciary and highlight negative aspects rather than positive points."

Musawa responded with a seven-page letter dated November 1, 2011, explaining and refuting the accusations leveled against it. The letter stressed the constitutional right of judges and court employees to express their opinions. The letter also highlighted the role of Musawa and other organizations in publishing facts related to the judiciary and legal system in Palestine, thus giving the general public an objective and impartial overview of the situation. Musawa stressed the need to maintain

dialogue between the various parts of the justice system and civil society organizations. The Head of Musawa's Board of Directors reminded the High Judicial Council that Musawa is a licensed organization and has to date issued 12 issues of *Eye on Justice* and 16 issues of *Justice and Law* magazine, along with several legal studies. The letter concluded by stating that Musawa works according to the law and is transparent and legally accountable.

Musawa sent the same letter to the Attorney General, who responded with an internal circular no. 10/2011 issuing instructions to the heads of public prosecution offices to cooperate with Musawa staff on the questionnaire.

In its 11<sup>th</sup> edition of *Eye on Justice*, Musawa published the request to the Head of the High Judicial Council in Gaza, along with the response denying the request. The High Judicial Council in Gaza stated: "The judge represents the judicial authority in Palestine and therefore, cannot be asked questions which should be addressed to those who are affected by the decisions emanating from the judicial system."

Musawa sent the same request to the Attorney General in Gaza, who agreed that the Alfa Company be permitted to perform its task as required.

The Sharia Chief Justice permitted judges and employees of the Sharia courts in the West Bank to fill out the questionnaires, whereas those in charge of the Sharia courts in Gaza rejected the request.

Musawa has not received any response from those in charge of correction centers (prisons) in West Bank districts and the questionnaires were not conducted in those centers, although they were conducted in correction centers in Gaza.

## Awaiting Charges

Musawa received a written complaint from attorney Salameh Halaseh of Ramallah, in which he complains against the methods used to arrest his client, Captain Hazem al-Tatar. According to the attorney, Captain al-Tatar has been detained at military intelligence service headquarters since January 13, 2012, without being transferred to the public prosecution or court or the military prosecution or military court. This violates the current law of criminal procedures.

Musawa sent a memo to Hasan al-Ouri, the legal advisor to President Abbas, stating that the procedures of arrest and detention as stipulated in the Basic Law and relevant Palestinian legislation are binding on all security and executive parties. The memo stressed that a defendant is innocent until proven guilty in a fair trial.

Musawa has not received any response to this memo, although it has learned from attorney Halaseh that, upon the intervention of the President's legal advisor, he was able to visit his client. The attorney also said that his client has not yet appeared before the public or military prosecution and that no legal action has been taken against him by investigators or the competent court.

Attorney Halaseh visited his client at the military intelligence service headquarters in Jericho on February 24, 2012. Since his client has not been charged, Halaseh submitted a petition to the Supreme Court demanding the release of his client on the grounds that his detention violates the Law of Criminal Procedures. The petition, registered under number 31/2012, has not yet been heard by the competent court.

## An Appeal Court Judge Resigns and a Supreme Court Judge Withdraws his Resignation

Judge Ra'ed Abdul Hamid of the Court of Appeal submitted his resignation and has returned to his job practicing law.

Supreme Court Judge Dr. Othman al-Takrouri has withdrawn his resignation, which was due to take effect in February.

## Why? What is the Justification?

While distributing questionnaires at Toubas Magistrates' Court for the second Legal Monitoring Report, a Musawa employee was surprised when she was stopped and asked to report to the Chief Clerk of the court. In the Clerk's office, the employee introduced herself and explained that Musawa was working on a survey to obtain feedback on justice in Palestine. When asked if the survey had been approved by the High Judicial Council, the Musawa employee explained that the survey was designed for the general public and not for judges or court employees.

Consultations took place with the High Judicial Council and the Musawa employee was informed that questionnaires could not be distributed inside the court. The General Secretariat of the High Judicial Council stated that the issue of the questionnaire had caused disagreements among judges and a circular had been issued by the High Judicial Council forbidding the survey to be conducted. The employee was told that the public could be consulted about their opinion outside the court building. As a result, the public were prevented from expressing their

opinion, in violation of their constitutional right under the provisions of the current Palestinian Basic Law.

Musawa expresses its deep regret at this decision and the stance adopted by the General Secretariat of the High Judicial Council. Musawa wonders why this decision was taken and the legal justification for it?

## Cooperation on Mizan Program

A memo of understanding was signed between the High Judicial Council and the Sharia High Judicial Council on February 22, 2012, for the purposes of implementing the Mizan program at the Sharia High Judicial Council. The Mizan program is one of the tools introduced to develop the quality of service of Palestinian institutions through a court case management system that will facilitate access to information about cases and their progress.

## A Controversial Decision

The Head of the Supreme Court and High Judicial Council, Judge Farid al-Jallad, issued decision no. 233/2011 on November 22, 2011, which stipulated the formation of a special commission of Court of Appeal judges to look into appeals submitted regarding cases at the Corruption Crimes Court.

The members of the special commission were as follows:

- 1- Judge Taysir Abu Zaher
- 2- Judge Raslan Arafat

3- Judge Fareed Aqel

4- Judge Taleb al-Bzour

5- Judge Thurayya al-Wazeer

Musawa has discovered that there were a number of criticisms due to the fact that the Head of the High Judicial Council has no jurisdiction to issue such a decision since the formation of courts is regulated by law. Due to the controversy surrounding the decision, it was later retracted.

## Admissions Committee Re-Drafts Examination Questions Following Leaks

The Admissions Contest Committee at the Judicial Training Institute was forced to re-draft questions on the written examination following information that some questions had been leaked. The new questions were prepared on the morning of the examination to guarantee no further leaks of information.

One of the examination candidates filed a case (no. 324/2011) at the Supreme Court appealing against the decision of the Admission Contest Committee to exclude him, and against the decision of the Head of the Judicial Institute, As'ad Mubarak, who rejected the candidate's appeal to sit the examination. As a result, he was prevented from joining the Institute even though he met the admission requirements under Article 10 of the Judicial

Institute Regulations No. 4 of 2008.

According to the case notes, the decision not to accept the candidate was taken because he did not work in the civil prosecution and his university certificate did not cover the entire year.

*Eye on Justice* obtained a copy of the case submitted by the candidate and, due to its importance from a legal perspective, is publishing it in full.

The Supreme Court has not yet issued its decision on the case, nor on a second case submitted by another candidate who claims that he was rejected in a manner that violated the law.

## PLO Laws Not Subject to Principle of Compatibility with Basic Law

The Supreme Court, which is entitled to look into constitutional appeals pending the formation of the Supreme Constitutional Court, rejected an appeal submitted to it that the Revolutionary Penal Code and the Code of Criminal Procedures issued by the PLO in 1979 are unconstitutional.

The court stated that the establishment of the PNA and the passing of the Palestinian Amended Basic Law of 2003 came after the revolutionary laws in question. Since the PNA culminated from the PLO, which is the source of laws, the court reached the conclusion that laws issued by the PLO prior to the establishment of the PNA are not subject to the principle of compatibility with the provisions of the Basic Law. The Supreme Constitutional Court is not authorized to examine whether laws issued by the PLO are constitutional or not.

The ruling stated that the Supreme Court is the court authorized to look into appeals pertaining to the detention of civilians and their transfer to military justice.

Previously, the Supreme Court had rejected several appeals on the unconstitutionality of the two PLO laws for reasons other than those mentioned in its new ruling. The court had previously stated that there was no interest in releasing appellants prior to sentencing, or that the attorney who submitted the appeal did not appear in the court in its valid capacity, or that not all the parties were litigating in the case as required in constitutional appeals before the Supreme Constitutional Court.

The interpretation of the Supreme Court in rejecting the appeal due to lack of interest was commented on by constitutional law experts occupying senior posts in the Egyptian Supreme Constitutional Court and their comments were published by Musawa in the 18<sup>th</sup> edition of *Justice and Law* magazine.

Musawa will continue to commission experts in constitutional law to comment on the new ruling of the Supreme Court and will publish their opinion. This new ruling has ignited important legal debate regarding the provisions of the Supreme Constitutional Court, which stipulate that the authority of the Supreme Court extends to laws issued prior to the Basic Law.

The ruling of the Supreme Court re-affirmed the limitation on the jurisdiction of the military judiciary to military affairs only with no authority to look into civil cases. With this interpretation, the Supreme Court ratified the established interpretation of the High Court of Justice on this matter.

## Bar Association Must Respond

Mohammed al-Khatib of Ramallah has complained that his attorney violated the professional code of conduct, thereby infringing the rights of his client contrary to the provisions of the Bar Association Law.

Musawa hopes that the Bar Association Council will consider the case seriously and, if the claims are proven, take appropriate disciplinary measures as stipulated in the Bar Association Law. This provides protection against an attorney who violates the professional code of conduct, exceeds the limits of his authority, commits a serious professional mistake, refrains from providing his client with all the relevant documents, or whose poor performance is detrimental to the client.

### Draft Amendment to Criminal Procedures Law

Musawa has proposed a draft amendment to the Criminal Procedures Law in a booklet submitted for consideration to the High Judicial Council, the Attorney General, the Justice Minister, the legal advisor to the President, the Palestine Bar Association, the Independent Commission for Human Rights "IHCRC", political parties, and legal experts.

### Understanding between Palestinian and Jordanian Bar Associations

*Eye on Justice* has obtained a copy of a memo of understanding signed on January 14, 2012, between the Palestinian and the Jordanian Bar Associations. The memo aims to strengthen cooperation between the two associations and develop professional links and political activities with the Arab world and internationally. The memo also discusses enhancing the reputation of the legal profession and encouraging participation within the community.

## The memo included nine items as follows:

1. Cooperation between the two bar associations in the exchange of experience to develop the work of their unions.
2. Cooperation and assistance to establish a technical office in the Palestinian Bar Association similar to that of the Jordanian Bar Association and train the required personnel.
3. Cooperation and assistance regarding medical insurance with the option for Palestinian attorneys to benefit from the medical insurance services of the Jordanian Bar Association under a special agreement.
4. Technical and practical cooperation via training courses for law lecturers and the transfer of information and teaching methods from the Jordanian Bar Association to the Palestinian Bar Association.
5. Shared use of electronic services with Palestinian attorneys permitted to make use of the electronic services available to the Jordanian Bar Association.
6. To permit Palestinian attorneys to participate in all the professional activities and services offered by the Jordanian Bar Association.
7. To develop cooperation between the two associations in the realm of public freedoms and human rights.
8. To encourage cooperation and coordination between the two associations to represent a united front at meetings and conferences of the Arab Attorneys' Union.
9. To organize regular meetings between the two associations to put into practice the contents of the memo of understanding.

Musawa welcomes the memo of understanding and hopes that similar agreements will be made between the Palestinian Bar Association and other bar associations in the Arab world and international community.



## Legal Interns at the Court of First Instance

A ruling by the Court of First Instance has opened up a legal debate on the appearance of legal interns in the courtroom. The controversy focuses on the interpretation of Article 19 of the Legal Interns Regulations, which has been interpreted in three different ways.

One interpretation is that if a legal intern receives a permit from the Bar Association Council, this is sufficient to enable the intern to litigate in cases transferred to him by the attorney with whom the intern is being trained.

The second interpretation is that the legal intern must appear before the court with the attorney in a supervisory role, effectively making the permit issued by the Bar Association Council worthless if the attorney does not attend the court as well.

The third interpretation argues that the text of Article 19 violates the provisions of the Bar Association Law, thus making the Article invalid since the Lawyers Law No.3 of 1999 and its amendment in Law No 5 of 1999 did not regulate this matter and overrule any provision that contradicts them. Since the text of the current Bar Association Law of 1966 on this subject does not contradict the Lawyers Law and its amendments, the organization of legal interns must comply with the terms of the Bar Association Law. Therefore, Article 19 of the Legal Interns Regulations is null and void.

As the ruling by the Court of First Instance is a preliminary decision, it cannot be contested. Also, in light of the fact that no judicial principle has been issued by the Supreme Court on the interpretation of Article 19 of the Legal Interns Regulations, Musawa believes that the text of Article 19 needs to be amended in the interests of clarification and ending speculation. Musawa advocates that the Bar Association introduce a new clause on this subject to the Bar Association Law to guarantee the rights of legal interns and enable them to develop their legal skills during their training period.

## Complaints by Judicial Training Institute Students

A memo signed by 19 students was sent to Judge As'ad Mubarak, Director of the Judicial Training Institute, complaining about the absence of practical training in the courses taught at the Institute. The students complained that teaching staff are primarily university law professors and this promotes the theoretical presentation of information. Sometimes, the lectures are even the same at those attended by students during their university studies.

The students requested one or two days a week for practical work and training inside the courts throughout the study period.

Musawa has learned that the Academic Committee convened in

an urgent meeting to discuss the memo on March 21, 2012.

Musawa also obtained a copy of a memo sent by Ministry of Education (MoE)

to the administration of the Judicial Training Institute, pointing out that certificates issued by the Institute would not be valid unless the students' requests had been met.

Musawa hopes that the requests of the students will be taken seriously since these students are to be employed in the judiciary and public prosecution and therefore need to acquire a high level of competence in order to perform with objectivity and integrity and ensure that justice is served.

## Unreasonable Decisions

Musawa received two written complaints from attorneys Allam Abbadi and Ghassan Masad, both from Jenin, complaining about the Magistrates' Court and the Court of First Instance in Jenin. The first court ordered Abbadi to deposit 500 Jordanian dinars in the court fund in order to summon a witness. In the second case, the attorney was ordered to deposit 1500 NIS in expenses to summon a witness. The Magistrates' Court refused to reconsider the amount ordered to be paid by the first attorney, while the Court of First Instance set a condition limiting the number of witnesses.

The two attorneys submitted their complaints to the Head of the High Judicial Council, the Judicial Inspection Department, the Bar Association, and Musawa. The first attorney argued that the decision of the Magistrates' Court violated a circular issued by the Head of the High Judicial Council on May 19, 2011, which defined the expenses of witnesses.

Musawa believes that the decisions of the two courts involved unreasonable sums of money and hopes that the High Judicial Council will take appropriate action on this matter.

## Violent Attacks

Sharia attorneys in the Hebron district denounced an attack on Sheikh Mazen al-Jibrini, a judge at the Hebron Sharia Court, on Thursday, February 9, 2012. Judge al-Jibrini was attacked by unknown assailants as he walked towards the court.

A press statement described the assailants as ignorant people who show no respect for the rule of law and society and demanded that the authorities catch and punish the perpetrators to the full extent of the law.

In another incident, human rights activist Mahmoud Abu Rahmeh, Director of Public Relations at the Mizan Center for Human Rights, was attacked by three masked men armed with knives and batons in Gaza on January 13, 2012. Abu Rahmeh suffered various injuries. He had previously been attacked on January 3<sup>rd</sup> of this year and received several threatening messages after publishing an article on human rights and the rule of the law.

Musawa backs calls for the authorities in the West Bank and Gaza Strip to open an immediate investigation into the two attacks and bring the perpetrators to justice.

## A Success Story

In a memo to the President entitled *The Rights of Working Women and Legal Mechanisms to Guarantee Them*, Musawa requested that the President instruct the Ministries of Labor and Women's Affairs to implement the demands listed in the memo as soon as possible.

The memo had 839 signatories from civil society institutions, prominent public bodies, and 25 community coalitions formed upon an initiative by Musawa for the purpose of defending the rights of working women in five districts (Hebron, Bethlehem, Nablus, Jenin and Salfit). The memo was also signed by participants in the Fourth International Conference on Palestinian Justice organized by Musawa last November.

The President issued instructions to implement the demands outlined in the memo and a meeting took place between the legal departments of the Ministries of Labor and Women's Affairs to discuss appropriate steps and the provision of legal guarantees to protect working women's rights.

Musawa received a letter from the Minister for Women's Affairs, Rabiha Thiab, who stressed the importance of cooperation with Musawa in order to achieve justice and equality. The Minister affirmed that the legal memo forwarded by Musawa on empowering working women and securing their legal, economic and social rights is being studied by the Legal Affairs Unit at the Ministry in order to implement appropriate measures.

Musawa expresses gratitude to the President for his response and also thanks the relevant ministries for their work.

## Appeal for Workers' Rights

Musawa received a petition signed by Asma' Khaled Hussein Ali of Iskaka village in the Salfit district seeking advice on her rights as a worker.

Musawa urges the relevant authorities to ensure that local councils adhere to the provisions of labor law with regard to employees. Musawa reiterates its requests for a minimum and maximum wage, a right to strike according to the law, equality between civil service and local council employees, and for the financial remuneration of local council workers to be included in annual council budgets.

## Failure to Implement Rulings

On March 3, 2012, Musawa received a written complaint from attorney Ahmad Shar'ab about the failure to release his client, Mu'ayyad Taye' Abdul Karim Bani Odeh, of Tammoun village in the Nablus district, following a Supreme Court ruling on April 5, 2010, annulling the detention of Odeh and ordering his release. At the request of the attorney, the Attorney General also sent a notice to the head of the security service where the client is detained demanding the implementation of the Supreme Court ruling.

The Court of First Instance in Nablus had first issued a ruling acquitting the defendant of all charges and the Court of Appeal ratified this ruling. However, the security services refused to release the defendant, forcing the attorney to petition the Supreme Court, which also ordered the client's release. The attorney has written to the Palestinian Bar Association, the Head of the High Judicial Council, the President, and the Independent Commission for Human Rights, but the security services still refuse to implement the ruling.

In another case, Musawa received a complaint from Nouredin Saleh Mahmoud Hammad that the Organization and Administration Commission had failed to implement a Supreme Court ruling to reinstate him in employment in the police service. The Director of the President's Office sent two letters to the Head of the Organization and Administration Commission with instructions from the President on the need to implement rulings by the Supreme Court. The General Director of Police and the Interior Minister agreed to reinstate the citizen in his job.

Musawa urges all relevant official parties to implement the rulings of the Supreme Court without any delay. Failure to respect court rulings violates the Basic Law and is detrimental to the rule of the law. It should be clear to all that the Basic Law and the Judicial Authority Law stipulate that refraining to implement court rulings is an offense punishable by law.

## Appoint an Attorney

Musawa received a written complaint from liberated prisoner Ahmad Mohammed Dalni from Salfit seeking assistance in order to attain his rights from a citizen in the village of Qira. Musawa advised Dalni to appoint a lawyer in order to undertake legal action regarding the case.

## Important Judicial Principle Established

With a majority of seven judges to four, the General Commission of the Criminal Department at the Court of Cassation established an important judicial principle that cases heard by the Magistrates' Court and the Court of First Instance prior to August 1, 2010, should remain within the authority of these courts even if cases after that date come under the jurisdiction of the Corruption Crimes Court. The establishment of the

Corruption Crimes Court does not transfer authority away from these courts as long as the cases fell within their jurisdiction at the date that they were filed.

This ruling by the Court of Cassation represents an important judicial principle and Musawa will commission criminal law experts to comment on it in *Justice and Law* magazine.

## Judiciary in the Arab World

A seminar organized by the Euro-Mediterranean Human Rights Network was organized in the Moroccan city of Rabat under the title *The Judiciary and the Arab Spring* on February 11-12, 2012. Attended by judges, legal experts and representatives of civil society from Algiers, Morocco, Tunis, Libya, Egypt, Lebanon, Syria, Palestine, Jordan, Britain, Denmark, Switzerland, Spain and France, participants presented papers on the justice system in Arab countries.

The subject of the papers was the judiciary in Arab countries, their level of independence and whether there are obstacles to the employment of staff in the judiciary. There was consensus that the status of the judiciary and justice in the Arab countries participating in the seminar was very uniform and that the same impediments exist that prevent the functioning of an independent and effective judiciary. The papers described major problems in the justice system in Arab countries, failure to implement the rule of law, and interference in the work of judges. The conclusion of the seminar was that there is a gap between the text of laws and practice on the ground and this is contrary to the interests and demands of Arab citizens who participated in the Arab Spring to call for justice, equality, and the rule of law.

Cooperation and the creation of a broad Arab legal lobby is required to put pressure on decision makers to renovate the justice system, primarily the judiciary, in line with constitutional provisions, human rights and the interests of the Arab public. Such action will ensure stability, improve the prospects for development, and provide a theoretical and practical example of respect for human rights.



## Analysis of Beirut Declaration

### (Recommendations of First Arab Conference on Justice in Beirut June 14-16, 1999)

*By counselor Mahmoud Ghneim, Deputy Head of the Egyptian Supreme Constitutional Court.*

In 1983, the Arab countries conducted negotiations in Riyadh and concluded the Arab Agreement for Judicial Cooperation. That was a first important step towards establishing regional standards but the ratification process was very slow.

In June 1999, a second decisive step was taken when Musawa, in cooperation with the Center for the Independence of Judges and Attorneys in Geneva, organized a conference on the independence of the judiciary. The conference led to a declaration that included a comprehensive set of principles and standards for judicial authorities in Arab countries. The declaration included 37 principles divided into seven sections.

The first section includes guarantees for the judiciary through integrating basic UN principles on the independence of the judiciary in Arab constitutions and laws. The state needs to provide an independent budget and the executive authority must not interfere in the work of judicial inspection.

The second section defines the criteria for the selection of judges. The criteria focus on the principle of equal opportunity for all without discrimination.

The third section covers the qualification and training of judges and deals in detail with the need for specialized institutions to train judges on up to date information technology and the exchange of experience between judges.

The fourth section discusses the judicial inspection of the constitutionality of laws via a court or constitutional council independent from the executive authority.

The fifth section includes the guarantees for a fair trial and urges Arab countries to ratify the optional protocol on the International Covenant on Civil and Political Rights, which permits individuals to take their cases before the UN Commission on Human Rights after exhausting all other legal methods in their countries.

The sixth section presents the case for women to be given equal opportunities as judges and for all legal impediments to their progress to be removed.

The seventh section describes the role of the International Criminal Court and calls for Arab countries to sign its bylaws.

### Important Decision on Law of Limitations

The General Commission at the Criminal Department in the Court of Cassation established an important judicial principle which ended a legal debate on the law of limitations.

The ruling was passed unanimously on June 23, 2011, and stipulated that a suspension of the law of limitations requires clear execution and the defendant must be informed officially according to Article 13 of the Criminal Procedures Law No. 3 of 2001. The ruling clarified that subsequent court orders to inform the defendant of the dates of hearings and summon him to court without informing him or without his presence in the hearings do not suspend the law of limitations.

### An Attorney May Not Represent Another Attorney

The General Commission of the Court of Cassation established a judicial principle that an attorney may not represent another attorney in a case. The ruling stated that if representation is approved prior to the filing of the case in court, this authority is not valid for a different attorney as the case would not meet Article 55 of the Regulations for Civil and Commercial Trials and clause 4 of Article 20 of the Attorneys Law No. 3 of 1999, which was amended by Law No. 5 of 1999.

The judicial ruling, issued on June 1, 2011, states that the intention of the legislation on this issue is that the attorney, whether in person as litigator or representing a client, should be the one to take the case to court. The exception to this is when a case has already been heard and the ruling passed and requires execution. An attorney has no right to hire another attorney to represent him prior to the case being heard. The decision was passed by a majority of eight judges, with three judges who took a different interpretation.

Musawa will commission civil law experts to comment on this case in *Justice and Law* magazine.

## Cont. / Bar Association Elections

Musawa hopes that the elected council will reconsider its bylaws to adopt proportional representation in future elections in line with regular electoral principles. This would also give women a chance to participate and lead the Bar Association. The Association needs to tackle the concerns of legal interns and also to review the condition that 25% of the membership are required for a general meeting to take place. The Head of the Bar Association

refuses to hold a meeting with only 200 attorneys, although general meetings are attended by a maximum of 300 attorneys.

Musawa also hopes that measures will be taken to implement the decision taken by the general membership to elect sub-committees and grant them powers. Any bylaws that contravene this decision should be annulled.

### Coalition of Legal Interns

More than 200 legal interns, mainly from Nablus, Hebron and Ramallah, have formed a coalition with a committee of four attorneys to act as a secretariat: Tha'er al-Mash'ati, Abdul Mun'em Dweikat, Mohammed Saqf al-Heit, and Rashad Tarwah.

The first activity of the coalition was to submit a leaflet of seven demands to the Bar Association Council. The demands included the establishment of a fund to cover the expenses of legal interns and for the medical insurance system of the Bar Association to be made optional. They also demanded representation on the Bar Association Council, a review of training methods with regard to specialized lectures for legal interns at least once a month, a written examination on lectures with an oral test on general legal knowledge and practical aspects, and the opportunity to re-sit the examination within two months from the date of the original examination.

Distributed in court headquarters, the leaflet called for the formation of bodies to monitor legal interns in all districts under the supervision of a training committee from the Bar Association Council.

The leaflet also called for an end to what was described as the continual harassment, humiliation and provocation of legal interns, especially by court employees and police, despite the card provided to legal interns stating, "Please facilitate the job of the holder of this card".

Musawa believes that these demands should be investigated by the Bar Association and the appropriate legislative and administrative measures taken to improve relations between legal interns and the Bar Association Council.



## Is it True?

*Is it true that a minister canceled a mandate he granted to a deputy minister to perform various responsibilities on his behalf?*

**The Minister:** This was an administrative measure and not related to the ministry.

*Is it true that an apartment has been designated for the Head of the High Judicial Council?*

**Secretary of the High Judicial Council Izzat al-Ramini:** There is space at the High Judicial Council that was used by the former head and may be used by any judge, visitor or the director of the office. It is not in use now.

*Is it true that the Bar Association Council commissioned four attorney professors to offer judicial assistance on Sharia and criminal cases in return for a salary of \$1000, including transportation?*

**Attorney Imad Awwad, Secretary of the Bar Association:** True

*Is it true that verbal agreements have been reached between the Bar Association and the EU to build headquarters for the Association next August?*

**Attorney Imad Awwad, Secretary of the Bar Association:** True

*Is it true that an understanding has been reached between the Bar Association and the Independent Commission for Human Rights to enable four legal interns to work in the training program of the Commission and that the selection of the four legal interns was not announced, was not open for competition, and the method of selection was not recorded?*

**Attorney Imad Awwad, Secretary of the Bar Association:** True

*Is it true that the Bar Association decided to organize a training course for 30 attorneys with at least three years of experience for the purpose of selecting 15 attorneys to work according to a contract and offer legal assistance to litigators?*

**Attorney Imad Awwad, Secretary of the Bar Association:** True

*Is it true that an executive manager has been appointed for projects at the Bar Association?*

**Attorney Imad Awwad, Secretary of the Bar Association:** True

*Is it true that some attorneys give their clients pledges for their release and that legal interns are delegated to handle cases that do not belong to the attorney they are training with?*

**Attorney Imad Awwad, Secretary of the Bar Association:** True

*Is it true that attorneys do not abide by the condition of obtaining permission to represent clients belonging to their colleagues and do so without their knowledge?*

**Attorney Imad Awwad, Secretary of the Bar Association:** True

*Is it true that attorneys pay insurance cheques on behalf of their clients and then get reimbursed?*

**Attorney Imad Awwad, Secretary of the Bar Association:** True

*Is it true that the complaints committee at the Bar Association has received complaints against attorneys who were dishonest, collaborated with the adversary, and forged proxies?*

**Attorney Imad Awwad, Secretary of the Bar Association:** True

*Is it true that an attorney presented a forged report allegedly issued by a medical committee for the purpose of withdrawing a prison order and that the public prosecution is looking into the incident?*

**Attorney Imad Awwad, Secretary of the Bar Association:** I do not recall if such a complaint was received.

*Is it true that judges at the Magistrates' Court have complained regarding the judicial training program and the performance of trainee judges?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** True

*Is it true that someone was arrested after he planned to shoot the Head of the Court of First Instance?*

**Judge Izzat al-Ramini,** It is true that the judge received a threatening phone call from an anonymous person.

*Is it true that a judge at the Supreme Court refused to head a disciplinary council and refused to participate in a committee to select judges for participation in external courses because of the absence of professional and legal criteria?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** True

*Is it true that a judge at the Supreme Court has not participated in any external activity since 1979 and that a judge at the Court of First Instance has not participated in any external activity since he was appointed?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** The first judge has participated recently; I don't know about the second judge.

*Is it true that some judges erect signs at their law offices saying they are a judge prior to their appointment?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** True, although there is a circular issued by the High Judicial Council on this matter and we will follow it up.

*Is it true that one attorney may grant bail to a client on an executive file and the brother of another attorney bails out the client?*

**Attorney Imad Awwad, Secretary of the Bar Association:** I do not recall if such a complaint has been submitted to the Bar Association.

*Is it true that it has become very common for the police to accompany judges?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** There is no circular on this matter.

*Is it true that a petition clerk bails out a convicted defendant in exchange for a small sum of money and that an attorney offers a settlement on an executive file contrary to the wishes of his client?*

**Attorney Imad Awwad, Secretary of the Bar Association:** I do not recall if such a complaint has been submitted to the Bar Association.

*Is it true that litigators complain that some prison sentences are not implemented?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** There is a lack of supervision by the competent parties.

*Is it true that there is still a disagreement over the rent of the building used as a court in Hebron between the inheritors of the landlord and the High Judicial Council and that the Council has not paid a sum of 100,000 Jordanian dinars in rent for the building for the period before it was evacuated in 2006?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** There are annual budgets allocated for the rental of court buildings. The owner in this case has not completed the paperwork required to pay the inheritors and we have not been provided with the bank account number of the owner. We are ready to pay when all the papers are complete.

*Is it true that a serious disagreement occurred between the deputy minister and the assistant deputy for financial and administrative affairs?*

**The Minister:** True and I am working to resolve this matter.

*Is it true that the Head of the High Judicial Council and his deputy are the only judges who select the judges to participate in external activities?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** The trilateral committee also includes another judge from the High Judicial Council, as far as I remember.

*Is it true that the French expert who supervised the project for administrative judiciary was replaced following a dispute between him and the High Judicial Council? And that this led to the postponement of a visit to France by a Palestinian delegation to see the administrative judicial system there?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** The services of the expert were terminated.

*Is it true that a judge protested against being removed from representing the High Judicial Council at the Public Prosecution Conference held recently in Jericho and was replaced by the Deputy Head of the Council?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** True.

*Is it true that serious disagreements occurred during the annual Public Prosecution Conference and the election of its association?*

**Assistant to the Attorney General Abdul Ghani al-Ewewi:** It is not true that there was disagreement between members of the public prosecution regarding the organizational structure, but there was a disagreement between the public prosecution and the Justice Ministry. The dispute was resolved and the organizational structure was ratified and elections organized in a cordial atmosphere.

*Is it true that the Supreme Court takes a long time to re-examine the cases of discharged teachers and that the new formation of the court excludes Judge Mahmoud Hammad, Head of the Supreme Justice Court?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** True. The formation of the court followed the regulations.

*Is it true that a judge has been waiting for the formation of a judicial commission to look into his case since May 29, 2011?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** True.

*Is it true that judges at the Supreme Court have been demanding elections to elect their representatives to the High Judicial Council for some time and that their demand has not yet been met?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** True, although the Council has not received a written request on this matter.

*Is it true that a trilateral committee (the head, his deputy and another member of the Council) is commissioned to act on behalf of the High Judicial Council?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** True. There is a decision to this effect and it has been implemented by the High Judicial Council.

*Is it true that two judges on the Supreme Court who live in Gaza are deputies of the Head of the High Judicial Council and that this is opposed by one of the deputies of the Head of the Council in the West Bank?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** True, but the Council has not submitted a written complaint on this matter.

*Is it true that an officer in one of the security services refuses to appear before the Court of Appeal to testify because he does not recognise the head of the court?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** The provisions of the law organize the giving of testimony in courts and in cases of violations, legal measures are taken against witnesses.

*Is it true that the Court of Appeal submitted a complaint to the High Judicial Council against an attorney and after the complaint was transferred to the public prosecution, it was revoked due to reconciliation between the court and the attorney under the sponsorship of the High Judicial Council?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** It is correct that the complaint was transferred to the public prosecution but I do not know what happened after that.

*Is it true that a legal intern printed special cards impersonating his status as an attorney and including a false address of a law office?*

**Attorney Imad Awwad, Secretary of the Bar Association:** True and the legal intern was brought before a disciplinary council.

*Is it true that a judge at the Magistrates' Court attended work on an official holiday (Birthday of the Prophet) and postponed some judicial files?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** It is possible that such an event might take place if the judge was not informed of the official holiday.

*Is it true that 12 judges at several Courts of First Instance did not attend work after receiving a circular calling them to attend a lecture on case administration and were surprised on their arrival at the Judicial Training Institute to discover that the lecture had been canceled?*



**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** True and the incident will be followed up.

**Judge Dr. Othman Takrouri:** I was supposed to deliver the lecture but I was forced to cancel it because of the overlap between my judicial work and the training on that day.

*Is it true that attorneys make videos of disagreements between judges and clerks on their mobile phones and make them public?*

**Attorney Imad Awwad, Secretary of the Bar Association:** I do not recall if such complaints have been submitted to the Council.

*Is it true that the strategic plan of the Palestinian Judicial Institute has not yet become effective although it was ratified last year?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** We are aware of the plan and the Institute must follow its guidelines.

**Director of the Judicial Training Institute, As'ad Mubarak:** The parties of the justice system have all agreed to the plan, but it was published by the Seyada project before its official ratification by the Board of Directors of the Institute. I was surprised since the Seyada project has no authority to publish the plan and the head of the Board of Directors of the Institute does not yet have a copy of it.

*Is it true that eight judges who received training in Yemen and Palestine have not yet been appointed and are still receiving their bonus?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:** The procedures to appoint them are underway and their bonuses were stopped when they ended the training.

*Is it true that a student at the Judicial Training Institute was accepted into the judicial studies diploma program although he did not meet the requirements of the program (Tawjihi examination score), while more than one application was refused for the same reason?*

**Director of the Judicial Training Institute As'ad Mubarak:** There is a five man committee for admissions consisting of two judges from the Supreme Court, the assistant to the Attorney General, a university professor, and myself. I do not remember any such case and I cannot imagine that we would accept this.

*Is it true that lecturers and students at the Judicial Training Institute had not received any financial bonus up to the beginning of March 2012 although the donor (EU) transferred \$800,000 last September, part of it allocated for this purpose?*

**Director of the Judicial Training Institute As'ad Mubarak:** It is true that we were subjected to complicated procedures by the Finance Ministry and as a result, we stated that the bonus for January would be disbursed on March 22 and the bonus for February would be disbursed one week later. The bonus for lecturers was delayed due to a dispute with the EU over whether these sums were limited to training alone or included the preparation of training material. We agreed with the EU to disburse the bonuses after the end of the first semester, at the end of April. I would like to point out that the system implemented by the Institute allowed judges and members of the public prosecution who provide training to receive a bonus for this in addition to their salaries, although the text of the presidential decree on the Institute and the Judicial Authority

Law did not cover this matter in detail. I will follow your advice and request the High Judicial Council to ask the President to issue a presidential decree amending the Institute regulations to ensure a legal definition of the bonus, its amount, and the criteria for the selection of teaching staff.

*Is it true that there is no library or resource center for the Judicial Training Institute despite the importance of such support tools for the judicial diploma program?*

**Director of the Judicial Training Institute As'ad Mubarak:** It is true. Many goals have not been implemented because the European grant is deposited in the bank in the name of the Justice Ministry. However, we recently reached an agreement with the Ministry to accept the signature of the head of the Board of Directors of the Institute and my signature with regards to the account. We will work on the project soon and publish tenders for the purpose of acquiring 681 legal references.

*Is it true that the supervisor of the special grant for the judicial diploma program, who was due to start full time work at the beginning of this year, did not assume her duties until March because of other commitments?*

**Director of the Judicial Training Institute As'ad Mubarak:** It is true and this was because of her family circumstances. She now works with us by email and this is counted as five working days instead of seven days for a period of two months. After that, she will start full time work as of April.

*Is it true that the academic committee at the Judicial Training Institute does not monitor the performance of lecturers, or the curriculum of the training courses, and has not convened for months?*

**Director of the Judicial Training Institute As'ad Mubarak:** The committee held meetings according to need in 2011. In the last meeting, held last November, the committee ratified the courses of the diploma and the lecturers but the supervisory role was absent. The committee will hold a meeting on March 20 to assess the experience of the diploma and define its organizational aspects. It will also organize training courses to train members of the committee and Institute employees on how to assess the training program and will discuss means to develop its supervisory role.

*Is it true that the Judicial Training Institute still lacks an administrative structure and the skilled personnel needed to perform administrative work in the basic and preparatory training program?*

**Director of the Judicial Training Institute As'ad Mubarak:** It is true and this is because the organizational structure of the Institute has not yet been put into place. There is no stable budget for the Institute and donors are funding the salaries of employees. Not a single employee receives a salary from the PNA.

*Is it true that students at the Judicial Training Institute do not attend lectures on a regular basis and complain about lack of supervision despite the existence of clear instructions on this matter?*

**Director of the Judicial Training Institute As'ad Mubarak:** All students attend their lectures and in cases where lecturers are absent, the students receive make-up lectures.

*Is it true that up to March 1, 2012, no training courses had been*



*established for the judicial diploma program and lecturers are left to choose the subjects of lectures?*

**Director of the Judicial Training Institute As'ad Mubarak:**

This is true for the first semester of some courses. When the semester ends at the end of April, the matter will be dealt with for the second semester.

*Is it true that the Karamah project, funded by the Canadian Representative Office, bought a mobile phone for the Director of the Judicial Training Institute and pays the bills for it?*

**Director of the Judicial Training Institute As'ad Mubarak:**

True. I was one of the founding members of the Karamah project. I then resigned and I use the mobile for the purposes of training. By the way, the project purchased many items for the Institute: they also provided a laptop, a fax machine and two desks, including my desk and a printer. All this equipment is entrusted to us until the end of the project. The project also pays for a legal researcher who works on developing the curricula.

*Is it true that the Head of the Court of Appeal holds sessions alone and told litigators that they do not need to present their cases?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:**

The matter has been settled.

*Is it true that the Judicial Training Institute has not yet implemented the recommendations that resulted from a workshop held in Bethlehem last November for judges and members of the public prosecution?*

**Director of the Judicial Training Institute As'ad Mubarak:**

True. This is because the Seyadah project stopped cooperating with us due to a disagreement between us one and half months ago.

*Is it true that a judge who performs his duties has not received any salary since his appointment four months ago?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:**

It is true but the High Judicial Council has demanded that the Finance Ministry allocate the finance for the post.

*Is it true that a member of the public prosecution refused to implement a ruling by the Magistrates' Court to bring a case to court and that the defendant has been held in custody for 27 days despite the judge giving the prosecution four deadlines? When the judge decided to release the defendant, a complaint was filed against him to the Attorney General?*

**Judge Izzat al-Ramini, Secretary of the High Judicial Council:**

It is true and a committee was formed to look into the case. It was discovered that the complaint was incorrect and an inquiry was sent to the public prosecution.

*Is it true that several female attorneys in Gaza complained that they were robbed while standing in the court because of overcrowding and that the Bar Association sent a written memo on this matter to the High Judicial Council in Gaza demanding an investigation?*

**Attorney Salameh Bseiso, Head of the Bar Association:** True.

*Is it true that a clerk in one of the Court of Appeal sessions in Gaza announced the sentences issued by the court on all the cases?*

**Attorney Salameh Bseiso, Head of the Bar Association:** This is not true.

*Is it true that a memo of understanding has been reached between the Bar Association in Gaza and the public prosecution and the memo was published on the Internet? The Bar Association vowed in the memo not to protect an attorney who is proven to have committed any criminal offense and promised to investigate any complaints filed to it on the misconduct of attorneys.*

**Attorney Salameh Bseiso, Head of the Bar Association:** This is not true.

*Is it true that the Bar Association Council in Gaza issued a decision to remove the elected member of the council Adel Abu Jahl and appointed Adeeab al-Rab'i in his place, and that al-Rab'i is an active attorney in the Islamic Bloc in the Bar Association in Gaza?*

**Attorney Salameh Bseiso, Head of the Bar Association:** It is true.

*Is it true that the Head of the High Judicial Council met with the judicial training committee and demanded that training be limited to judges only and stopped the current training program for judges?*

**Director of the Judicial Training Institute As'ad Mubarak:** The Head of the Council did request more focus on judges and not to permit attorneys to participate in the training. He also asked for reduced dependence on university professors following discussions in the committee meeting, taking into consideration the Moroccan experience. The Head of the Council also requested that training take place on Saturdays only in order not to affect judicial work. Dr. Othman Takrouri, a member of the training committee, stopped the training.

**Judge Othman Takrouri:** True, I stopped the training because it is part of judicial work and should not take place during official holidays.

The editorial board of *Eye on Justice* recorded the answers to questions and wishes to point out that some answers were not published due to their sensitive nature. The purpose of this question and answer session is to highlight the professional role of Musawa in oversight in the interests of the community.

### Retraction

Musawa was notified by Judge Fayez Hammad that Training Guide No. 5, published by Musawa last December under the title *Rules of Inspection and Gathering of Evidence and Witnesses According to Criminal Procedures Law*, was not written by Judge Abdul Qader Jaradeh as stated in the guide.

Legal expert Akram Ahmad al-Kurd also stated that the study published in the eighth edition of *Justice and Law* magazine in April 2008 under the title *Procedures of Arrest and Inspection in Palestinian Legislation* was not written by Judge Abdul Qader Jaradeh as claimed in the magazine.

### Positive Initiative

The legal execution department of Ramallah court will now accept the payment of sums of money relating to sentences of less than 10,000 NIS in order to facilitate services and enable defendants to pay at the court instead of the bank.

Musawa praises this positive initiative which should be adopted in all courts.

### Musawa's Publications at Sharjah Book Fair

Musawa responded to a request by the organizers of the Sharjah Book Fair in the United Arab Emirates to provide a number of publications for display and distribution to interested parties.

### Draft Law for Arab Human Rights Court

Under an initiative from the Justice Ministry, a committee has been formed made up of ministry representatives and several civil society organizations to prepare a draft law for the Arab Human Rights Court to be presented in the name of Palestine to the Arab League Council.

## Investigation of Complaints

Musawa received a written complaint from attorney Baha' Nayef Hamad Naji from Ramallah and his brother Ismail Naji against two members of the public prosecution in Salfit.

Musawa met with the Attorney General who made the following statement:

"The attorney in question has been accused several times of forgery and was sentenced to one year's probation at Salfit Magistrates' Court. On the subject of this complaint, I confirm that a member of the public prosecution carried out the provisions of the law in detaining the attorney, but the attorney's brother assaulted the public prosecutor. Another public prosecutor who heard the disturbance went to the scene and asked the attorney's brother to leave but was also assaulted.

I conducted an impartial investigation of the incident and heard statements from the attorneys who were present and those attorneys identified in the complaint. I found the statements given to be untrue and the whole incident was caught on videotape."

## Open Letter to the President

Musawa has obtained a copy of an open letter sent to the President regarding the state of the Palestinian judiciary and allegedly sent by Judge Izzat al-Ramini, Secretary of the High Judicial Council and Head of Financial and Administrative Affairs at the High Judicial Council. Copies of the letter were sent to several judges working in the Supreme Court.

The letter calls for reform in the judicial authority and states that the achievements to date are under threat since the current Head of the High Judicial Council assumed his post. The letter accuses the current Head of the High Judicial Council of implementing a policy of exclusion without any clear vision. The letter called for revision of the Judicial Authority Law and other laws related to judicial affairs, along with reform of the structure of the High Judicial Council. The letter also calls for the President to have the sole authority to appoint the Head of the High Judicial Council.

Judge Izzat al-Ramini denied that he sent this letter and told Musawa that the signature is not his. He has requested that the High Judicial Council investigate the incident.

The High Judicial Council has not announced the results of the investigation but Judge al-Ramini is prepared to investigate the matter himself if the High Judicial Council does not.

### When Will the Electoral Register in Gaza be Updated?

Musawa has been informed by reliable sources that the government of Gaza has not yet allowed the Central Elections Commission to start updating the electoral register, despite the fact that the Commission has been restructured to accommodate national reconciliation and include both Fatah and Hamas.

Musawa believes that updating the register of voters is a national administrative requirement unrelated to politics and designed to identify changes in the demographic structure of Palestinian society.

Musawa hopes that the Gaza government and relevant departments will facilitate the work of the Central Elections Commission immediately. It is a legal requirement that needs to be completed if legislative and presidential elections are to be held in the future.

### When Will We Have Professional Relations between Police and Attorneys?

Attorney Ibrahim Yasin from Jenin informed Musawa that a dispute took place between a police officer and an attorney inside the public prosecution building on January 18, 2012, in which the attorney was assaulted and also arrested. Attorneys in the building suspended work for half an hour in solidarity with the arrested attorney and to protest against the assault. Later, several attorneys headed to the police station and resolved the case in a friendly manner.

Musawa wonders whether we will ever have professional relations between the police and attorneys so that the police do not exceed the limits of their powers and demonstrate respect for the rights of legal professionals.

### Dispute Over Jurisdiction of High Judicial Council Departments

Musawa obtained a copy of a memo sent some time ago by the Judicial Training Department to the Head of the Supreme Court and Head of the High Judicial Council. Musawa hopes that the issues raised in the memo will be investigated and the disputes over the powers of different departments in the High Judicial Council will be resolved. Musawa learned that the severity of the dispute between the heads of the Judicial Training Department and of Financial and Administrative Affairs pushed the former to resign.

### National Need for *Eye on Justice*

Musawa has consistently organized seminars attended by representatives from the justice system, attorneys, jurists, and representatives of civil society organizations to assess each edition of *Eye on Justice* and debate its continued publication since they are stakeholders in the justice system. On October 23, 2011, a seminar took place to discuss the 12<sup>th</sup> edition of *Eye on Justice*.

The participants stated that *Eye on Justice* should continue to be published as it plays a crucial role in oversight of the judicial system and meets a national need for positive criticism and new means to overcome obstacles. The participants suggested that it be made into a quarterly periodical. They concluded that Musawa is the only organization with the effective tools to monitor all parts of the justice system without exception.

Musawa thanks all seminar participants and hopes to receive comments and feedback from those engaged in the legal world. We are committed to publishing all comments.

### Professional Conduct Required

Since the publication of the 12<sup>th</sup> edition of *Eye on Justice*, which included several references to disputes occurring between attorneys and judges, these disputes have increased in number and have occurred in many courts.

Musawa received a complaint from attorney Mohammed Yazid Fathi Mohammed Shalbak from Jenin against the Head of the Court of First Instance in Jenin. The complaint was also sent to the High Judicial Council and the Judicial Inspection Department.

Musawa received another complaint from attorney Fadi Zaki Manasrah of Tulkarem against a judge at the Magistrates' Court in Tulkarem. The attorney claims that the judge abused his authority and failed to record events as they occurred in the court session according to the regulations.

In addition, a serious argument took place between an attorney and a judge at the Court of First Instance, a dispute occurred between a Magistrates' Court judge and an attorney, and there was a third incident at the Court of Appeal in front of other attorneys and court employees. All the disputes were resolved in a friendly manner under the supervision of the Head of the High Judicial Council.

Musawa looks forward to the day when concrete steps are implemented to resolve the crisis of confidence between attorneys and judges and improve relations while respecting the provisions of the law and the ethics of professional conduct of judges and attorneys.

## Bar Association Council Elections Finally to Take Place

There has been vigorous debate among members of the Bar Association Council regarding the professional and social role of the Council and the need to hold regular elections despite political differences, which have been used as a pretext not to conduct elections according to the legal provisions.

The debate resulted in an amendment to the Attorneys Law No. 3 of 1999 on the financial and administrative independence of the Council. Once the amendment was published in the Official Gazette, the Bar Association Council (Acting Commission) in the West Bank and the Council in Gaza announced emergency elections to take place on April 7.

Hasan al-Ouri, the legal advisor to the President, requested that Musawa intervene with factions in the Gaza Council to obtain their approval for the elections and Musawa succeeded in obtaining the approval in writing.

Musawa conducted three training courses in Gaza, Khan Yunis and Ramallah, attended by 120 attorneys, to debate the rights of attorneys and the role of the Council. Musawa also organized three seminars attended by 100 attorneys on the future of the Council in light of the new elections.

## Cheque Fraud

In February 2012, Jenin Magistrates' Court heard a case of cheque fraud and in March 2012 they heard another case in which the defendant did not have funds in the bank to cover a personal cheque for one million US dollars.

## When Will the Supreme Court Act?

A judge from the Magistrates' Court has been suspended from work since 2008 despite several petitions to the Supreme Court appealing against the decision and the administrative measures taken against him. The Supreme Court has not yet set a date to look into the case. The judge in question is now enrolled in university studies and still receives his salary as usual.

## Independence of Civil Society Organizations a Constitutional Right

In edition 81 of the Palestinian Gazette issued in Gaza, the government in Gaza included amendments to the Charitable Organizations and NGO Law No. 1 of 2000. The amendments affected two articles: Article 31 stipulates that "the branches of foreign organizations in the Palestinian Territories are subject to all provisions that apply to local organizations in terms of legal provisions and supervision by the Interior Ministry and the competent ministry". In addition, Article 47 stipulates "All branches of local organizations have to update the Interior Ministry and competent ministry about any documents or papers that are requested and the Interior Ministry and the competent ministry have the right to monitor the work and activities of these organizations to ensure that the funds have been spent for the purposes defined".

The NGO network, human rights organizations and civil society have criticized these amendments since they grant the Interior Ministry powers that were not included in the Charitable Organizations and NGO Law No. 1 of 2000.

These amendments allow the Interior Ministry to interfere in the work of non-governmental organizations and affect their independence, which is a constitutional right granted by the Basic Law.

Article 6 of the Charitable Organizations and NGO Law No. 1 of 2000 allows the competent ministry to monitor the work of organizations but does not grant the Interior Ministry any such jurisdiction. The powers granted to the Interior Ministry pertain only to the spending of funds within the organization in accordance with the law.

Musawa joins with civil society in calls for the government in Gaza to reconsider these amendments.

## When Will the Structure of the High Judicial Council be Amended?

A legal debate is taking place in the Supreme Court on the extent to which the structure of the High Judicial Council adheres to the provisions of the Judicial Authority Law. In particular, a member of the Council was appointed as deputy head of the Supreme Court and lost membership on the Council in this new capacity.

Another Council member who was the head of the Courts of Appeal lost his membership after he was appointed as a judge in the Supreme Court. There is also controversy about a judge who was appointed as head of the Courts of Appeal although he did not have the required five years of experience.

This raises questions about the legality of membership on the Council. At least four members of the nine-man High Judicial Council do not meet the membership requirements in accordance with the law. This requires immediate action to rectify the situation. When will this happen??

## At Last, Dates Set to Investigate Cases

The dates of April 12 and April 20 have been set by the Supreme Court to look into 30 cases filed by 45 judges relating to violations in promotions and appeals against salary calculations. The judges filed these cases at the Supreme Court more than two years ago and have been awaiting a hearing ever since.

"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.







## Before Publication

### Draft Law for Arab Human Rights Court

Under an initiative from the Justice Ministry, a committee has been formed made up of ministry representatives and several civil society organizations to prepare a draft law for the Arab Human Rights Court to be presented in the name of Palestine to the Arab League Council.

### Draft Amendment to Criminal Procedures Law

Musawa has proposed a draft amendment to the Criminal Procedures Law in a booklet submitted for consideration to the High Judicial Council, the Attorney General, the Justice Minister, the legal advisor to the President, the Palestine Bar Association, the Independent Commission for Human Rights "IHCR", political parties, and legal experts.

### MUSAWA in Brief

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

### Invitation

MUSAWA invites all legists to contribute with their legal ideas and freely express their views by effectively taking part in writing to it for the purposes of publication in its periodicals "Eye on Justice" and "Justice and Law".



**MUSAWA**

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

Department of Programs

#### Dear Citizen

For the purposes of ensuring the rights of Palestinian citizen and fair judiciary fostering and guaranteeing justice and equality among citizens, the department of programs at MUSAWA maintains that "Eye on Justice" and "Justice and Law" publications that addressing whatsoever relates to the performance of justice system will continue to be published.

The Department of Programs hereby offers its willingness to receive and publish any views, ideas, news, articles, researches, studies or comments relevant to independence and integrity of justice system and day to day course of action together with the performance of those in charge thereof with adhering to the rules of the professional confidentiality.

**MUSAWA**

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