

## **Palestinian Autonomous Areas**

**The Palestinian judiciary is largely underfunded, suffers from neglect and is subjected to frequent political attacks. State Security Courts remain the primary concern, with trials occurring at night and without appropriate safeguards for ensuring a fair trial. The absence of a clear body of law, the failure of President Arafat to assent to laws regarding the judiciary and the lack of a Judicial Council to regulate appointments and promotions also hampers the development of an independent judiciary.**

The 1993 Declaration of Principles on Interim Self Government Arrangements (the Oslo Accords), signed by Israel and the Palestinian Liberation Organisation (PLO), which led to the establishment of the Palestinian Autonomous Areas, left five main issues related to Jerusalem, refugees, settlements, security arrangements, borders and international relations to be resolved in a final status agreement. In September 1999, the Sharm el-Sheikh Agreement established a new timetable for the conclusion of the negotiations. The agreement required both parties to make a "determined effort" to conclude a Framework Agreement on all permanent status issues by September 2000.

The series of agreements signed since the Oslo Accords establishes the current constitutional structure in the areas that have been returned to Palestinian control. The scope of the power, granted to the Interim Palestinian Self-Government Authority (Palestinian Authority (PA)), is limited both functionally and territorially. In the West Bank territory returned to the PA is divided into three categories. In areas A and B the PA has full civil powers and responsibilities, whilst in area C the PA has civil powers and responsibilities not relating to territory. Furthermore, in area A the PA is responsible for internal security and public order and in area B responsible for public order of Palestinians. Israel has an overriding responsibility for security. Even after the completion of redeployments as specified in the Sharm el-Sheikh agreement, only approximately 18% of the West Bank will be under full Palestinian control. In the Gaza Strip, Israel retains full control over 38% of the territory, in what are referred to as yellow areas. There is no joint control over territory in the Gaza Strip.

The 1995 Interim Agreement on the West Bank and the Gaza Strip (the Interim Agreement) invested the Palestinian Council (PC) with the executive and legislative powers of the PA. The PC delegates its executive powers to an executive authority composed of members of the PC. The President is elected separately and heads the executive authority and may appoint other persons, who are not council members, of an amount not exceeding 20% of the total membership of the executive authority. The PC does not have powers or responsibilities in the sphere of foreign relations, external security or for the security of Israelis. The PLO is entitled to conclude agreements with states or international organisations in certain specified economic areas.

Despite this apparent legal structure, the executive authority, in particular President Arafat, wields most power and continues to act with relative impunity. President Arafat is able to issue new laws and create new institutions through presidential decrees, transfer cases from civil courts to the state security courts, and the executive authority routinely refuses to enforce judicial decisions and harasses members of the legislative council. President Arafat's continued refusal to sign the Basic Law effectively stops the development of clear government structure based on democratic principles, the separation of powers and the Rule of Law.

The International Commission of Jurists (ICJ) and its Centre for the Independence of Judges and Lawyers (CIJL), conducted a mission to the Palestinian Autonomous Areas from 15-25 January 2000. The mission met with various members of the Palestinian Authority, members of the judiciary, lawyers and human rights groups.

### **Human Rights Background**

Under Article XIX of the 1995 Interim Agreement the PC and the executive authority are required to exercise their powers with due regard to internationally accepted norms and principles of human rights. However, human rights in the Palestinian territories have been routinely violated, generally for political expediency. Palestinian security forces often resort to physical violence, and the freedom of expression and association are significantly curtailed.

The Palestinian police and security forces regularly detain suspects in prison for long periods of time without charges and without bringing them before a properly constituted court. This is particularly so with suspected members of Hamas or the Islamic Jihad, and other perceived threats to the peace process. Suspects are arrested without a judicial warrant and subjected to beatings and torture whilst in custody.

Members of the PC have also been subject to police assaults. On 16 December 1999 members of the general intelligence services assaulted Abdil Jawad Saleh, a member of the PC. He had been protesting outside the Jericho Detention Centre about the detention of some colleagues who had signed a petition protesting against corruption in the institutions of the Palestinian Authority. He was summoned by the security forces to see the director of the detention centre and, while waiting, was beaten and whipped with a hose. He had to be transferred to a hospital. Assaults of PC members also occurred in July 1998.

The present confusion regarding applicable laws and the jurisdictions of various Palestinian institutions makes it difficult for the judicial system to protect individuals from actions of the state that violate their rights. In the absence of new laws promulgated by the PC, many of the existing laws in the Gaza Strip date from the early twentieth century, a time period when human rights were not sufficiently protected in domestic laws. In the West Bank, the laws date primarily from the 1950's and 1960's. Also significant changes were made to these laws by Israeli military orders during occupation, in a manner restrictive to human rights.

The State Security Court, which tries a range of offences not limited to security, violates fundamental human rights. Trials in these courts often occur at night and behind closed doors. They are conducted quickly and summarily, after which the sentence is passed and executed immediately. Often a sentence of death is imposed and is carried out within hours of the trial. From these courts there is no right of appeal, and no right for the accused to have legal representation or to have time to prepare an adequate defence. Even in cases determined in regular courts, the executive authority routinely ignores court orders to release people who have been illegally detained, or re-arrests them immediately after their release. For example, Dr Abdel Aziz Al-Rantisi, whose release was ordered by the High Court on 4 June 1998, is still being illegally detained.

### *Palestinian Legal History*

The legal system in the occupied territories derives from a variety of sources. Each successive administration applied the previous administration's laws, and then progressively modified them throughout their tenure. Therefore, in the occupied territories, the laws derive from Ottoman, British, Egyptian, Jordanian, Israeli and Palestinian Authority origins. In Law 5 of 1995 the Palestinian Authority confirmed that all laws in force in the West Bank and Gaza Strip on 19 May 1994 would remain in force. Various revolutionary codes that regulate the activities of the PLO are applied in State Security Courts and Military Courts to members of the military and to civilians.

In the Gaza Strip the majority of laws date from the British Mandate and derive from the common law tradition. The British Emergency Law of 1945 is still in force in this area. In 1950, the West Bank was unified with Jordan and in the following period a new set of legislation based on the civil law tradition was introduced, to unify the West Bank and Jordanian legal systems. British Mandate and Ottoman law continued to apply until abrogated by the new unified law. Both systems were further modified by Israeli military orders following occupation.

The 1993 Oslo Accords regard the Gaza Strip and West Bank as a single territorial unit. Therefore, the legislative and executive acts of the PA apply to the two banks uniformly. In the absence of specific legislation from the PC the court must determine which laws from previous administrations still apply. Also, the executive will often base its actions on a law from the Gaza Strip or the West Bank, but the executive decision will apply to both areas equally. As it is often unclear which laws are in effect, courts frequently accede to assertions by the executive as to the appropriate basis for their action.

### *Draft Laws*

Since 1996, the PC has promulgated a series of laws establishing the principles, structure and rules that the government will be based on in the self-governing territories. The most important of these is the Draft Basic Law. The Draft Basic Law provides that the governmental system rests on the principles of parliamentary democracy, the Rule of Law and the separation of powers. Chapter 6 of the Basic Law secures the independence and impartiality of the judiciary, and the Basic Law also requires the PA to act in accordance with basic human rights treaties. The Judicial Authority Law, passed by the PC in December 1998, sets out in greater detail the structure of the Palestinian court system, each court's jurisdiction and the procedures for the appointment and selection of judges. The Law on the Independence of the Judiciary, passed in February 2000, guarantees the financial independence of the judiciary.

The Basic Law, Judicial Authority Law and Law on the Independence of the Judiciary are yet to be signed by the President. The executive authority asserts that because of the failure to complete this procedural requirement these laws are not in effect. The 1995 Interim Agreement grants legislative and executive power to the PC, and allows the PC to pass laws to regulate its procedure. Article 71 of the Standing Orders of the PC states that if there is a failure by the President to sign a law within one month, the President must return the law with comments or the reasons for rejection. The law shall then be re-discussed and if approved by an absolute majority of the parliament the law takes effect. The application of these laws should not be thwarted by the refusal of the President to return the draft legislation.

### *The Judiciary*

The judicial system, inherited by the PA after more than 26 years of Israeli occupation, was severely damaged through neglect and a lack of support from the Israeli Military Government. The court system suffers from a severe lack of funding, judges and administrative staff. Many court buildings are in a dilapidated condition and overburdened with cases. Court decisions are not recorded systematically to develop a body of case law.

During the occupation, the Israeli Military Government routinely modified laws and removed cases from Palestinian courts' jurisdiction to its military courts, irrespective of whether or not they related to security concerns. The judiciary was subjected to executive pressure as judicial appointments were carried out through a committee appointed by the Israeli Military Area Commander.

President Arafat, on 20 June 1999, appointed Zuheir Sourani as civilian Attorney General, a position that had been vacant since May 1998. This is a welcome change as the Attorney General represents the judiciary's interests in the executive and acts as a defender of the judicial system. Sourani had previously been a judge of the High Court of Justice, the head of the Criminal Court, and the head of the Election Appeals Court.

### *Regular Courts*

Article IX(6) of the 1995 Interim Agreement requires the PC to have an independent judicial system composed of independent Palestinian courts and tribunals. This requires the creation of a unified judicial system. As the Draft Basic Law and the Judicial Authority Law have not been signed by President Arafat, the court system remains unchanged.

The court structure in the self-governing areas, despite the different legal traditions, is relatively similar. The regular court structure consists of Magistrates Courts, District Courts or courts of first instance, the Courts of Appeal and the High Court of Justice. Religious Courts, both Moslem and Christian, deal with matters of personal status. Magistrate Courts deal with minor offences and small civil claims and District Courts deal with more serious crimes and larger civil claims. Currently there are 2 District and 6 Magistrate Courts in the Gaza Strip, and 4 District and 9 Magistrate Courts in the West Bank.

The Court of Appeal hears appeals in civil and criminal matters from lower courts, and the High Court of Justice reviews decisions of executive authorities and deals with final appeals from the Court of Appeal. Both of these courts are situated in Ramallah and Gaza City. Article VIII of the 1995 Interim Agreement provides that any person or organisation affected by any act or decision of the executive authority or the Ra'ees (the President), and believes that it is ultra vires or otherwise incorrect in law or procedure, may apply for a review of the decision to the relevant Palestinian court of justice.

### *Israeli Military Courts*

Israeli military courts have full jurisdiction in areas that have not been returned to Palestinian territorial control. This includes the yellow areas in the Gaza Strip, and the settlements and military installation areas and Area C in the West Bank. In Area B in the West Bank Israel has the overriding responsibility for security for the purpose of protecting Israelis and confronting the threat of terrorism. This gives Israel concurrent jurisdiction with the PC in

Area B and entitles the military to arrest and detain suspects in crimes involving security. If the detained suspect is a Palestinian the suspect should be turned over to the Palestinian police force. However if the crime was committed against Israel or Israelis, the military can detain the suspect until an appropriate forum for prosecution can be determined. The Israeli military determines whether the crime involves Israel's interests.

The Israeli military court structure consists of Military Courts of First Instance and the Military Appeals Court. The Court of First Instance can try all cases connected with security, including criminal offences that may become security offences. Article 2 of the Jurisdiction in Criminal Offences Order of 1967 gives military courts jurisdiction over all criminal offences by deeming them to be security offences. Military Appeals Courts will only hear appeals from cases involving a sentence of more than 5 years. Persons convicted by a single-judge military court can petition for leave to appeal, whilst those convicted by a three judge panel can appeal as of right. It is possible to petition the Israeli High Court of Justice from these courts for a procedural review of a decision.

### *The State Security Court and Military Courts*

#### *State Security Courts*

President Arafat established a High State Security Court, with seats in Gaza and Jericho, by Decree 7 of 1995, before a duly constituted legislative body had been elected. The legal basis given for these courts were Articles 23 and 59 of the constitutional law of the Gaza Strip and Order #55 of 1964 of the Egyptian Administration. These laws, in turn, were based on powers granted to the British Governor under the British Emergency Law of 1945. The court is constituted, on an ad hoc basis, by a high ranking officer and two officers of a lesser rank. It does not sit in session permanently and only forms at the President's discretion. The court is competent to hear crimes that affect both internal and external security.

President Arafat changed the structure of the security courts and their jurisdiction by Order #15 of 1998. This order created two other types of security courts, Partial Courts and Integral Courts. The jurisdiction of these courts is limited to cases involving crimes committed in violation of Articles 428 and 433 of the Jordanian Penal Code #16 of 1960. These articles involve crimes relating to violations of the laws regarding public health and the pricing, weighing and quality of foodstuffs. Partial Court cases are heard by one judge and involve crimes where the maximum penalty does not exceed three years. Integral Court cases are composed of three judges and deal with all other crimes. These courts can try civilian or military personnel.

Despite the legal structures establishing these courts, frequent abuses of jurisdiction and human rights are involved. The state security court system exists entirely separate from the regular civil court system and is unacceptably subject to the influence of the executive. The court is constituted by the President, and judges of the court are selected by the executive for each particular hearing. Accused that appear before the court are not entitled to due process, which includes being denied adequate legal advice and the right to appeal. Defendants are usually represented by lawyers appointed directly by the court, who are provided with little information about their client or the case.

As noted earlier, cases are often convened on short notice, at night, and do not allow the proper consideration of the facts and law applicable to the case. The executive also brings many crimes within the court's jurisdiction by adding a security element to the charge.

On 1 November 1999, President Arafat appointed Khalid Al Qudrah as Attorney General to the State Security Court. Al Qudrah had been removed from the position of civil Attorney General in 1998 on corruption charges.

### *Palestinian Military Courts*

A series of military courts have also been established. These courts try members of the PLO military forces and members of the Palestinian security services that operate in the self-governing areas. The court also tries members of the civilian population where a military connection is established.

The structure of the court system and the rules of procedure are derived from the 1979 PLO Revolutionary Code of Penal Proceedings. The code authorises the creation of a District Court, a Permanent Military Court and other special courts. The District Court is presided over by one judge and can only hear crimes committed by enlisted soldiers and where the penalty does not exceed imprisonment for one year. The Permanent Military Court is presided over by three judges and hears all cases involving crimes except those explicitly excluded by law. A Special Court hears all cases that it assumes jurisdiction for and crimes involving officers of the rank of major and higher.

These courts are formed upon the decision of the Supreme Commander, President Arafat, and apply the 1979 Revolutionary Penal Law. Currently there are 3 District Military Courts and 3 Permanent Military Courts in the Palestinian territories. Judges are selected from a separate military judiciary and prosecutors come from the Military Public Prosecution headed by the Attorney General for the military courts.

Two cases illustrate the problems with the security and military courts. On 25 February 1999 Colonel Ahmad Atiya Abu Mustafa was tried by a military court for the rape of a six year old boy on 19 February. The case was held in the evening and reportedly lasted for one hour. He has sentenced to 15 years imprisonment for rape and to be executed for "causing public disorder". The later charge was presumably in relation to public disturbances that occurred after his name was released to the public. He was executed on the 26th early in the morning. Concerns were raised after his execution about whether he had committed the crime.

On 28 August, 1999 the High State Security Court was convened on order of President Arafat to hear the case of Ayman Mohammad Ibrahim Abu Sa'da. The case resulted from the death of Lieutenant-Colonel Abu-Zeineh on 25 August 1999 after he intervened in a family dispute involving Ayman. The court convened on the evening of the 28th and a sentence of death by firing squad was issued and carried out the following day.

The ICJ/CIJL mission to the Palestinian Autonomous Areas in January 2000 visited the state security and military courts and recommended that the State Security Court be immediately abolished and that the jurisdiction of military courts be limited to trying military personnel for offences committed while on duty.

### *Judges*

In the West Bank, prior to 1967, the High Judicial Council was responsible for the appointment of judges. This consisted of the head of the Court of Cassation, located in Jordan, two senior judges of that court, the Attorney General, the heads of the Courts of Appeal in Amman and Jerusalem and the Minister of Justice. Since 1967, the West Bank judicial system has been isolated from the court system in Jordan, and therefore from the High Judicial Council responsible for the appointment of judges. During the Israeli occupation the power to appoint judges was given to a committee appointed by the Israeli Military Area Commander. In the Gaza Strip, following the common law tradition, judges were appointed by the executive, after consulting with the Chief Justice.

Under the Palestinian Authority, members of the judiciary have been directly appointed in the same manner that applied in the Gaza Strip. Judges are appointed, transferred or removed at the discretion of the Minister of Justice, or President Arafat for more senior positions. This has led to judges being removed unjustly from office by the executive. For example, in January 1998, Chief Justice Qusi El Abadallah of the High Court of Justice of the Gaza Strip was "retired" from office by the executive.

The Draft Basic Law and the Judicial Authority Law guarantee the independence of the judges within the Palestinian territories. Articles 88-97 of the Draft Basic Law incorporate some of the UN Basic Principles on the Independence of the Judiciary ensuring that judges will be independent in their judicial function, and mandates the creation of an independent Higher Judicial Council (HJC) to ensure that independence. The Draft Judicial Authority Law guarantees the judiciary an independent budget and gives the HJC the power to nominate judges for appointment to the judiciary. It also guarantees members of the judiciary a secure tenure.

On 14 June 1999 Radwan Al Agha was appointed as Chief Justice of the High Court of the Gaza Strip by President Arafat, a position that had been vacant since January 1998. On 19 September 1999, President Arafat, by presidential decree, transferred the management of the judiciary from the Minister of Justice to the Chief Justice of the High Court of Justice in the Gaza Strip. The Minister of Justice had exercised this power in the absence of any other body responsible for judicial management.

The extent of powers granted to the Chief Justice is uncertain, as was the extent of powers the Minister of Justice actually legally held. The decree stated that the Chief Justice is mandated to grant judicial vacations and to arrange the conditions of the judiciary. The exact scope of the power to arrange the conditions of the judiciary is uncertain and possibly subject to executive interference. The Palestinian Authority should have established an independent Judicial Council, as specified in the Draft Basic Law, with clearly defined powers to carry out this function. On 10 October 1999, Chief Justice Al Agha transferred several judges between courts in the West Bank, not involving any demotions, without consulting the judges concerned. In response to this move a group of West Bank judges went on strike to protest this decision.

Lack of resources and inadequate training still pose problems for the effective administration of justice. In the absence of a High Judicial Council responsible for the appointment of judges there has not been a sufficient creation of new judgeships to meet the growing caseload. As of January 1999 the judiciary comprised 65 judges, 30 in the Gaza Strip and 35 in the West Bank. This consisted of 9 Gaza Strip and 3 West Bank High Court judges; 21 judges presiding over Magistrate and District Courts in the Gaza Strip and 32 presiding in the West

Bank. However, in Magistrate Courts in the Gaza Strip alone in 1998 the volume of cases processed was 75,000. In most courts there is a substantial backlog of cases. Judicial salaries are also very low, increasing the difficulties in appointing new judges. Judges are generally appointed for 10 year terms.

The dilapidated condition that the court system is in is illustrated by the events of 6 February 2000. The Court of First Instance in Bethlehem was attacked by a mob of people, who stormed the court and locked the judges inside the building. The protestors were demanding that the conviction and fifteen year sentence imposed on two men be withdrawn. As a result of this action the judges declared a strike.

Furthermore, the executive routinely ignores judicial decisions, particularly those that order the release of arbitrarily detained individuals. The judicial system also suffers from a lack of funds and appropriate infrastructure for efficient judicial administration.

### *Lawyers*

Lawyers in the self-governing territories face similar problems as members of the judiciary. They are frequently subject to executive interference in the performance of their duties, and suffer from lack of training and funds to develop an efficient and unified legal profession. During the year, lawyers in the West Bank and Gaza Strip conducted several strikes to protest the current conditions of the judicial system.

Prior to the Israeli occupation, West Bank lawyers were members of the Jordanian Bar Association. As a result of the actions taken by the Israeli Military Government during the occupation, lawyers went on a permanent strike. However, some members of the legal profession returned to representing clients in order to provide protection for those resident in the occupied territories. These lawyers were dismissed from the Jordanian Bar and their pension rights removed. The lawyers who continued to strike, who were eventually in minority, maintained their pension rights and membership of the Bar, but this was subject to them not returning to representing clients in the West Bank. Since 1993 all lawyers have returned to active participation in the legal system.

Several other lawyer's associations, in response to the occupation, began to operate in the occupied territories. In 1979 an Arab Lawyers Committee was set up consisting of lawyers from Jerusalem and the West Bank, and in 1980 the Lawyers Union in the Gaza Strip was established for lawyers practising in that territory.

In order to facilitate the formation of a unified bar association, President Arafat mandated the formation of the Council for the Union of Palestinian Lawyers. The Interim Ruling Council was appointed directly by President Arafat on the advice of the Minister of Justice. The Council consisted of nine members: three members representing lawyers from the Gaza Strip, three members representing the lawyers who had participated in the strike during occupation and three members representing the Arab Lawyers Committee. This council was invested with the responsibility for implementing a project for the unification of the Bar Association. The appointed Council serves until 9 May 2000. The Bar Association Law was passed by the PC and signed by President Arafat in November 1999. This law requires the holding of elections for an independent Bar Council.



During 1999, lawyers conducted several strikes to protest the condition of the legal system. Lawyers also went on strike in November to protest Bar Association Law #3 of 1999. This law stipulated that lawyers must accompany their clients to a public notary and have their client sign a power of attorney in the presence of three parties: the lawyer, the client and the public notary. A lawyer is not able to represent their client unless this procedure is followed. The effect of this law is that if a lawyer is unable to represent their client another lawyer cannot quickly replace them and protect the client's interests. This increases the potential that a client will be without legal representation before Palestinian courts. This law was amended shortly after, due to the protest by lawyers.

The Palestinian executive authority also developed a policy in June 1999 denying human rights lawyers access to their clients incarcerated in Palestinian prisons. This was reported to be because Palestinian human rights groups falsely described the actions of Palestinian police. This is a serious violation of a lawyer's duty to their client and the inherent right that clients have to ensure that their human rights are protected. The right to have access to a lawyer is also included in the Prison Law, which entered into force in 1998.

### *Cases*

Iyad Alami, Hanan al Bakri, Hanan Matar, Ashraf Nasralla, Khader Shkirat, Ibrahim Sourani, Raji Sourani, Fouad Tarazi lawyers, members of the human rights groups LAW, Palestinian Centre for Human Rights (PCHR), and the Women's Legal and Social Counselling Center: On 10 and 14 May 2000 the Palestinian Bar Association removed these lawyers from the list of practising lawyers. The Acting Bar Council based its decision on Article 7 of the Palestinian Bar Association Law which prohibits, inter alia, the combining of the practice of law with the holding of public or private employment.

This action was taken without due process and at the end of the Acting Council's tenure in office. Elections for a new council were due to be held by 9 May 2000. On 17 May 2000, the Palestinian High Court of Justice, in a preliminary decision, suspended the Acting Council's decision.

Ahmad Yasin lawyer: Ahmad Yasin was arrested on 18 July 1999 under an order from the Jenin prosecutor. He was charged with collaborating with the enemy in contravention of Article 127 of the 1960 Jordanian Penal Code 16. Ahmad Yasin had drafted a contract in December 1997 for the sale of land between two parties, one of which was an Israeli. Yasin's defence was that the contract had been annulled and was void. Yasin had previously published articles complaining about police harassment. He was released on 18 August 1999