

**Position paper issued by Human Rights and Democracy Media Center
"SHAMS" on the reform of the Palestinian judiciary: basic criteria**



مركز إعلام حقوق الإنسان والديمقراطية «شمس»
Human Rights & Democracy Media Center «SHAMS»

Holding the Consultative status of the Economic and Social Council of the United Nations (ECOSOC)

Holding the observer status at the Arab Standing Committee on Human Rights – the League of Arab States

**Position paper issued by Human Rights and Democracy Media Center
"SHAMS" on the reform of the Palestinian judiciary: basic criteria**

General background

The independence of the judiciary can be seen as the backbone of a fair democratic state. This principle has become enshrined in the essence of international agreements and constitutions, including international agreements that the State of Palestine has joined, the amended Palestinian Basic Law, and the Declaration of Independence document, with its remarkable moral value. Other principles are in conjunction with this principle, such as the separation of powers, the principle of impartiality and integrity of the judge, and the principle of transparency in assuming the position of the judiciary, each of which depends on the other, so that the absence or imbalance between them undermines justice. It is clear that any judicial reform process that has proven weak in the ability to reform itself should be based on a societal dialogue, or a parliamentary will from a freely elected parliament according to the popular will and within the limits of what the constitution permits.

Structurally, the Palestinian judiciary suffers from many crises, which in part are a reflection of the crack in the political system and the fundamental defect resulting from the absence of parliament, in which one of the judicial parties, the "Supreme Constitutional Court", played a role in its unconstitutional dissolution. The crisis is compounded by the absence of general elections despite the passage of years since the end of the constitutional mandate of the president and parliament, and the resulting cracks in the principle of the rule of law and the separation of powers,

and the encroachment of the executive authority resulted in a violation of citizens' rights.

By focusing on the problems of the Palestinian judiciary, many of them can be touched in the current reality of the Palestinian judiciary, among them the interference of the executive authority in it, the struggle over occupying leadership positions between the parties, the weakness of human resources, and problems related to legislation, performance, or the judges' full response to human rights standards, or suspicions of using the judicial platform for personal interests, and the emergence of the tribal judiciary, which led to a massive decline in citizens' confidence in the judiciary.

At the same time, Palestine enjoys an active, vibrant, and dynamic civil society, which should play an effective role in addressing service provision gaps and seeking to hold parties accountable for their duties towards the right-holders (citizens), and contribute to building the agenda of the Palestinian state and its development plans and improving the reality of international standards and best practices, including "separation of powers."

Based on its societal role and its experience in working with the justice sector, “SHAMS” Center reviews a set of points, which we believe that adopting them would improve the judicial situation and lead to a more effective, independent, fair, transparent and responsive judiciary to freedoms and human rights standards, including rights Women, children and people with disabilities.

Core reform points

First: Structural and administrative reforms

1. Issuing a presidential decree setting a precise date for the holding of legislative and presidential elections and providing the requirements for

their success in terms of a fair environment and respect for public rights and freedoms, in a way that addresses the critical defect in the political system, as reform of the judiciary cannot be separated from reforming the executive authority, renewing its legitimacy and stopping its encroachment, and from restoring the role of the legislative authority.

2. Work to unify the institutions of the justice sector (the judiciary, and the Public Prosecution in particular) between the West Bank and the Gaza Strip by laying the foundations and standards that lead to this and abolish the state of division that has continued since 2007 between the two justice sectors.
3. Establishing adequate budgets necessary for the expenditures and development of the judicial sector in terms of human resources and buildings, in order to reduce the judiciary's dependence on foreign financing projects and programs, and to enhance the independence of the judiciary.
4. The pressure towards reforming the Supreme Constitutional Court, given the irregularities and political nature of its existing formation, which was reinforced by its decisions. The new formation should take into account fair female representation.
5. Reforming the administrative judiciary, by approving litigation on two levels, and working to make the administrative judiciary a judiciary of annulment and compensation, not just abolition, and increasing the number of bodies of the Supreme Court of Justice, provided that this is done by the parliament elected and not by the executive authority using the current exceptional legislative power, for what this will carry the danger and

suspicious of interference in the judicial authority strengthens the executive's attempts to control it.

6. Governing the justice sector by clearly defining the powers of the justice sector staff, including between the Supreme Judicial Council and the Ministry of Justice, in administering and supervising the courts. This calls for detailing the roles of each side.
7. Promoting digitization, including designing systems for archiving files and archiving them electronically (without detracting from the importance of paper archiving) in a way that protects them from any potential danger as this violates rights.

Second: The principle of the independence of the judiciary

1. Criminalizing interference in the affairs of the judiciary from any party, especially the executive authority, and setting deterrent penalties (considering interference as a misdemeanor) on the body that does so.
2. Enabling judges to disclose the interference that may take place in their work, by creating the necessary tools for that.
3. Providing protection for those reporting interferences with their work from any punitive / retaliatory steps.

4. Executing deterrent penalties according to the law on any party that refrains or obstructs the implementation of judicial rulings and decisions, including the security services, in a way that restores the prestige of the judiciary, contributes to restoring citizens' confidence in it and encourages them to respect the law and feel its justice and strength.

Third: Legislative Reforms

1. The speed in solving the legislative crisis after 2007, which led to a severe legislative division, and hit the legal unity. Civil society can play a prominent role in this context, by forming a civil framework that begins work, and helps the elected parliament's committees to deal with legislation issued after June 14, 2007, whether by a decree law in the West Bank or laws by the Palestinian Legislative Council that is controlled by Hamas in the Gaza Strip, in accordance with the standards of legislation respecting rights, freedoms, drafting principles, and Palestine's international obligations.
2. Addressing the problems related to the legal judiciary, including amending the laws and legislations of personal status, whether the Jordanian 61/1976 in the West Bank or the rights of the Ottoman family in the Gaza Strip, so that the laws are developed and responsive to the legal obligations of the State of Palestine.
3. The elected Palestinian parliament should work urgently, to harmonize national legislation with Palestine's international legal obligations, foremost of which is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Rights of Persons with Disabilities and the International Covenants on Civil, Political and Private Rights With economic, social and cultural rights. The relevant parties, whether

at the political level or the Fatwa and Legislation Bureau, must publish the agreements in the Official Gazette, which would give them a binding character, allow the judiciary to enforce them, and positively reflect on rights and freedoms. In this context, reference must be made to the Constitutional Court's interpretation of the status of international conventions, which carried a great contradiction, and is an extension of a deeper problem related to the formation of the court itself, which must be resolved. According to the interpretation of the Constitutional Court, international human rights conventions and treaties take precedence over national legislation after their publication in the official gazette and their inclusion in the national law, in accordance with the Supreme Constitutional Court Decisions No. (4/2017) of November 19, 2017 and No. (5/2017) of 12 March 2018. However, the application of the provisions of international treaties depends, according to the Supreme Constitutional Court, on their compatibility with “the national, religious and cultural identity of the Palestinian people,” which are vague and broad terms, and exceptional standards in the implementation of international obligations!

Fourth: Address the judicial bottleneck

1. Computing and automation can be used for the judicial work system, programming and digital technologies, especially in reporting and information exchange, and from the GPS system to ensure that the judicial reporting personnel reach the required areas accurately and the use of private companies with regard to reporting methods. The ability to inform the witnesses of Jerusalem as well as the witnesses of the Palestinian interior (areas 48) should

also be informed through technology or with the help of reliable Palestinian authorities inside.

2. Signing a memorandum of understanding with the Bar Association under which penalties are imposed on a lawyer who is absent without legitimate reasons from the court sessions deliberately postponing them, and amending the loopholes of the Palestinian Criminal Procedures Law that lawyers benefit from to appeal with the aim of procrastination only so that this is more firmly bypassed in the future, and setting a timeframe for appeal times and more realistic conditions to allow its submission, without prejudice to the guarantees of fairness of the accused.
3. Addressing criminal legislation and granting powers to penalize lawyers who will be absent from the judiciary, through legal treatment.

Fifth: Human Resources

1. Update the criteria for membership of the Supreme Judicial Council, including specialists, experts and competencies from outside the judicial or official executive sector, by making use of comparative international experiences to prevent conflicts of interest.
2. Developing mechanisms to hold the Speaker of the Council and the Attorney General accountable in the event of any violations.

3. Developing national evaluation mechanisms for judicial human resources, so that they are independent, and made up of competencies and previous judicial, academic and specialized expertise, and in partnership with the elected parliament. To provide judiciary with efficient and sufficient human cadre.
4. Establishing mechanisms that restrict the powers of judicial administrative parties in using transfer, secondment, and assignment as a disguised punishment, including the requirement in writing of each judge to transfer, delegate or loan him.
5. Developing criteria for judges' candidacy for internal and external participations and sessions in accordance with a framework of transparency.
6. Strengthening the integrity system in the procedures for appointing and promoting judges according to the principle of competence and merit and in conformity with the Palestinian Basic Law.
7. Refining the skills of judges regarding best practices for dealing with citizens.
8. Enhancing the response of the Judicial Inspection Department to its assigned roles, and more disclosure of the results of its work without prejudice to the guarantees and privacy of the parties. Provided that the work of the committee includes members of the public prosecution.

Sixth: Promoting the values of integrity, transparency and combating corruption

1. Establishing training institutes and providing financial and logistical resources for them to train experts working in the justice sector (police, public prosecution, and judiciary) on anti-corruption issues, particularly

cases that need technical and professional expertise such as money laundering.

2. Enhancing the citizens' ability to submit inquiries, observations and complaints about the judiciary, by creating sustainable mechanisms in this regard.
3. Forming other bodies for the Corruption Crimes Court instead of Ramallah body being the only entity to do so. It is important to increase the number of court bodies so that they cover the rest of the governorates, and their venue is not limited to a central court in Ramallah.
4. Strengthening societal and civic oversight over the corruption crimes court.
5. Judges' obligation to disclose their properties and submit financial disclosure statements.
6. Enhancing the transparency of the judicial body, by publishing the agenda of the Supreme Judicial Council and its decisions, especially by digital means, in order to allow citizens to access relevant information quickly and with reasonable capacity.
7. Activating the principle of judicial delegation by strengthening cooperation with courts abroad and neighboring countries, to inform and hear wanted witnesses in cases of Palestinian corruption.
8. Sending judges abroad to learn about the experiences of developed countries in the field of combating corruption, and to benefit from their legal systems.

9. Reinforcing the principle of causation for judicial decisions, tightening the supervision of higher courts on this, and publishing judicial decisions continuously without delay.