

The General National Palestinian Plan
2011 – 2013

Executive Summary
Justice Sector Strategy

1. Profile on the Sector

The Palestinian National Authority inherited an inhomogeneous legal system which overshadowed the legal and judicial situation. It suffered a lot of dilemmas which had various adverse effects on the judiciary and on justice for the PNA. Moreover, there was a big overlapping in the systems applicable in the Palestinian territories; some of which were based on the Israeli military orders, the Jordanian and Palestinian legislations and those applicable from the British Mandate and the Ottoman rule. Since the establishment of the PNA, one of its most important obligations was the unification of the legal and judicial systems through the development of systematic mechanisms for the review and unification of legislations.

The Chairman of the Executive Committee of the Palestine Liberation Organization – the President of the PNA issued decision No. (1)1994 from Tunis to continue working with laws and by-laws applicable in the Palestinian territories “the West Bank and the Gaza Strip” until same are unified. The task of unifying the laws between the two sectors of the country and their replacement with modern laws was the first task of the first Legislative Council.

The Palestinian Authority Council was tasked with promulgating laws since 5/7/1994 under the first government between 20/5/1994 and 16/12/1994. Legislations were issued by decrees from the President of the PNA. When the PLC was elected on 20/1/1996, it assumed the task of promulgating legislations since its inauguration on 7/3/1996.

The justice sector is composed of governmental and non-governmental institutions, notably:

The Ministry of Justice: It plays its role in supporting the judicial sector institutions; in providing administrative and technical support to the courts and to the public prosecution; and in providing the suitable environment for safeguarding the integrity, impartiality and independence of the judicial authority. The Ministry provides certificates of non-conviction to the people through the justice record, the legalization of documents, issues legal translation and arbitration certificates, provides advice and legal briefs to the Council of Ministers, judicial reports to the judiciary and the public prosecution through the Forensic and Criminal Laboratory department. The Minister of Justice is the Chairman of the Judicial Institute and supervises the Council on Legal Opinion and Legislation (Diwan Al-Fatwa Wal Tashrii).

The Public Prosecution: It specializes in instituting criminal proceeding in the name of the Palestinian people, undertakes the enforcement of judicial decisions and represents the state in civil cases. Moreover, it supervises the judicial officers and monitors the reform and rehabilitation centers.

The High Judicial Council: It specializes in instituting policies, supervising judges and organizing the work of the courts of all degrees which adjudicates cases before them. The judicial authority strives to build and develop an active judicial system capable of bearing

the huge responsibilities and keeping abreast with modern developments and the requirements for quick and easy access of the people to the judiciary. As a result of its development plans and the support it received from all authorities, the judicial authority moved various steps as regards training and qualifying judges, scholarships, specialization the recruitment of judicial competencies and the linkage of the outcomes of judicial inspection to training programs. Furthermore, the HJC focuses on building courts and on providing them with modern technology.

Sharia'a Judicial Council: The Sharia courts in their three levels specialize in adjudicating cases brought before them; ike: wills, guardianship, inheritance, alimony, custody, paternity, divorce, separation, proof of puberty, endowment cases and the dissolution of invalid contracts of marriage.

The Bar Association: It guarantees the protection of people who resort to lawyers for legal services on the one hand and the protection of the interests of lawyers on the other hand.

Institutions of Legal Education: They teach law in law schools of Palestinian universities including: Al-QUDS, Birzeit, Annajah and the Arab American universities. The educational institutions enrich the Palestinian legal library by undertaking specialized legal research and the MA thesis prepared by students and graduates.

International Organizations: The justice sector is supported by various international organizations including: USAID, EUPOL COPPS, CIDA, SIDA and the Government of the Netherlands.

Integration between the Justice and Rule of Law and Security Sectors:

The Council of Ministers issued resolution No. (99) 2005 pertaining to the establishment of the judicial police force which is subordinate to the Directorate General of the Police. This resolution was activated in 2008. Furthermore, a MoU was signed between the PCP and the Ministry of Justice to regulate the relationship and to coordinate between the newly established unit and the various bodies of the Ministry of Justice. However, the General Directorate of the Judicial Police is still in the stage of preparation and did not assume its duties as outlined in the above mentioned Council of Ministers' Resolution.

However, it has been decided that forensics shall be subordinate to the Ministry of Justice and that the Ministry of Health shall exercise technical supervision over same. Moreover it has been decided that criminal laboratories shall be administratively subordinate to the PCP and technically subordinate to the Ministry of Justice since those laboratories are some of the pillars of criminal justice in Palestine.

The judicial record at the Ministry of Justice was also established through the cooperation with the Public Prosecution and the Ministry of Interior by virtue of understandings reached between the Ministry of Justice and the Public Prosecution and the Ministry of Interior. The judicial record contains the information on the criminal record of the citizen.

By virtue of these understandings, the Public Prosecution provided the Ministry of Justice with the necessary information to feed the judicial record with the criminal data. Moreover, there was cooperation with the prison directorates to verify the criminal data and to complete certain missing items. Also, the Ministry of Interior provided the judicial record with a periodical updatable version on the civil data of citizens.

On the other hand, the courts have a general jurisdiction to adjudicate all cases pertaining to civilians. As such, the civilian Public Prosecution shall have the sole right to institute criminal proceedings according to the provisions of the Criminal Procedure Code No. (3) 2001. However, by virtue of the provisions of article (101) of the Palestinian Basic Law, the jurisdiction of the military courts shall be restricted to military affairs. The basic problem which negatively affects the regulation of the relationship between the civil and military prosecution is the failure to define “military affairs” and the limits which distinguish crimes of military and civilian natures, something which has resulted in the overlap of the jurisdictions of the civil and military prosecutions, and ultimately between the civil and military judiciaries.

The security establishment is related to the public prosecution in that the technical work of the judicial officers shall be supervised by the public prosecution. The public prosecution also exercises a monitoring and supervisory role over the reform and rehabilitation centers and the security agencies’ detention centers to verify the circumstances of detainees in those centers.

According to the Criminal Procedure Code, the Public Prosecution enforces criminal judgments, and in the exercise of that role shall have the right to make use of the police force whenever necessary. Despite the fact that the security establishment does not exert effort in judicial enforcement, various obstacles impede judicial enforcement including: the measures taken by the Israeli occupation forces, the lack of Palestinian sovereignty over all territories belonging to it and the logistical and technical reasons.

2. Situation Analysis

The justice sector encountered various difficulties and challenges due to a large extent to a series of internal and external factors, which combined resulted in hampering its development with the passage of time. Among the most prominent factors is the weakness of the legal and institutional infrastructure of the justice institutions.

The non-allocation of suitable support to the judicial authority by the executive, the non-allocation of development budgets to it in the earlier stage of the formation of the PNA, the obstacles imposed by the occupation, the diminished national sovereignty and the lack of jurisdiction have all contributed to the absence of the suitable adjudication environment represented in the slow adjudication procedures, the mismanagement of case files, the unsuitability of the buildings and facilities to the nature of judicial work, the weakness of resources, the old administrative support systems, the weakness of public services, the lack of information systems, the backlog of cases before the courts, the weak enforcement mechanisms, and the absence of institutional rehabilitation of

administrative, judicial and legal support staff has created a state of vulnerability in judicial performance and in justice institutions. This has led to the reluctance of the citizen to resort to the judiciary and his resort to parallel means away from the rule of law in the absence of alternative means for conflict resolution.

The modernity of legal education and the weakness of legal judgments in Palestine in comparison with the legacy of the Palestinian legal system which embodied a series of radical differences has delayed the development of a national jurisprudence capable of meeting these differences beneficial to the Palestinian situation and facilitating the harmonization and unification of these systems on common grounds, and which could have contributed to the emergence of a judicial and legislative approach away from these directives.

The Palestinian justice institutions strived to benefit from the opportunities provided by the international donor organizations in the fields of administrative development, the institutionalization of the judicial institutions at systems and human resources levels. However, the political and economic instability, the lack of the appropriate skills resulted in destabilizing the institutions of justice, organized work and in weak performance. Moreover, weak coordination among those institutions reflected on multiple representations before the donors resulting in the overlap of programs funded by the donors.

The years 2008 and 2009 witnessed big achievements in the judicial sector. The number of investigation and criminal cases and the rate of finalized cases increased considerably in 2008 compared to the previous years. On the other hand, criminal enforcements are witnessing tangible development from the perspective of the reduced cases brought forward and the increased finalization of cases from year to year.

The year 2009 witnessed the development of the organizational structures and the infrastructure of the judicial and the rule of law institutions. The Palestinian Judicial Institute and the Judicial Police were established. Police officers as a nucleus of the judicial police were trained. The Judicial Inspection Department was activated and a Court Administration Department established. All these need MoU to regulate their references. Moreover, the Planning and Projects Administration, a judicial library and an electronic archive for all documents were established. The Ministry of Justice also worked on rehabilitating and modernizing the Public Services Department including legalizations and the judicial record. Their facilities and departments were modernized including the introduction of an automatic queuing system to offer better public services.

Since its inception, The Judicial Records Department at the MoJ has, in cooperation with the IT Department of the Public Prosecution, the Ministry of Interior, the General Administration of Reform and Rehabilitation, worked on managing and feeding the computerized data base of the judicial record with a summary of judgments, the judicial enforcement record, the civil record and on linking them with the registers of people on the path towards the issue of certificates of non-conviction.

The MoJ is on the verge of concluding an agreement with the Government of Canada for the establishment of the main Forensic Center in Palestine. In the same context, the judicial police was established to strengthen the rule of law. Furthermore; various specialized departments and units including the Administrative Affairs Department, the IT Department, the Planning Department, the Training Department and the Media and Public Relations Department at the Public Prosecution were established.

Regarding the sharia judiciary, two sharia courts in Ramallah and El-Bireh Governorate and one in Hebron were established. Additionally, eight other sharia courts were inaugurated in various parts of the West Bank and the Gaza Strip. Eleven judges including the first two female judges in Palestine were appointed. Moreover, the High Sharia Judicial Council appointed 58 judges during 2008/2009. 32 notary publics and 30 bailiffs were appointed. Those appointments were aimed at speeding up adjudication procedures and at putting an end to the backlogs.

The main problems at the national level:

1. Weakness of the legal system applicable in the Palestinian territories in the light of the absence of civil legislation, the weakness of criminal legislation and the absence of a modern Penal Code.
2. The absent role of the Palestinian Legislative Council.
3. The weak public confidence in the judicial institutions, the adjudication procedures and the resort to alternative methods.
4. The weakness of alternative means for conflict resolution.
5. The weak performance of judicial institutions, the weak coordination among them which is reflected in the multiple representation of the sector before the donors.
6. The modernity of legal education and rehabilitation in Palestine.
7. The numerous judicial systems and the methods of enforcement.
8. Weakness of communication means with the public.
9. Absence of contiguity between the country's districts which affected the extent of enabling the public to access judicial institutions.
10. The emigration of qualified people.
11. The absence of specialized courts and prosecutions.
12. The overlap of the civil and military jurisdictions.
13. The absence of a constitutional court to decide on the constitutionality of legislations and the conflict in jurisdictions.
14. Judicial choke points and backlogs before the courts.
15. Weakness and unsuitability of reform and rehabilitation centers and places of detention.

At the external level:

Throughout successive years, the Palestinian people lacked an entity or a recognized state exercising its sovereignty on the land and the people and distinguished by an international presence as other countries. Following the Oslo accords of 1993 and the creation of the first nucleus of a Palestinian National Authority from various basic

authorities: executive, judicial and legislative emerged. In the light of successive governments from that date which reflected on the emergence of the international presence of this Authority, this entity did not attain the sought after level of the establishment of a state exercising full sovereignty over its territory. The continuation of the occupation and its negative daily impact on the various components and the constituents of the justice sector, and in the light of the ambiguous nature of the sought after state and the political and geographical separation between both sectors of the country created a big challenge for the development of the justice sector.

Among the most important obstacles facing the judicial sector as a result of the external effects is the inability of the legal system to extend its legitimate mandate over all its territories and the incompetence of the Palestinian Authority to conclude agreements and to join international treaties and conventions supporting rights and liberties.

The Israeli occupation and its negative impact on the rule of law lead to the obstruction of any developments aimed at state building, the stability of its system, and consequently the disregard of all international conventions and norms. Moreover, the application of Israeli legislation over Palestinian territories under its control has unsettled public confidence in the judicial system.

The most important problems on the external level:

1. The impact of the Israeli occupation and its role in unsettling public confidence in public order, and particularly the judicial system.
2. Absence of the Palestinian State imposing its sovereignty on the Palestinian territories and its negative repercussions on communicating with the outside world for the requirements of the justice sector.
3. Restrictions on the movement of people which obstruct the course of justice.
4. Non-compliance of the Israeli occupation with the agreements signed and with legal protocols.
5. The existence of settlements has limited the application of the rule of law in the Palestinian territories.
6. The multiplicity and overlapping of support and funding to the justice sector.
7. The increase in the number of fugitives to the Israeli areas and the Israeli non-response to the hand-over demands.
8. Lack of PNA control of the borders and its weak ability to control borders, apprehend wanted people or prevent wanted people from travelling.
9. Weakness of legal aid means at the reciprocal and international levels which impeded the exercise of legal authority and the enforcement of judgments.
10. The lack of Palestinian jurisdiction over the Israelis and Palestinians holding Israeli IDs who commit crimes in PNA territories.
11. Diminished Palestinian jurisdiction due to the division of territories to A, B and C.
12. Failure to comply with the legal protocol attached to the Oslo Accords needed for state building.

3. Vision

“A justice sector capable to achieve justice and the rule of law for maintaining freedoms, public and private rights and equality so as to maintain human dignity and provide the suitable framework for comprehensive and sustainable development for the Palestinian society in a fully sovereign Palestinian State”.

The achievement of this requirement demands serious support to the various justice and rule of law; the development of legislations regulating the sector based on a legislative plan, the comprehensive review of the applicable legislations; the determination of the themes needed for the sector and their prioritization according to a suitable timeframe; the development of a suitable and active a system of judicial procedures based on the respect of basic human rights initiatives to protect freedom; the development the defense infrastructure; the initiation of practical and field initiatives for the protection of the justice and the rue of law sectors from negative influences of the Israeli occupation and the current divisions in the Palestinian territories; and finding specific mechanisms to strengthen the role of the public, the media and civil society in indulging in the justice and rule of law sector.

4. Strategic goals, policies and interventions

The following table outlines a summary of the strategic goals, the policies and the main interventions proposed to be implemented in the justice and rule of law field. The total sector strategies include the detailed policies and interventions.

Policy	Policy Interventions
1. The strategic goal: Strengthen the respect of human rights, basic freedoms and the rule of law	
A. Strengthen the basic human rights and freedoms environment.	<ul style="list-style-type: none"> • Review of legislations pertaining to the rights of the citizen. • Preparation of mechanisms and plans to strengthen human rights in cooperation with Palestinian and international human right organizations • Documentation of breaches of Palestinian human rights and the pursuit of the perpetrators.
B. Facilitate citizens’ access to the services of the justice sector and their improvement.	<ul style="list-style-type: none"> • Help the marginalized groups to enable them to benefit from the justice and judicial institutions. • Follow-up of citizens’ complaints. • Updating and developing the services provided to the public. • Circulation of legal information and facilitate public access to them.

<p>C. Strengthen the links with civil society and with the media.</p>	<ul style="list-style-type: none"> • Creation of a modern media system to improve communication with the public and delivery of the justice message. • Raise the awareness of the public and educate them in the field of the rule of law and the work of justice institutions. • Prepare legal reports jointly with civil society. • Establish advisory legal councils jointly with civil society.
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Policy	Policy Interventions
2. Strategic goal: Ensure fair trial	
<p>a. Creation of conducive environment for litigation</p>	<ul style="list-style-type: none"> • Update and develop competent criminal justice facilities in forensics, criminal lab, and Judicial Police • Update developed systems for the management of criminal, civil, and religious case, and accelerate case adjudication • Update competent courts, and identify separate competences for regular and military courts • Develop and upgrade capabilities of judges and attorneys-at-law • Institutionalize legal aid to ensure access of justice to marginalized and needy sectors
<p>b. Enhance role of Bar Association in developing of the justice sector</p>	<ul style="list-style-type: none"> • Update Bar Association legal framework • Develop Bar Association internal performance • Raise level of services provided by Bar Association
<p>c. Enhance and update monitoring, accountability, and management framework</p>	<ul style="list-style-type: none"> • Activate and develop mechanisms of monitoring and regular and religious judicial inspection • Ensure proper conduct of administrative supervision over regular and religious courts in accordance with adopted

	mechanisms
d. Relieve courts of enormous burden	<ul style="list-style-type: none"> • Address issue of judicial suffocation and case backlog • Introduce concepts of support methods for conflict resolution into judicial work and ensure their adoption
e. Raise competence of notification systems and judicial rulings enforcement	<ul style="list-style-type: none"> • Develop effective mechanisms to ensure the enforcement of criminal, civil, and religious rulings within a proper time period • Train staff and provide proper equipment for Public Prosecution

Policy	Policy Interventions
3. Strategic goal: Support, build, empower and develop justice institutions	
a. Develop work environment, motivate competences, and upgrade level of staff training	<ul style="list-style-type: none"> • Upgrade competences and capabilities of human resources in the justice sector according to needs • Develop finance and administrative systems that enhance principles of monitoring and accountability in justice institutions • Develop data and IT systems within the operational systems of justice institutions • Develop infrastructure of justice institutions
b. Raise level of legal education	<ul style="list-style-type: none"> • Develop legal education for the purpose of enhancing preparation for the judiciary • Develop scientific research and support legal research centers
c. Institutionalize judicial training	<ul style="list-style-type: none"> • Develop continuing and basic training programs • Finalize update operations and develop institutional framework for training • Recruit qualified local staff for training operations in relevant and concerned institutions

Policy	Policy Interventions
4. Strategic goal: Unify, update and develop legislations	
1. Create conducive legislative	<ul style="list-style-type: none"> • Monitor legislative needs of justice

environment	<p>sector and rule of law in partnership with all justice sector institutions</p> <ul style="list-style-type: none"> • Review and develop existing legislative policies
2. Form an updated, consistent, and stable national legal system	<ul style="list-style-type: none"> • Develop follow-up national plan, and review unification and update of legislations • Implement legislative plan adopted by justice sector institutions • Draft legislative propositions in opine with the justice sector legislative plan
3. Activate Council of Legal Opinion and Legislation	<ul style="list-style-type: none"> • Public Palestinians Chronicles periodically • Provide qualified staff in the sphere of preparation of legislations • Develop capabilities in the sphere of legal drafting • Form a competent and specialized unit in the sphere of monitoring the quality of legislations

5. Breakdown of resources and responsibilities

Annexed is the estimated budget for 2011-2013 distributed according to goals:

Strategic Goal	Estimated budget (m\$US)
Enhance respect and protection of human rights, basic liberties, and rule of law	40
Ensure fair trial	65
Support, build, empower and develop justice institutions	120
Unify, update and develop legislations	25
TOTAL	250

6. Anticipated results

The Ministry of Planning and Administrative Development (MPAD) shall work with each sector for the purpose of developing a set of appropriate indicators and targets for 2011-2013. It has been decided to finalize this process and update this section during the budget preparation process. The indicators and achievements below, which have been identified by the justice sector strategy, constitute the springboard for our work:

1. Legislations related to rights of civilians, which have been reviewed and for which recommendations have been put forward;

2. A joint work plan with national justice institutions, and MoUs reached with a number of regional and international institutions;
3. Periodic and regular visits made to rehab and correction centers and to detention facilities;
4. All human rights violations committed against Palestinian civilians have been documented and perpetrators arrested;
5. Finance and administrative systems to enhance monitoring and accountability principles in just sectors have been enhanced;
6. All marginalized and needy sectors have received legal aid and the services of other justice facilities;
7. Mechanisms of monitoring and regular, judicial and religious inspection have been developed;
8. Several rule of law related cultural programs have been adopted;
9. A number of media activities in various parts of the West Bank have been implemented in accordance with the rule of law public awareness plan;
10. A number of rule of law public awareness media material that address all sectors of the Palestinian society have been prepared;
11. A number of joint legal reports have been prepared in cooperation with the civil society and in accordance with agreed methodology;
12. The Advisory Council has been set up in partnership with civil society institutions;
13. Rules regulating the justice sector have been updated or amended;
14. Criminal justice facilities have been established;
15. The Judicial Police have been established and are now operating;
16. A number of new judges have been appointed and distributed according to the number of incoming cases;
17. A number of civilian complaints regarding lawyers performance have been looked into;
18. Competent courts have been established and their competences regulated;
19. A number of legislations that regulated the competences of military courts have been adopted;
20. The Constitutional Court has been set up and is now operating;
21. A number of administrative courts have been established and are now operating;
22. The judicial code of conduct has been reviewed;
23. The number of adjudicated cases in courts has dropped;
24. The Bar Association has organized a number of training courses for lawyers to upgrade their performance before the public;
25. A number of training courses for new judges have been organized;
26. Rules of alternative methods for conflict resolution have been updated;
27. All courts have been e-linked and case files computerized;
28. Infrastructure of all buildings have been renovated;
29. A number of scientific researches have been conducted in legal research units;
30. Legal Education program has been developed;
31. Future Judges Program has been developed;
32. "Justice Everywhere Program" has been completed;
33. An official manual on legislative drafting has been published;

34. Council of Legal Opinion and Legislation has been activated;
35. Monitoring quality of legislations has been organized and institutionalized;
36. The official gazette is issued on a regular basis;
37. Systems of judicial case management have been enacted;
38. Public services have been improved; and
39. Mechanisms of implementing criminal, civil and religious rulings have been organized and activated.

8. Procedures for the preparation of sector strategy

The National Justice and Rule of Law Strategy of 2011-2013 is based on the Reform and Development Plan of 2008-2010. National and technical teams have been formed and assigned the preparation of the Justice Sector and Rule of Law National Plan. The teams are headed by the MoJ with the membership of the Public Prosecution, High Judicial Council, MoI, and MPAD. MPAD is responsible for coordinating the preparation of sector strategies, dissemination of instructions and templates related to the preparation of the sector strategies manual and unified technical annexes.

In addition, members of the civil society have taken part in the strategies preparation team, including civil organizations network, Bureau of Grievances (ICHR), and Birzeit University. Moreover, a technical team has been formed made up of the head of the national team and a number of experts from USAID-funded Nizam Project. The technical team has placed the strategy in the correct strategic mold in accordance with the technical annex issued by the MPAD as well as the modern scientific methodologies of strategic planning.

The national team held 14 meetings and the technical team 21. The first version of the strategy has been translated into English and distributed to international partners via Local Aid Coordination Secretariat (LACS). A special meeting for the justice sector group was held on 8 March 2010 and the remarks of the international partners in the strategy were discussed.

Several official and civil sources were consulted, and the following terms of reference were taken as a foundation for the preparation of the justice sector strategy:

1. The Basic Law and laws in force in Palestine;
2. Guidance paper on general political issues which has been prepared by the Council of Ministers and MPAD;
3. The program of the 13th government “Building the Palestinian State through Peace and Prosperity.” The government has stressed the enhancement of good governance, respect for the rule of law, separation of authorities, protection of human rights, creation of peaceful environment, imposition of law and order, as well as the provision of safety and security.
4. Reform and Development Plan if 2008-2010; and
5. Studies and documents provide to the team by justice commissions.

