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## Position Paper by Human Rights Organisations' on the Independence of the Palestinian Judicial System

مجلس منظمات حقوق الإنسان الفلسطينية  
Palestinian Human Rights Organizations Council



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Palestinian human rights organisations are following, with concern, the rapidly unfolding developments in the Palestinian Judicial Authority, coinciding with additional serious challenges facing the Palestinian people. In addition to the so-called “Deal of the Century”, the Israeli occupying authorities continue to advance and entrench their annexation, emboldened and supported by the United States, in flagrant violation of international human rights and humanitarian law. Such times require the urgent restoration of the Palestinian political system and the consolidation of public authorities and institutions, most notably the Judicial Authority, based on competence, impartiality, and transparency, to strengthen the separation of powers and rule of law, as a basis of good governance, and to reinforce Palestinian institutions in the face of imminent challenges.

Since 2007, the internal Palestinian political divide has increased challenges and risks to the political system. The inaction, and later dissolution, of the Palestinian Legislative Council (PLC) have further exacerbated the situation. This is evidenced in the Executive Authority exercising the law-making power, promulgating laws by decrees as “exceptional legislations”, in contravention to the requirements set forth by Article 43 of the Palestinian Basic Law,

which restricts it to cases of necessity that cannot be delayed, and largely without community and political participation. In the Gaza Strip, the PLC's Reform and Change Bloc continues to convene PLC sessions and pass regulations contrary to the Basic Law and PLC Standing Orders. Consequently, the abuse of powers has negatively affected public rights and freedoms, which has undermined all that remains of the political system and allowed for normalizing the state of internal political divide under various pretexts.

The Judicial Authority has not been immune to the consequences of the internal Palestinian political divide. Instead of serving as a single body that contributes to the unity of the Palestinian people, the judicial system has itself become part of the internal political divide that needs to be consolidated. Two judicial councils are now in place, one in the West Bank and another in the Gaza Strip. The same is true for the Public Prosecution, with two Attorney Generals operating there. As such, the Judicial Authority has been drawn into political division and rivalries, providing a key avenue and additional tools to further entrench the split and tighten the grip on all authorities.

For 13 years, attempts to achieve national reconciliation and end the internal Palestinian political divide have been at a standstill, allowing for an undemocratic environment to prevail across all components of the Palestinian political system. Legislative and presidential elections have not been held, which are long overdue as of 2010, eroding the legitimacy of all authorities due to the absence of democratic practices. This has led to the executive, legislative, and judicial powers to operate contrary to the Palestinian Basic Law. As a result, an entire generation has been deprived of their right to political participation and access to decision-making circles. Meanwhile, a set of interests have been allocated to certain groups, who perceive the end to the political division as a threat to their own.

The structure of the Palestinian political system viewed that the Palestinian High Court is capable of delivering the tasks and powers of a Supreme Constitutional Court (SCC). Under such capacity, the SCC has convened and rendered judgements for over 15 years, without indications of a pressing necessity requiring the issuance of a declaration to establish a Supreme Constitutional Court. The formation of the current SCC has been dominated by political considerations, whereas its decisions have provoked widespread controversy across Palestinian society, necessitating that its law and formation be reconsidered.

Overtime, in the absence of prospects for national reconciliation, the judicial system has continued to decline and exacerbate. The Executive branch's interference in the judiciary is key to the absence of judicial independence and a violation to the principle of the rule of law. For example, the appointment of Chairs of the High Judicial Council (HJC) contravenes the provisions of the Judicial Authority Law No. 1 of 2002. In addition, requesting HJC Chairs to sign a resignation letter before they are appointed seriously breaches the principles of judicial independence and impartiality. This has resulted in increased interference in judicial affairs, with ramifications on the internal state of the judiciary, and creating a split within the Judicial Authority and judges. This has adversely impacted the image and integrity of the judiciary and undermined public confidence in it, besides the negative and serious effects on rights and freedoms, as well as the individual rights of litigants.

The Executive branch's interference in the judiciary has included the establishment of the Presidential Committee for the Development of the Justice Sector, and later the dissolution of the permanent HJC. It also included the formation of a Transitional HJC, the forced transfer of several judges to retirement against their will, and the secondment of judges to non-judicial government jobs while preserving their judicial capacity and privileges, contrary to customary secondment. These measures have not achieved an independent and effective Palestinian judicial system, which would provide prompt, efficient, and impartial justice to people, based on financial, operational and administrative independence. This would restore respect for, and public confidence in, the judiciary, while allowing it to contribute to Palestinian perseverance, as a main pillar of the Palestinian political system.

The Judicial Authority Law No. 1 of 2002 has never posed a challenge to the development of the Palestinian judicial system. Instead, the interference in judicial affairs, the surpassing of the Judicial Authority Law, and the absence of a political will to prevent such interference are all key factors for the declining judicial performance and low public confidence in the judiciary. To this end, the provisions of the Judicial Authority Law should be duly respected and upheld.

An independent, impartial, and fair judicial system requires competent judges, with relevant experience, professionalism, and good conduct. It also requires effective oversight tools, grounded in law, adopting principles of equality and non-discrimination, while ensuring accountability and fair trial - based on the respect for human rights, equitable law enforcement, and combating corruption. Transparent and professional evaluation and accountability should be applied to promote equal opportunities and fair competition at both judicial and administrative levels. This will further necessitate the provision of all means to guarantee a decent living standard for judges, in a way that maintains their eminence thus the integrity of the judicial system.

Having acceded to international human rights conventions, the State of Palestine is obliged to enhance institutional performance in line with the standards of judicial independence and impartiality, particularly those provided by the Basic Principles on the Independence of the Judiciary (adopted by the UN General Assembly in 1985) and the International Covenant on Civil and Political Rights. Compliance with these norms should reinforce the international status of Palestine, and reinforce the political leadership's efforts and calls on the international community and UN Security Council to recognise Palestine as a full member state of the United Nations.

Considering the consequences of recent developments at the judiciary level and the negative impact of continued interference in judicial affairs on rights and freedoms, the undersigned human rights organisations emphasise the following demands:

1. Apply the Judicial Authority Law No. 1 of 2002 in good faith, instead of amending its provisions, and until such time national elections are held and an elected parliament is established.
2. Restore the permanent High Judicial Council expeditiously without delay, in line with the Judicial Authority Law No. 1 of 2002, while ensuring non-interference in judicial affairs.
3. Launch consultations by the permanent High Judicial Council with all official and non-

official bodies to present its vision, reflected in a plan with a clearly defined timeframe, to promote and advance the Palestinian judiciary.

4. Revisit the formation and law of the Supreme Constitutional Court, ensuring its independence, impartiality, and non-politicisation.
5. Take serious steps to restore democratic life, foremost by putting an end to the internal Palestinian political divide and calling for legislative and presidential elections as soon as practicable. These will ensure the right of all people to participate and engage in national decision-making processes and strengthen institutional performance, rights, freedoms and the rule of law.

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### **Signatories**

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|---|--|----|---|
| 1 | Palestinian Center for Human Rights  | 8  | Coalition for Accountability and Integrity (AMAN)                                     |
| 2 | Al-Haq   | 9  | Civil Commission for the independence of the Judiciary and the Rule of Law (ISTIQLAL) |
| 2 | Mezan Center for Human Rights  | 10 | Jerusalem Legal Aid and Human Rights Center   |
| 3 | Palestinian Center for the Independence of the Judiciary and the Legal Profession (MUSAWA) | 11 | Hurryyat - Centre for Defense of Liberties and Civil Rights                           |
| 4 | Addameer Prisoner Support and Human Rights Association                                     | 12 | Aldameer Association for Human Rights   |
| 5 | Palestinian Working Women Society for Development  | 13 | Ramallah Center for Human Rights Studies  |
| 6 | Human Rights and Democracy Media Center (SHAMS)  | 14 | Center for Women's Studies  |
| 7 | Defence for Children International - Palestine Section                                     | 15 | Palestinian Initiative for the Promotion of Global Dialogue and Democracy - MIFTAH    |

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