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# **MAPPING STUDY**

## **Legal Aid Services Provided by the Palestinian Authority**

**2011**





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## **AUTHOR**

Diana Buttu

## **EDITOR**

Sara Bailey

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# Acronyms

Addameer	Addameer Prisoners Support and Human Rights Association
AGO	Attorney-General's Office
Hamoked	Hamoked - Centre for the Defence of the Individual
HJC	High Judicial Council
IBA	Israel Bar Association
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICHR	Independent Commission for Human Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICSECR	International Covenant on Social, Economic and Cultural Rights
IT	Information Technology
JD	Jordanian Dinar
JLAC	Jerusalem Legal Aid and Human Rights Centre
MOJ	Ministry of Justice
NGO	Non-Governmental Organization
NIS	New Israeli Shekel
NRC	Norwegian Refugee Council
OCHA	Office for the Coordination of Humanitarian Affairs
oPt	occupied Palestinian territory
PAPP	Programme of Assistance to the Palestinian People (UNDP)
PBA	Palestinian Bar Association
PCATI	Israeli Committee Against Torture in Israel
PCBS	Palestinian Central Bureau of Statistics
PLC	Palestinian Legislative Council
PLO	Palestine Liberation Organization
PA	Palestinian Authority
Prisoners' Club	Palestinian Prisoners' Club
St. Yves	Society of St. Yves - Catholic Centre for Human Rights
UN	United Nations
UNDP	United Nations Development Programme
WCLAC	Women's Centre for Legal Aid and Counselling

# Executive Summary

This study maps legal aid services provided by the Palestinian Authority (hereinafter 'PA'). It details the legal areas in which assistance is provided and the methods which are used to deliver legal assistance. The author consulted a range of sources in order to obtain a comprehensive picture of current legal aid coverage as well as an overview of legal assistance initiatives launched and implemented prior to the establishment of the PA in 1994.

In the main, the legal aid initiatives of the PA came about in response to the demands of the second Palestinian *Intifada* (uprising), during which thousands of Palestinians were arrested and detained, and the ongoing land confiscations, home demolitions and evictions that are carried-out in the context of Israel's construction and expansion of illegal settlements in the West Bank, as well as the construction of the Wall. Several Palestinian ministries and other institutions provide legal assistance, but there is a lack of coordination and little oversight is provided by the central government, for instance through the Ministry of Justice. Instead, the assistance provided is largely insular: each ministry or institution oversees its own operations, and works in the absence of a PA-wide strategy.

With respect to the Israeli legal system, the PA has confined its legal aid provision to cases involving arbitrary detention; and for cases involving home demolitions, evictions, and land seizures. These are litigated in both the military tribunals and the Israeli civil courts.

## Palestinian Detainees

Legal assistance is widely available for Palestinian prisoners and detainees from two main PA-supported sources: the Palestinian Prisoners' Club (hereinafter 'Prisoners' Club') and the Ministry of Detainees and Ex-Detainees. The Legal Unit of the Prisoners' Club contracts 29 private lawyers on annual contracts. These lawyers are paid a monthly stipend; the Ministry of Detainees and Ex-Detainees contracts 38 lawyers in a similar manner. According to the PA, 980 cases were handled in 2010.

The lawyers are required to provide a complete range of services to detainees that include: serving as duty counsel; ensuring that the detainee is not tortured and receives adequate medical care; representing the detainee in court; and plea bargaining, if necessary. These services are provided unless the detainee elects to employ a different lawyer.

Although the services provided are wide-ranging in scope, they are not without criticism. The interviewees were highly critical of the lawyers' inability and/or unwillingness to secure family visits to the prisons - private lawyers must be contracted for this purpose. The interviewees were also critical of the high costs associated with accessing alternative legal services which force many detainees to use the services of PA-contracted lawyers, even if they would prefer to hire private counsel. In this regard, some interviewees noted that they felt that their detained family member was not receiving specialised or individualised services due to the high caseload of the contracted lawyers. Finally, the interviewees were highly critical of the policy of entering into plea bargaining arrangements with the Israeli authorities.

## Land Cases in West Bank

The Wall and Settlements Unit was established in January 2004 and sits within the Prime Minister's Office. The unit contracts six private lawyers who work throughout the West Bank (excluding East Jerusalem). Their work is overseen by a coordinator and supported by a team of six fieldworkers, one in each governorate. The lawyers are contracted to provide assistance on an unlimited number of cases; the current caseload of the unit is around 1,100.

The lawyers are required to abide by 'red lines' established by the unit. These prohibit the lawyers from: (i) reaching agreements with the Israeli authorities to (partially) demolish property; (ii) agreeing to Israel's drawing of settlement boundaries; (iii) accepting falsified documents as a basis for adjudication; and (iv) directly or indirectly accepting the Wall's route.

The unit requires the lawyers to provide regular updates on its cases and to confer with the Wall and Settlements Unit on the general legal direction. The lawyers are contracted on an annual basis.

All persons requiring assistance for these issues, excluding actions taking place in East Jerusalem, are eligible to receive legal assistance. The unit handles (either in-house or through outsourcing to NGOs) approximately 90 percent of all cases involving land confiscations, evictions and home demolitions in the West Bank. The remaining 10 percent of cases are handled directly by private lawyers and other NGOs.

In addition to legal services, the PA pays for land registration fees, fees to appeal decisions, and surveys.

Although the services provided by the lawyers contracted by the Wall and Settlements Unit are generally viewed positively, the main criticism centres on the lack of quality control and oversight over the work of the lawyers. Although the lawyers are paid very high fees (an estimated NIS 25,000 per month), the competency of the lawyers is generally perceived to be inadequate. Some interviewees said that lawyers have poor communication skills and at times take decisions without consulting the communities affected, particularly Bedouin communities. In addition, there is a perception that there are no clear criteria for choosing lawyers, and that lawyers with little experience are often being contracted instead of those with more experience.

### Home Demolitions, Evictions and Land Confiscation Cases in East Jerusalem

Through the Orient House, the Palestine Liberation Organization (hereinafter 'PLO') used to provide legal assistance to Palestinians facing home demolitions, residency revocation and evictions. It served as a clearing house for assistance where Palestinians could bring their legal claims and be directed to either private lawyers or to NGOs such as the Jerusalem Legal Aid and Human Rights Centre (hereinafter 'JLAC') or St. Yves. With the establishment of the PA, the situation remained largely the same as the PA is still prohibited from operating in East Jerusalem. In May 2001, Mr. Faisal Hussein, who led the Orient House, passed away and three months later the Israeli authorities closed it. The closure of Palestinian institutions such as Orient House is ongoing. This has led to a political and institutional vacuum that has also had a severe impact on the provision of legal services for Palestinians living in East Jerusalem.

Historically, several mechanisms and entities have provided legal assistance to Palestinians living in East Jerusalem subject to Israeli threats to land and property. These were consolidated into a new unit in 2011, known as the 'Legal Affairs Unit' under the auspices of the Palestinian Prime Minister. Legal assistance is largely confined to protecting homes from demolition and preventing the eviction of Palestinians from their homes.

It is available for virtually all Palestinians who apply for it, although applicants are normally required to pay a nominal sum (usually NIS 500 to 1,000 per case) in order to ensure 'buy-in' and the client's participation in the case. Assistance is only denied when the applicant is a large land-owner or contractor and can afford to pay for private lawyers.

Legal assistance is generally provided for home demolitions and evictions, while cases involving residency revocation and insurance matters are referred to NGOs that work directly with the Legal Affairs Unit. Once Eligibility has been determined by a committee consisting of a representative of the Governorate, the President's Office, the Ministry of Finance and the Prime Minister's Office, cases are then forwarded to one of the lawyers contracted to provide services.

Since its establishment in the President's Office, the Jerusalem Unit has employed private lawyers to provide services, with a committee of several individuals reviewing each case. An estimated 20 files are referred every month to each of the three contracted lawyers.

Much criticism is directed at the handling of East Jerusalem cases, including from NGOs and the contracted lawyers themselves. In general, stakeholders noted that there is a lack of an overarching strategy in addressing East Jerusalem cases. Other stakeholders suggested that the various actors continue to 'compete' with one another. The strongest criticisms came from some of the private lawyers contracted to work with the Jerusalem Unit. According to one lawyer interviewed, "There is no oversight, no strategy and no review." He also explained that the lawyers have not been paid since 2009 and yet new cases continue to be sent to them and existing cases continue to require follow-up.



## Legal Assistance for Cases before Palestinian Courts

The right to legal counsel is contained in several Palestinian laws, including Article 61 of the Civil and Commercial Procedure Law (2001), and Article 14 of the amended Basic Law, which enshrines the concept of innocence until proven guilty and guarantees the right to legal defence.

Article 244 of the Penal Code Procedure Law No. 3 (2001) stipulates that in the case of felonies the Court shall appoint legal representation to represent an accused individual, if the accused is unable to secure his/her own counsel.

In addition, the Law of the Legal Profession No. 3 (1999) requires the Palestinian Bar Association (hereinafter 'PBA') to provide legal aid for those who cannot afford it. According to the PBA, in situations involving felonies where legal assistance is required, the defendant is generally required to indicate before a judge his/her inability to pay legal fees. After noting the matter on the record, the Court forwards requests for legal assistance to the PBA where the Chairman of the Bar appoints a lawyer for the accused in order to serve as his/her counsel of record based on pre-defined criteria. In practice, however, few requests are made for legal assistance, despite the fact that many Palestinians live below the poverty line and legal fees are generally high for criminal cases.

There were a total of 80 cases for the years 2009 and 2010, with JD 20,458 (US\$ 28,740) in legal fees dispensed by the Palestinian courts to cover the costs. This amounts to only a fraction of the total number of felony cases in the West Bank; there were 23,357 criminal cases in 2009 and 15,422 cases in 2010. The low number of supported cases must be viewed in light of the prevailing poverty rates in the West Bank<sup>1</sup>. Based on these figures, one can surmise that there may be a number of reasons for the low number of requests including: (i) a lack of awareness by defendants of the availability of legal assistance; (ii) a lack of confidence in court-appointed lawyers; and (iii) social stigma surrounding requesting assistance.

Interviewees criticised the current system for the provision of legal assistance; largely on the basis of the low fees paid to lawyers assigned a case by the PBA or the courts. Most lawyers are reluctant to take on court-assigned cases because the fee schedule provided is approximately one-tenth to one one-hundredth of the fee that a lawyer normally charges. As a result, many lawyers often 'hand over' these cases to junior lawyers in their firms, while the senior lawyer only provides basic oversight.

## Assistance Provided by the Independent Commission for Human Rights

The Independent Commission for Human Rights (hereinafter 'ICHR')<sup>2</sup> provides legal assistance through two staff lawyers to Palestinians seeking redress from government action and specifically in the following cases: cases of human rights violations; complaints submitted by citizens related to abuse of power; and generally integrating human rights into Palestinian legislation and practice.

The ICHR does not provide assistance for: (i) complaints regarding conflicts between individuals or private institutions; (ii) cases already filed in courts or other bodies of arbitration; (iii) complaints related to obtaining humanitarian aid; or (iv) complaints regarding Israeli violations of Palestinians' human rights. Legal assistance is provided following the receipt of a complaint by a complainant or if the ICHR determines, following its field research, that there is a human rights violation. The majority of the complaints received are handled outside of the formal court system, by lobbying government officials, including the President and Prime Minister.

<sup>1</sup> According to the Palestinian Central Bureau of Statistics (PCBS), in 2009 and 2010 the poverty rates in the West Bank were 19.4 percent and 18.3 percent respectively.

<sup>2</sup> A semi-governmental institution that receives the majority of its funds from international development actors.

# Conclusions and Recommendations

PA-provided legal assistance is largely *ad hoc* in nature and focuses on a few legal areas, namely: (i) detainees in Israeli prisons; (ii) land confiscations, evictions and home demolitions carried out by Israeli authorities; (iii) felony cases for crimes committed in the areas under the PA's authority; and (iv) human rights violation claims against the PA.

The vast majority of support is provided to support Palestinians who come into contact with the Israeli legal system. The support provided generally follows a similar pattern wherein private lawyers are contracted by the PA to provide legal assistance for an unspecified number of cases. The main criticism surrounding such support is the lack of legal and strategic oversight. Each ministry or institution tends to operate in isolation, thereby creating the perception that the services provided are of a poor quality and that private lawyers need to be paid additional sums in order to ensure that a case is prioritized. The lack of strategic oversight may have severe negative consequences, particularly with regard to the practice of plea bargaining (see below).

## General Recommendations:

Reassess the model of legal aid provision with a view to carrying out a feasibility study for the creation of one centralised entity which provides a wide array of legal services, rather than the limited ones provided at current.

Develop a legal framework designed to coordinate legal assistance programmes at a national level and create a legal aid coordination body in order to: (a) ensure that the PA provides both legal and strategic oversight of cases on a comprehensive basis; and; (b) provide a means for redress in order to strengthen the public trust in lawyers and to effectively ensure that any complaints are properly addressed.

## Cases in Israeli Courts and Tribunals

- Establish clear criteria for supporting cases. Given the extensive involvement of civil society, PA services should seek to complement the legal assistance already provided by NGOs.
- Reassess the PA's reliance on using private lawyers rather than contracting in-house lawyers to work exclusively on the PA's caseload. In other words, assess the feasibility of establishing a legal assistance clinic in which lawyers work solely for the clinic with the funding for the clinic provided by the PA.
- Urgently create means to pay PA-contracted lawyers. If the PA indeed elects to continue to provide legal assistance, a regular budget must be established;
- Establish a clear channel of oversight by the PA of legal assistance provided by PA-contracted lawyers. Without such oversight, it is impossible to control the political and legal avenues pursued by lawyers in each case;
- Reassess the model of providing legal support, particularly in light of the fact that many lawyers contracted by the PA are also contracted by NGOs;

## Cases in Palestinian Courts

- Develop a national plan for legal aid provision through an inclusive and participatory process;
- Expand legal assistance to include vulnerable groups, such as women appearing before family courts;
- Increase the fee payment schedule for lawyers working on court-appointed cases;
- Expand the criminal legal aid programmes to include support for the primary stages of cases such as during investigation and questioning, following arrest, and at the trial stage in all crimes, irrespective of the potential length of the criminal sentence;
- Establish a system of volunteerism wherein lawyers donate a certain number of hours annually to *pro bono* work;
- Provide greater public awareness and accessibility to legal assistance measures, particularly for criminal cases; and
- Alternatively, carry out a feasibility study for the creation of a legal clinic or legal programme that can provide assistance for Palestinians seeking redress in Palestinian courts.

# 1. Introduction

## 1.1. Overview

This study maps legal aid services provided by the PA. It examines the various legal areas in which assistance is provided, and assesses the methods employed in the provision of legal assistance. The author consulted a number of different sources in order to obtain a comprehensive picture of the legal assistance that is currently provided, as well as the legal assistance initiatives that were implemented prior to the establishment of the PA in 1994. The author interviewed ministers and other representatives of the PA, lawyers who provide legal assistance, civil society representatives, families of Palestinian detainees, and members of different political factions. Please see Annex A for a list of interviewees. In addition, a validation workshop was held in order to obtain feedback from diverse stakeholders; their comments were incorporated into the study.

As explained in further detail below, various legal aid initiatives were launched in response to the demands of the second Palestinian *Intifada* (uprising), during which thousands of Palestinians were arrested and detained, and the ongoing land confiscations, home demolitions and evictions that are carried-out in the context of Israel's construction and expansion of illegal settlements in the West Bank, as well as the construction of the Wall. Legal aid initiatives have been, therefore, reactive rather than proactive; in the main, they have been implemented in a haphazard manner and in the absence of a clear overarching strategy.

Several Palestinian ministries or units provide legal assistance, but there is little coordination or oversight, for instance through the Ministry of Justice. Furthermore, there is no government-wide strategy for legal aid provision.

## 1.2. The Legal Assistance Context

The PA, which was established in 1994 following the signing of the Oslo Agreements, was intended to be a temporary institution with its mandate coming to an end in 1999. It was presumed that it would be replaced by an independent Palestinian government following statehood. The PA is currently in the process of making the transition from an interim, temporary body to a more permanent one through a comprehensive institution-building programme. The programme entitled *Ending the Occupation: Establishing the State*, launched in August 2009, aimed to create the institutions that are deemed necessary for a state within a two year period. Several of these institutions relate to the rule of law.<sup>3</sup>

While the state-building efforts of the PA have been lauded by many, it is important to note that the creation of institutions - particularly those relating to the provision of legal aid - is not new. As early as 1998, with the stalling and eventual failure of the negotiations with Israel, the PA's temporary presence soon became more permanent in nature; various ministries that had not been included in the Oslo Agreements were created and existing ones were reformed. The creation of these new ministries is central to an examination of PA-provided legal assistance and will be discussed in more detail below.

Prior to the establishment of the PA, the availability of legal assistance was limited. In the main, it was provided by the various Palestinian political factions, NGOs and private lawyers.<sup>4</sup> Legal assistance, including advice and representation, was provided by these actors to address a broad range of human rights violations, including arbitrary arrest and detention, torture, land confiscations, home demolitions, and the denial of freedom of movement. NGOs and private lawyers were employed to challenge the government of Israel's actions, and to provide representation before the Israeli military courts and the Israeli Supreme Court. It is important to note that the provision of representation in front of the Israeli courts was criticised by many individuals, organizations and political factions; these critics feared legitimising Israeli legal decision-making over Palestinians. This debate is ongoing and according to two interviewees, may explain why PA-provided legal assistance is decentralised and delivered by private lawyers, rather than centralised and delivered through legal aid clinics overseen directly by the PA.

NGO providers of legal assistance include: JLAC (established in 1974); Al-Haq (established in 1979); and the Women's Center for Legal Aid and Counselling (established in 1991), which provides support for women before the family law courts. Several other NGOs also provide legal aid services and the PA's legal assistance programme merely serves as one of several service providers; in some cases, the PA actually refers cases to these NGOs.

3 Programme of the Thirteenth Government - *Ending the Occupation, Establishing the State* (2009).

4 Hajjar, Lisa, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza*, (University of California Press), 2005.

At its inception, it was not envisioned that the PA would provide any legal assistance; PA-provided legal assistance came about as a result of increased demand by Palestinians who were forced to deal with Israel's civil and military legal systems. The demand for services increased with the onset of the second *Intifada* (uprising) during which Israel scaled-up arbitrary arrests and detentions, home demolitions, and other human rights violations. However, while the scale of the legal assistance provided increased, it remained rather *ad hoc* and limited in nature.

In addition, notable gaps remain. For example, assistance is not provided to certain vulnerable groups such as women (in the case of family disputes) or youth involved in crime, both of which involve the provision of assistance in Palestinian courts. PA-provided legal aid programmes remain largely focused on cases in Israeli courts and tribunals.

## 2. Legal Assistance in Palestinian, Israeli and International Law

The rights to legal assistance and representation are increasingly becoming enshrined in domestic legal systems across the world. International human rights law also establishes these rights. For example, Article 14 of the International Covenant on Civil and Political Rights provides that:

"(...) everyone shall be entitled to the following minimum guarantees, in full equality: (...) (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. (...) (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him, in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it."<sup>5</sup>

The PA has enacted similar provisions that establish the right of Palestinians to legal assistance and representation. For instance, Article 9 of the Palestinian Basic Law (as amended 2003) states:

"All Palestinians are equal before law and judiciary, without discrimination because of race, sex, colour, religion, political opinion or disability"<sup>6</sup>

Article 14 of the Palestinian Basic Law enshrines the concept of innocence until proven guilty and guarantees the right to legal defence.<sup>7</sup> The right to legal counsel is also contained in several other Palestinian laws including Article 61 of the Civil and Commercial Procedure Law (2001), which stipulates that without a lawyer's presence a case will not be accepted for initial, appeal, or cessation court proceedings. Hence, the PA has in fact a duty to provide citizens who cannot afford representation with free legal assistance in order to ensure equal access to the justice system.

There are no provisions in Palestinian law, however, that relate to the provision of legal assistance for civil lawsuits or petitions, including those filed against the PA. In certain cases which involve discrimination and the abuse of human rights by the PA itself, assistance is available from the ICHR (see below).

Palestinian law is silent with respect to the provision of assistance for Palestinians seeking redress in Israeli courts and tribunals, even though a majority of PA-provided legal assistance supports cases before the Israeli legal system rather than the Palestinian one.<sup>8</sup>

In the Israeli court system, the Office of the Public Defender provides legal assistance for accused persons appearing before Israeli civilian courts. However, there is no public defender system for defendants charged in the military courts. The military defender system only provides legal defence for soldiers charged with military offenses. Although some of the suspects and defendants are unrepresented, military judges only appoint private attorneys to serve as defence counsel in a small number of cases.<sup>9</sup>

5 International Covenant on Civil and Political Rights, (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49). Similar provisions are found in the UN Standard Minimum Rules for the Treatment of Prisoners, the European Convention on Human Rights, the European Charter of Fundamental Rights, the American Convention on Human Rights, the Statute of the International Criminal Court, and the various international criminal tribunals.

6 Palestinian Basic Law (amended in 2003).

7 Ibid.

8 Several requests for information regarding budgetary allocations for legal assistance were made to the PA's Ministry of Finance, Prime Minister's Office and relevant ministries. None of the requests were answered. Accordingly, accurate facts and figures regarding the number of cases supported and the amount of spending on such cases are estimates.

9 Kenneth Mann, "Creating a Public Defender System in the Shadow of the Israeli-Palestinian Conflict," *New York Law School Law Review* 48 (2003).

## 3. Legal Assistance for Cases in the Israeli Legal Systems

### 3.1. Overview

Palestinians often seek legal assistance in order to challenge or address violations of human rights perpetrated by Israeli actors. The main areas in which legal assistance is sought are as follows:

- Cases involving arbitrary detention or arrest, and other matters which are generally brought before an Israeli military tribunal or prosecuted before an Israeli criminal court;
- Home demolitions, home evictions, 'stop work' orders, land seizures, permit issues and other matters associated with access or land rights;
- The revocation of residency in the case of East Jerusalem residents;
- Family reunification for families divided between the West Bank and the Gaza Strip;
- Visitor permits and access to land permits; and
- Freedom of movement.

Lawyers working in human rights NGOs also provide legal assistance for many of these types of cases.<sup>10</sup> The table below, while not exhaustive, details some of the free or subsidised legal assistance services provided by NGOs in the oPt; it also specifies whether legal assistance in particular areas is also provided by the PA.

**Table 1: Legal Assistance Provided by the Palestinian Authority and Non-Governmental Organizations for Cases Involving Israeli Courts and Tribunals<sup>11</sup>**

Legal Issue	PA Assistance Available	NGO Assistance Available
<b>Detainees</b>		
Prison visits for family members		✓
Denial of access to attorney	✓	✓
Condition of detention centres	✓	✓
Torture	✓	✓
Administrative detention/unlawful combatants' law		✓
Deportation/forcible transfer		✓
Land confiscation (West Bank including East Jerusalem)	✓	✓
Home demolitions/damage to property	✓	✓
Planning in Area C	✓	✓
Planning in East Jerusalem		✓

<sup>10</sup> Additionally, the Israeli public defender has, of late, stepped in to represent Palestinians from Gaza charged with a variety of offenses owing to the fact that, following Israel's "disengagement" from the Gaza Strip in 2005, Israel no longer views the Gaza Strip as "occupied territory" and hence all cases involving defendants from Gaza are heard in Israeli criminal courts and not Israeli military tribunals. As such the Israeli public defender is often called in to assist with such cases before cases are then transferred to the private lawyers or other legal aid services.

<sup>11</sup> Information obtained by reviewing the annual reports: HaMoked, "Hamoked Activity Report," (1994); "Hamoked Activity Report," (1995); "Hamoked Activity Report," (1999).

Legal Issue	PA Assistance Available	NGO Assistance Available
<b>Freedom of movement</b>		
Entry to Israel from West Bank or Gaza Strip		✓
Entry to Gaza/West Bank		✓
Movement within West Bank		✓
Travel bans (for travel outside of oPt)		✓
Access permits for land behind the wall		✓
Change of residency address		✓
<b>East Jerusalem (excluding land issues)</b>		
Permits for divided families		✓
Family reunification		✓
Revocation of residency		✓
Registration of children/revocation of benefits		✓
Wrongful death/injury/human shields		✓
<b>Labour standards</b>		
Non-payment of wages		✓
Poor working standards		✓
Right to collectively bargain		✓
Prohibition on child labour		✓
<b>Residency in the West Bank and Gaza Strip</b>		
Family reunification/travel to West Bank/Gaza Strip from abroad		✓
Removal from registry/freezing of residency		✓
Registration of children		✓

As Table 1 illustrates, the PA confines its legal assistance to:

- Cases involving arbitrary detention in criminal courts and military tribunals; and
- Cases involving land (including land seizure), home demolitions and evictions in both the military tribunals and the civil courts.

Each of these areas will be discussed below.

While the PA's Ministry of Civil Affairs submits requests for permits and changes to the population registry, it does not provide individual legal assistance in the event of a denial of a permit or change in the applicant's registration. In these cases, Palestinians often resort to contracting private lawyers or seek support from NGOs that provide legal assistance for redress.

## 3.2. Prisoners and Detainees in the Israeli Civilian and Military Courts

### 3.2.1. Legal Environment and Context

According to Addameer - Prisoner Support and Human Rights Association, a West Bank-based NGO (hereinafter 'Addameer') more than 650,000 Palestinians have been detained by Israel since 1967. This figure represents nearly one quarter of the entire Palestinian population.<sup>12</sup> As of January 2011, there are approximately 5,640 Palestinians held in Israeli prisons and detention centres. Of these, 37 are women, 213 are minors (of whom 30 are between the ages of 12 and 15) and 187 are held in administrative detention without charge or trial.<sup>13</sup> The vast majority of cases - an estimated 98 percent - are settled by plea bargains.<sup>14</sup>

Palestinians in the occupied West Bank (excluding East Jerusalem) who are accused of 'threatening the security of Israel' are tried in military tribunals.<sup>15</sup> There are two military tribunals, one in Ofer and one in Salem; these are situated in Israeli army bases in the West Bank. They were usually represented either by Palestinian lawyers (members of the Palestinian Bar) who had obtained Israeli permission to enter the military base or by lawyers holding Israeli citizenship (members of the Israeli Bar).<sup>16</sup> Following Israel's 'disengagement' from the Gaza Strip, the Erez military court was shut down. Today, Palestinians with Gaza residency who are accused of 'security' offenses are tried in Israeli civil courts but their legal protections are restricted.<sup>17</sup> As Israel prohibits Palestinian lawyers from representing Palestinians in Israeli courts, only members of the Israeli Bar are able to work on such cases.

#### Procedures following Arrest

Subsequent to an arrest, Palestinian prisoners are transferred to facilities inside Israel, in Israeli settlements or in Israeli army bases. There are three types of facilities: detention centres, interrogation centres and prisons. There are five official detention centres, all of which are located near Israeli settlements or army bases; five interrogation centres, all of which are located in Israel (including one secret detention facility); and twenty prisons, all of which are located in Israel.<sup>18</sup>

After an initial period of detention, detainees from the West Bank are usually transferred to interrogation centres inside Israel where lawyers with West Bank residency are effectively barred from visiting them. Detainees can be held without judicial order for eight days; and detentions can be extended for up to 188 days.<sup>19</sup> Detainees may be barred from access to a lawyer for up to 90 days. According to the Public Committee Against Torture in Israel (hereinafter 'PCATI') and the Palestinian Prisoners' Club, it has become routine practice to prohibit access to an attorney; in the years 2005 to 2007, an estimated 70-90 percent of prisoners were held incommunicado.<sup>20</sup>

After being interrogated, a detainee may be released, formally charged or placed in administrative detention. If the detainee is charged, s/he is transferred to an Israeli prison to await trial; and if the detainee is placed in administrative detention, the detainee is transferred to an Israeli prison for the period of detention.<sup>21</sup> Administrative detention is a procedure that allows the

12 Addameer, "Defending Palestinian Prisoners: A Report on the Status of Defense Lawyers in Israeli Military Courts," (April 2008).

13 Figures taken from Israel Prison Service: [www.ips.gov.il](http://www.ips.gov.il), last checked April 2011.

14 According to Addameer, in 2005, out of 9,986 cases, 3,851 were classified as "serious" with 3,693 agreeing to plea bargains. The remaining 6,126 cases were all settled by plea bargains. Of the 167 that were not settled, 15 individuals were acquitted of all charges. Addameer, "Defending Palestinian Prisoners: A Report on the Status of Defense Lawyers in Israeli Military Courts." at 8.

15 Mann, "Creating a Public Defender System in the Shadow of the Israeli-Palestinian Conflict."

16 According to Addameer, from 2002 to 2003 only two Palestinian lawyers obtained such permission from Israeli authorities. Supra note, Addameer, "Defending Palestinian Prisoners: A Report on the Status of Defense Lawyers in Israeli Military Courts.,"; *ibid*.

17 Palestinians arrested from Gaza are usually held in 'Askalan/Shikma prison and tried or given detention hearings at the Bir al-Sab'e/Beersheba courthouse (both facilities are inside Israel).

18 Criminal prisoners are held in separate living quarters from those charged with "security"/political offences.

19 See Israeli Military Order 378 which provides that a military judge may order that a detention be extended for 30 days after the first eight days. Such detention may be extended an additional 60 days and then again for an additional 90 days of the military prosecutor obtains an order from a military appeals court judge.

20 PCATI, "When the Exception Becomes the Rule: Incommunicado Detention of Palestinian Security Detainees," (Public Committee Against Torture in Israel and Nadi al-Asir, November 2010).

21 Administrative detention can be extended and there is no limit to the number of times an administrative order may be renewed.

army to hold prisoners on secret evidence without charging them or allowing them to stand trial. Israeli military orders stipulate that a military commander can order a prisoner be held for up to six months without being charged. The detention can be renewed indefinitely provided that the military court holds periodic hearings to extend the detention order.<sup>22</sup>

According to Israeli military orders, the military authorities have a duty to inform the family of a detainee where the detainee is being held without delay and whenever s/he is transferred to a different facility. In practice, however, lawyers report that the military apparatus rarely follows this procedure.

### Right to Legal Counsel

According to both Israeli civil law and Israeli military orders, a detainee accused of being a security threat can be prevented from consulting an attorney. In military courts, a detainee can be held for 15 days without access to a lawyer. The 15-day period is an initial period that can be extended for up to 90 days by court order. As noted above, Palestinian lawyers from the West Bank are limited to working in Israeli military courts and cannot represent clients in Israeli civil courts or in the Israeli Supreme Court as they are not members of the Israeli Bar. However, even though they are permitted to work in Israeli military courts, Israeli-imposed movement restrictions severely impede their ability to represent their clients as they cannot enter Israel to visit their clients in prison or in interrogation centres; lawyers from the West Bank can apply for permits to enter Israel, however, no special access is accorded to Palestinian lawyers seeking to visit their clients.

For lawyers who are members of the Israeli Bar and for the very small number of Palestinian lawyers with permits to enter Israel, there is, in general, no restriction to visiting clients in prison or in interrogation centres provided that the detainee has not been barred from accessing counsel by court order. Lawyers who wish to visit detainees must apply to enter prison and must demonstrate that s/he has a power of attorney from the prisoner's family.

### Legal Proceedings

Proceedings in Israeli civil courts and military courts are conducted in Hebrew with translation provided as required by Israeli soldiers. All of the interviewees who commented on this issue noted that the quality of the translation is poor and that naturally, this is very problematic.

### Plea Bargains

The Israeli military authorities routinely inflate charges in order to be able to 'bargain-down' the charges. According to both the Prisoners' Club and Addameer, approximately 98 percent of cases are settled by plea bargain. This issue will be further discussed below.<sup>23</sup>

As a result of the absence of procedural guarantees, the Israeli army can arrest, interrogate and imprison large numbers of Palestinians. For example, between March and October 2002, the Israeli army arrested more than 15,000 Palestinians during mass arrest campaigns carried out in the West Bank. Equally, according to the Prisoners' Club, approximately 10,000 Palestinians were either convicted, acquitted or agreed to a plea bargain in 2005 alone.<sup>24</sup>

## 3.2.2. Relevant Palestinian Institutions

Legal assistance for Palestinian prisoners and detainees is widely available from two main PA sources: the Prisoners' Club and the Ministry of Detainees and Ex-Detainees.

The Prisoners' Club was established in September 1993, two weeks after the signing of the Oslo Accords. It is registered as an NGO, but it receives financial support from the PA. According to Mr. Qaddura Fares, the head of the Prisoners' Club, it has a monthly operating budget of NIS 60,000 all of which is received from the PA.<sup>25</sup> At the time of its establishment, the Prisoners' Club had a small legal unit with only one lawyer assigned to represent Palestinian detainees and prisoners. The main role of the Prisoners' Club at that time was to provide financial assistance to prisoners and their families, and to support prisoners following their release. From 1993 to 1998, the Prisoners' Club was mainly involved in providing assistance to Palestinians

22 Israeli Military Order 1226 (1988).

23 Addameer, "Defending Palestinian Prisoners: A Report on the Status of Defense Lawyers in Israeli Military Courts."

24 *Ibid.*

25 Interview with Qaddura Fares, *head of Palestinian Prisoners' Club* (28 March 2011).



serving prison terms, for example, by ensuring the adequate provision of goods in the prison system (through the 'canteens') or by monitoring ill-treatment. At this time, the Prisoners' Club served as the sole semi-governmental body aiding Palestinian detainees.

In 1998, the role of Prisoners' Club was expanded to incorporate legal representation for Palestinians detained and imprisoned by Israeli authorities. In late 2000, it increased the number of contracted lawyers in order to meet the additional demand for legal representation resulting from Israel's increased detention of Palestinians following the start of the second *Intifada*. Today, the Prisoners' Club retains 29 lawyers who work throughout the West Bank.

Also in 1998, the Ministry of Prisoners' Affairs (now the Ministry of Detainees and Ex-Detainees) was established. This Ministry was not on the list of ministries established under the Oslo Accords; it was established at a later stage to support the provision of employment opportunities and training for ex-detainees. In the period 1998-2008, the Prisoners' Club provided legal assistance for detainees, while the Ministry focused primarily on training, education and the provision of employment opportunities for released prisoners.

This delineation of responsibilities changed in 2008. The Ministry of Detainees and Ex-Detainees established a legal unit in 2003 in order to provide legal assistance to Palestinian children, with support from international development partners. In 2008, the legal unit was expanded to provide a wide range of legal assistance and today, the Ministry retains 38 private lawyers. Their qualifications will be discussed below.

According to the Ministry's legal advisor, Mr. Jawad Amawe, the reason for its establishment was to meet the continued demand for legal assistance, a demand that could not be met by the Prisoners' Club alone. Mr. Amawe explains that due to overwhelming demand, in certain cases, legal assistance was provided in an *ad hoc* manner, with NIS 4,000 paid for each detainee for legal services. In most cases, the fees exceeded NIS 4,000, leaving the family of the detained individual to pay the remaining fees. In the case of high profile cases, the President's office waived the standard schedule fee, paying instead the full amount of legal fees with, in some cases, fees reaching more than US\$ 120,000 for a single detainee.<sup>26</sup>

### 3.2.3. Eligibility

All Palestinian detainees are eligible to receive legal assistance. According to estimates provided by the Prisoners' Club, 80 percent of Palestinian detainees use the services of the Palestinian Prisoners' Club or the Ministry of Detainees and Ex-Detainees.<sup>27</sup> Of the 20 percent who do not, most are affiliated with Hamas and employ private lawyers. The remaining detainees use the services of NGOs, especially Addameer, or contract private lawyers.

The reasons why non-PA lawyers are retained vary: some interviewees believed that retaining a private lawyer and paying additional sums of money ensures that the lawyer will better serve the client, as it is perceived that the lawyer would invest more time in the case<sup>28</sup>; while others (particularly Hamas) did not want to accept assistance from PA-financed lawyers for political reasons.<sup>29</sup>

### 3.2.4. Delivery and Coverage

The Prisoners' Club has offices throughout the West Bank including in Ramallah, Jericho, Hebron, Bethlehem, Salfit, Tubas, Qalqilya, Nablus and Jenin.<sup>30</sup> These offices provide a focal point for the families of detained individuals and inform the Prisoners' Club of arrests or detentions, particularly as the Israeli authorities do not always notify lawyers. The process of representation begins with the signing of a power of attorney form authorising the Prisoners' Club to represent the detained person. The forms are usually signed by family members and sent to one of the Prisoners' Club's various offices. By contrast, lawyers

26 Interview with Jawad Amawi, *legal advisor to Ministry of Detainees and Ex-Detainees* (22 March 2011).

27 The estimates varied among interviewees: the Ministry of Detainees estimated that more than 90% of detainees use the services of the Ministry of Detainees and Ex-Detainees and the Prisoners' Club; Qaddura Fares estimated 80%, while Sufian Abu-Zayda estimated that 70% of detainees use the combined services. Requests for detailed breakdowns have been made to the Ministry of Finance.

28 Interview with Um and Abu Nidal, conducted 13 March 2011 (family name withheld at request of family). The corollary to this is that there may be a perception among some that attorneys that are provided through legal assistance will not devote as much time or resources to a case.

29 Interview with Sufyan Abu-Zayda, *former Minister of Detainees and Ex-Detainees* (30 March 2011).

30 When the Prisoners' Club was originally established, it maintained strong links with *Husam* - a prisoner's rights organization based in the Gaza Strip. In 2007, following the Hamas takeover of the Gaza Strip, *Husam's* offices were closed but offices re-opened temporarily. In 2008/9 during Israel's attack on the Gaza Strip, aerial bombing destroyed *Husam's* main office.

contracted by the Ministry are normally assigned to the various interrogation and detention centres, and the courts; therefore, they generally obtain authorisation from the detainee on site.

Both the Prisoners' Club and the Ministry provide comprehensive legal services to prisoners detained by Israel. Palestinians are offered representation throughout the entire process of detention including: at the initial arrest stage, during interrogation, at each court appearance, and for plea bargains. More specifically, these services include the following:

#### Arrest and Detention:

- Disclosure of the whereabouts of the detainees following arrest by enquiring with the Israeli authorities;
- Visits to the detainee to: (i) ascertain the circumstances of arrest; (ii) provide information regarding the methods that may be used in order to extract confessions; and (iii) brief the detainee on his/her rights;
- Determine whether the Israeli authorities have committed any human rights violations in the detention stage and petition the Israeli Supreme Court accordingly;
- Ensure that the detainee is receiving adequate medical care and is not being subjected to torture; and
- Ensure that detainee is not held in isolation.

#### In Court:

- Representing the detainee at first instance and serving as the lawyer of record;
- Responding to indictment and representing the detainee as requested; and
- Working on case settlement, if requested, or representing the detainee through trial, if requested.

#### Post-Conviction:

- Following-up with prisoners in the post-trial stage to determine the conditions of detention, the detainees' physical and psychological health, and to provide legal services if needed;
- Ensuring that the detainees are not subjected to torture; and
- Communicating with local and international human rights organizations to ensure that continued legal services are provided if needed (for appeals) and ensuring that the prisoner's human rights are not violated.

All of the prisoners receive general visits and, in addition, the Prisoners' Club or the Ministry of Detainees and Ex-Detainees will dispatch a lawyer specifically to follow-up on a complaint subsequent to receiving notification of a prisoner receiving ill-treatment or requiring medical assistance.

### 3.2.5. Retaining Private Lawyers

The Prisoner's Club's legal unit employs three lawyers who provide the oversight and follow-up on all cases and three staff workers who liaise with the family members of detained individuals, as well as with other NGOs and the ICRC. The Ministry's legal unit also employs three lawyers with two assistants to liaise with the family members of the detainees.

The Prisoners' Club also contracts 29 private lawyers who receive monthly stipends,<sup>31</sup> based on annual contracts, to represent and follow-up on an unspecified number of cases per month. The Ministry of Detainees contracts 38 lawyers in a similar manner. According to the Ministry of Detainees, in total, the Ministry and the Prisoners' Club dealt with 980 cases in 2010.<sup>32</sup>

The lawyers are required to provide all of the services outlined above, including serving as duty counsel, unless or until the detainee chooses to employ a different lawyer. The lawyers are also required to maintain close contact with the detainee's family as well as with the Prisoners' Club or Ministry. In this regard, they are required to submit reports to the Prisoners' Club or the Ministry documenting any required action on the case subsequent to each visit, court attendance, or correspondence.

<sup>31</sup> Lawyers reportedly receive an estimated NIS 18,000 per month, but this figure could not be confirmed by the Palestinian Ministry of Finance, which failed to respond to several written requests for information.

<sup>32</sup> Fares, Qaddura, *supra* note 22.

According to Mr. Amawe, the pool of lawyers working in the field is limited. Nonetheless, the lawyers that are contracted are selected on the basis of the following criteria: experience working with detainees; knowledge of the legal system surrounding detention, interrogations, imprisonments and plea bargains; ability to speak both Hebrew and Arabic; ability to work long hours and on short notice; ability to visit Israeli interrogation centres and prisons; ability to provide continuous follow-up support, as required; a law practice with at least one other lawyer and a secretary in the office; and the ability to maintain excellent relations with the detainees' families. According to Mr. Fares, only a limited number of lawyers meet these criteria.

Owing to the combination of movement restrictions and the effective barring of West Bank lawyers from entering Israel to visit clients in prisons and in interrogation centres, coupled with language requirements in military tribunals, most of the lawyers are Palestinian lawyers with Israeli citizenship holding membership in the Israeli Bar, while a few are Palestinians with West Bank residency (who are able to go to the military tribunals in Ofer and Salem).

Lawyers are generally assigned to a geographic location, depending on the location of the attorney's office and the location of the detention centre, interrogation centre or prison.

### 3.2.6. The Evaluation of Legal Services and the Removal of Lawyers

The lawyers are contracted on an annual basis. The interviewees for this study said that the Prisoners' Club's legal unit routinely assesses the lawyers it contracts and particularly before the contract is renewed. The lawyers are assessed on the basis of their compliance with the regular reporting requirements, their ability to keep the families of detainees informed of any case updates, and their rapport with the families and the detainees. Lawyers are generally not assessed on the *substance* of a case (i.e. whether they obtained a 'fair' plea bargain) as the legal units view such matters as decisions taken by the lawyer and detainees. As such, the legal units merely serve as conduits to obtaining legal services.

Both legal units said that if they learn of some improper action on the part of the contracted lawyers - such as a request for additional funds from the family in order to prioritise their case - the contracts would be immediately terminated. The units have, in the past, immediately terminated contracts upon learning of improper action.<sup>33</sup>

### 3.2.7. Criticisms of the Legal Services Provided

The interviewees had several criticisms of the services provided.

- Family Visits

The families of the detainees interviewed for this study were highly critical of the lawyers' inability and/or unwillingness to secure prison visits for family members. While the ICRC coordinates and arranges prison visits, in the case of Israel's refusal to grant permits for such visits, families are often forced to obtain private representation in order to find out why the permit has been denied.

- High Cost to Alternatives/Perception of Lawyers

Family members were critical of the high costs associated with obtaining alternative legal services which force many detainees to use the services of the PA-contracted lawyers, even when they would prefer to contract private counsel. While the family members were not aware of the salaries that were paid to the contracted lawyers, they complained that accessing private attorneys was often prohibitive.

The families also indicated that they often felt that their detained family member was not receiving a specialized or individualized service owing to the high caseload held by the contracted lawyers. One interviewee noted, "The lawyer treated our case in the same way that he treats every potato in a sack of potatoes."

- Plea Bargaining

Many of the interviewees were highly critical of the plea bargaining policy while others defended the policy. One stated that, "If we do not plea bargain, we can cripple the Israeli legal system. The prosecutors know this and therefore our leverage in negotiating better terms is strong." Some of the detractors took a different stance, noting that the Israeli authorities often add

<sup>33</sup> Three families interviewed indicated that, while their lawyer had not requested additional funds, the common perception is that contracted lawyers routinely request additional funds in order to make their case a higher priority.

charges or inflate charges knowing that the charges will be bargained down, but effectively ensuring a long prison sentence in any case. The majority of the interviewees noted that the main problem with plea bargaining is that it criminalises political resistance to Israel's military occupation. In this regard, Mr. Sufian Abu-Zayda, the former Minister of Detainees and Ex-Detainees and a former political prisoner himself stated:

"In the '80s and early '90s we took the position that we were not going to engage in Israel's kangaroo courts or be part of the theatre that portrays Israel as 'democratic'. All factions decided to boycott the court system and not engage in bargains. All abided by this national call. Today, that national call is missing, so detainees are forced to look out for themselves."

Abu-Zayda's and others' criticisms were largely centred on the lack of a decision by the political factions and leadership, and less on the lawyers involved, but they nevertheless noted that the lawyers often fail to challenge some of the superfluous charges, or some of the absurd cases, believing instead that they will be bargained away.

Criticism was also voiced at the inclusion of the payment of fines as part of the plea bargaining process. In 2005, for example, according to Addameer the PA paid NIS 14,373,700 (US\$ 3.5 million) in fines levied against Palestinian detainees.<sup>34</sup>

## 3.3. Home Demolitions, Evictions and Land Confiscations

### 3.3.1. Overview

In 2011, Israel continued to demolish homes, other types of buildings, and other structures constructed by Palestinians in various areas of the West Bank on the basis that these buildings lacked Israeli planning licenses. Compensation is generally not offered in these cases. Properties situated 300 meters from the Wall or Israeli military installations are also subject to demolition or confiscation. In 2010, the Israeli authorities demolished 113 houses and 240 other commercial or community-use structures in Area C (which is under the full jurisdiction of the Israeli civil and military authorities). These demolitions affected 13,847 individuals, including 7,777 children. This was a significant increase from 2009 during which there were 191 demolitions affecting 572 persons including 332 children, according to the UN Office for the Coordination of Humanitarian Affairs (OCHA). Many of the demolitions were carried-out in Bedouin and herder communities in the Tubas governorate where Israeli policies largely prohibit Palestinian construction.

In East Jerusalem, home demolitions in 2010 decreased in comparison to the 2009 figures, although the Jerusalem Municipality demolished twice as many non-residential structures (54) during the year compared to 2009 (23), often affecting private family businesses. The Jerusalem Municipality demolished 24 homes that it claimed were built without municipal permits, in comparison to 57 in 2009, although seven additional home-owners demolished their own homes in 2010 after receiving a demolition notice, in order to avoid being charged by the municipality for the cost of demolition.

The PA, through a number of institutions, provides legal assistance for Palestinians facing home demolitions or land confiscations in East Jerusalem and the rest of the West Bank (Area C). Similarly to the assistance provided in the case of detainees, assistance began after the start of the second *Intifada* and following the construction of the Wall.

### 3.3.2. The Wall and Settlements Unit

#### 3.3.2.1. History

The Wall and Settlements Unit was established in January 2004 within the Prime Minister's Office. The unit contracts six private lawyers who work throughout the West Bank (excluding East Jerusalem). Their work is overseen by a coordinator and supported by a team of six fieldworkers - one in each governorate. The unit now sits within the PA's Ministry of State for Settlements.

Prior to the establishment of the Wall and Settlement's Unit, Palestinians sought legal assistance for home demolitions and land confiscations from private attorneys, NGOs or by seeking financial assistance for private lawyers by appealing directly to the President or the Prime Minister. According to Mr. Muhammad Nazzal, the head of the Wall and Settlements Unit, the provision of assistance in this manner was problematic, as the President often approved financial support without providing

34 Addameer, "Defending Palestinian Prisoners: A Report on the Status of Defense Lawyers in Israeli Military Courts." p. 8.

a fee schedule.<sup>35</sup> In some cases, the fees ran into hundreds of thousands of dollars for a single case to cover legal fees and surveyors fees.<sup>36</sup> Moreover, prior to the establishment of the unit, there was generally no oversight for the cases and few 'red lines' were drawn.<sup>37</sup>

In January 2004, with the establishment of the Wall and Settlements Unit, six lawyers were selected and the unit established an informal advisory board consisting of representatives of three West Bank-based NGOs: Al-Haq, JLAC and St. Yves. The purpose of the advisory board is to oversee cases and provide an ongoing discussion of legal strategies for the cases.

### 3.3.2.2. Eligibility

All cases, excluding those in East Jerusalem, are eligible to receive legal assistance. According to Mr. Nazzal, the unit handles approximately 90 percent of cases that involve land confiscations, evictions and home demolitions in the West Bank, with an estimated 1 percent of cases handled by private lawyers and 9 percent of cases handled by NGOs directly, without being first referred to the Wall and Settlements Unit.

In addition to legal services, the PA pays for land registration fees, fees to appeal decisions, and surveys. The lawyer pays for these additional fees upfront and is later reimbursed by the PA's Ministry of Finance. According to Mr. Nazzal, these fees can be prohibitively high, particularly where a survey is needed.<sup>38</sup>

### 3.3.2.3. Method for Receiving Assistance

The cases are generally referred to the unit in one of two ways: (i) directly from lawyers who are approached by homeowners; or (ii) through various local councils and local representatives who notify the unit of a case in their district. In both cases, a fieldworker is dispatched to the area and assigned with obtaining information on the case. This information is relayed back to the unit which passes the information onto the assigned lawyer.

According to Mr. Nazzal, most of the cases involving home demolitions are reassigned to other institutions, such as JLAC and St. Yves, as the nature of these cases is uncomplicated. More complicated cases are sent to the lawyers contracted by the unit. These include: cases involving the confiscation of land for the route of the Wall; cases involving land confiscated to expand settlement or military infrastructure; cases involving duplicate registration or the falsification of documents; and cases where the land is situated inside a settlement area.

### 3.3.2.4. The Employment of Private Lawyers

As noted above, six lawyers are privately contracted to the Wall and Settlements Unit to provide *all* assistance with the associated cases. Lawyers are generally assigned to a particular geographic area - northern West Bank, central West Bank and southern West Bank - with two lawyers serving as counsel in each of these areas.

The lawyers are contracted annually for an unlimited number of cases with the current caseload of the unit approximately 1,100. According to Mr. Nazzal, the contracted lawyers are chosen on the basis of criteria established by the unit. This includes: expertise; knowledge of the legal system surrounding land confiscations and registration; ability to speak Hebrew and Arabic; ability to work long hours and on short notice; ability to provide continuous follow-up support the Wall and Settlements Unit; a law practice with at least one other lawyer and a secretary in the office; and an ability to maintain excellent relations with the families involved.

The lawyers are required to abide by 'red lines' established by the unit. The red lines prohibit the lawyers from: (i) reaching agreements with the Israeli authorities to (partially) demolish property; (ii) agreeing to Israel's drawing of settlement boundaries; (iii) accepting falsified documents as a basis for adjudication; and (iv) directly or indirectly accepting the Wall's route.

The unit requires the lawyers to provide regular updates on its cases and liaise with the unit on the legal direction of cases, if required.

<sup>35</sup> Interview with Mohammed Nazzal, *head of Wall and Settlements Unit* (2 April 2011).

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

### 3.3.2.5. The Removal of Lawyers

The lawyers are contracted on an annual basis. The interviewees indicated that the Wall and Settlements Unit routinely assesses contracted lawyers, particularly before a contract renewal. The lawyers are assessed on the basis of their compliance with the regular reporting requirements; their rapport with the aggrieved landowners; and on the basis of whether they adhere to the 'red lines' set out by the Unit.

### 3.3.2.6. Criticisms of the Legal Services Provided

Although the lawyers contracted with the Wall and Settlements Unit are generally viewed positively, the main criticism related to the lack of quality control and oversight over the work of the lawyers. While lawyers are paid very high fees, with lawyers obtaining an estimated NIS 25,000 per month, the quality of the legal assistance is generally perceived to be inadequate. Some interviewees indicated that the lawyers have poor communication skills and at times take decisions without consulting the affected communities, particularly the Bedouin communities. In addition, it is perceived that there are no clear criteria for the selection of lawyers, with lawyers with little experience often contracted while those with more experience are not contracted.

Lawyers also indicated that oftentimes the instructions provided to them are vague, with no clear vetting process made available. For example, one lawyer indicated that he was forwarded a case that was more than 15 years old and where the issue at hand had already been adjudicated. This was only ascertained following his extensive review of the case rather than in the case notes that accompanied the case. Moreover, when he explained that he was unable to assist owing to the age of the case, it was considered a "strike against" him.

## 3.4. Home Demolitions, Evictions and Land Confiscations in Jerusalem

### 3.4.1. Context

Since 1967, in contravention of international law, Israel has undertaken numerous measures aimed at altering the status of East Jerusalem. These include land confiscations, settlement building and construction of the Wall. In addition, municipal policies aimed at maintaining a demographic ratio of 70:30 Jews to non-Jews include the demolition of homes, home evictions and residency revocation for Jerusalem's 270,000 Palestinians. OCHA describes these policies as 'push factors' and notes that they risk undermining the Palestinian presence in East Jerusalem.<sup>39</sup> In addition, Palestinians face the revocation of access to health services and health insurance in an attempt to decrease the Palestinian presence in Jerusalem.

Following the 1967 war, the government of Israel unilaterally annexed some 70 km<sup>2</sup> of the oPt to Israel. This area included East Jerusalem as well as 64 km<sup>2</sup> of surrounding West Bank territory. The annexed area was subsequently added to the Municipality of Jerusalem. The right to reside in East Jerusalem was restricted to those Palestinians who were recorded as living within this expanded municipal boundary.

Palestinians in Jerusalem are defined as permanent residents of Israel rather than citizens, and their residency status is tenuous and conditional on their being able to prove that their 'centre of life' lies within Jerusalem. Extended stays by Jerusalem Palestinians outside of Israel can result in the revocation of their Jerusalem ID cards. Approximately 14,000 Palestinians from East Jerusalem have had their residency revoked since 1967 of which over 4,500 had their residencies revoked in 2008 alone.<sup>40</sup>

Since 1967, Israel has failed to provide Palestinian residents of East Jerusalem with the necessary planning framework which is needed to meet their basic housing and infrastructure needs. According to OCHA, the Israeli authorities have allotted a mere 13 percent of the annexed municipal area for Palestinian construction and a lot of that area is already built-up.<sup>41</sup> It is only within this area that Palestinians can apply for building permits, but the number of permits granted per year to Palestinians does not meet the existing demand for housing. As a result, Palestinian residents of East Jerusalem face a serious shortage in housing, and are left with no choice other than to build structures 'illegally' and therefore risk demolition and displacement.

39 Office for the Coordination of Humanitarian Affairs for the occupied Palestinian territory (OCHA), "East Jerusalem: Key Humanitarian Concerns," (Jerusalem, 2011).

40 Information provided by HaMoked: [http://www.hamoked.org/Document.aspx?dID=868\\_update](http://www.hamoked.org/Document.aspx?dID=868_update).

41 *Ibid.*

Starting in June 1967, the government of Israel has constructed settlements within the unilaterally expanded municipal boundary of Jerusalem despite their illegality under international law. Over one third of the area within the extended boundary of East Jerusalem has been expropriated for the construction and expansion of Israeli settlements. The territory expropriated for settlement building and expansion has resulted in a corresponding reduction in the land and resources available for Palestinian construction and development. In addition, settler organizations routinely target houses for takeover in order to create a new ring of settlements within Palestinian residential areas in the so-called 'Holy Basin' area. The impact of this settlement activity in Palestinian areas includes restrictions on public space, residential growth and freedom of movement. In the most severe cases - in the Old City, Silwan, and most recently in Sheikh Jarrah - Israeli settler expropriation has entailed the eviction of long-term Palestinian residents.

In addition to land confiscation, primarily undertaken in the 1970s and 1980s, in 2002 the Government of Israel approved the construction of the Wall. The Wall in Jerusalem has furthered the separation of East Jerusalem from the remainder of the West Bank with many Palestinian communities now living on the 'West Bank' side of the Wall needing to cross checkpoints in order to access health and education services, with their status as residents potentially in jeopardy. Others have been placed on the 'Jerusalem' side of the Wall with their status similarly at risk. OCHA estimates that approximately 2,500 Palestinians in 16 communities are affected.<sup>42</sup>

It is estimated that approximately 20,000 cases involving evictions and home demolitions are currently making their way through the Israeli court system.<sup>43</sup>

### 3.4.2. History

The history of PA-provided legal assistance in East Jerusalem is more extensive than that of its assistance in the remainder of the West Bank. Through the Orient House, the PLO provided significant legal assistance to Palestinians facing home demolitions, residency revocations and evictions. The Orient House served as a clearing house for assistance, where Palestinians could bring their legal claims and be directed to either private lawyers or to NGOs such as JLAC or St. Yves for assistance. With the establishment of the PA, the situation remained the same as the PA is still prohibited from operating in East Jerusalem. In May 2001, Mr. Faisal Hussein, who led the Orient House, passed away and three months later Israeli authorities closed it. The closure of Palestinian institutions such as Orient House is ongoing. This has led to a political and institutional vacuum that has also impacted on the provision of legal services for Palestinians in East Jerusalem.

This vacuum in legal assistance remained for several years until 2007. Prior to that time, the President's Office provided *ad hoc* legal assistance to Palestinians in East Jerusalem in a manner similar to that employed for cases in the remainder of the West Bank: Palestinians seeking assistance went to the Office of the President and in some instances the President would agree to pay for private legal assistance. No spending limits were determined and the criteria for the funding of such cases were unknown.

In 2007, a programme aimed at maintaining a Palestinian presence in the city of Jerusalem was set up. It had several components, including helping Palestinians to obtain building permits (including through financial assistance); providing financial assistance to economically disadvantaged families; providing financial assistance for payment municipal taxes (*amona*) and fines; providing shelter or financial assistance in the event of demolitions; and providing legal assistance for home demolitions and evictions.<sup>44</sup> For the purposes of this study, only the first item, maintaining a Palestinian presence in the city, will be highlighted.

This programme formally ended in 2009. Since that time, legal assistance continued to be provided by several actors, including the Jerusalem Unit of the President's Office, the PLO's Governor of Jerusalem and the PA's Ministry of Jerusalem Affairs. These bodies often have overlapping strategies and agendas. In January 2011, the various actors were combined and in March 2011, the Jerusalem Unit of the President's Office was disbanded and in its place, a new unit known as the 'Legal Affairs Unit' was established under the auspices of the Palestinian Prime Minister. The Legal Affairs Unit was aimed at coordinating the efforts of these actors. Legal assistance is largely confined to protecting homes from demolition and from preventing the eviction of Palestinians from their homes.<sup>45</sup>

42 *Ibid.*

43 Interview with the *Norwegian Refugee Council* (2 April 2011).

44 Legal assistance was also provided to assistance in residency revocation cases and in the case of health-insurance related issues.

45 Interview with Ahmed Ruwaidy, *Legal Advisor to the President on Jerusalem Affairs* (2 April 2011).

### 3.4.3. Eligibility

In these areas, legal assistance is available for virtually all Palestinians who seek it although they are required to pay a nominal sum (usually NIS 500 to 1,000 per case) in order to obtain 'buy-in' and to ensure that the client participates in the case. Assistance is only denied when the applicant is a large-scale land-owner or contractor who can afford to pay for private lawyers. According to Mr. Ahmad Ruwaidy, the President's Advisor on Jerusalem Affairs, the reason why assistance is provided to all who seek it is because Palestinians generally 'self-select', with more affluent Palestinians generally seeking private lawyers and refusing the assistance provided by the PA.

### 3.4.4. Delivery Methods

Legal assistance is generally provided for home demolitions and evictions, while cases involving residency revocation and insurance matters are referred to NGOs such as the Coalition for Jerusalem that work with the legal affairs unit of the Ministry. Persons in need of assistance may apply by visiting the Governor's office in East Jerusalem and completing a form. The file is then sent to the Legal Affairs Unit where a committee consisting of a representative of the governorate, the President's Office, the Ministry of Finance and the Prime Minister's Office, reviews it to determine whether the applicant is eligible for assistance. As noted above, most cases are eligible. Once eligibility is determined, the case is assigned to one of the lawyers contracted to provide services. Mr. Ahmad Ruwaidy estimates that 90 percent of the applicants are provided with some form of legal assistance, with the bulk of assistance provided by the legal affairs unit.

### 3.4.5. The Use of Private Lawyers

Since the establishment of the Jerusalem unit of the President's Office, the unit has employed private lawyers to provide services with a committee of several individuals reviewing the cases. Two different contractual arrangements are made with lawyers: three lawyers are contracted on a monthly basis to provide services; while other lawyers are contracted on a case-by-case basis. According to Mr. Ruwaidy, an estimated 20 files are forwarded each month to each of the three contracted lawyers. This was confirmed by one lawyer who indicated that in 2010 he handled 310 housing and emergency cases. Contracted lawyers are paid a monthly fee for the caseload, although the amount was unspecified with additional funds provided if the caseload exceeds more than 20 files per month.

Lawyers are generally chosen on the basis of their reputation, expertise and ability to interact with clients. Although the lawyers are required to provide monthly reports to the unit, little oversight is exercised over their work as the caseload is generally high. In this regard, Mr. Ruwaidy stated, "If you don't have confidence in the work of the lawyers, they should be removed."

### 3.4.6. The Dismissal of Lawyers

Lawyers are rarely removed, usually only due to the lawyer's poor communication skills with the client. Lawyers have not been removed for other professional reasons, such as a failure to provide adequate services.

### 3.4.7. Criticisms of Legal Services Provided

A significant amount of criticism from NGOs, contracted lawyers and internal lawyers has been directed at the way in which East Jerusalem cases are handled. Many stakeholders have noted that there is a general lack of strategy with respect to addressing East Jerusalem cases. For example, the Governor contends that legal assistance should be directed towards providing additional building permits rather than for defending existing structures, while others believe that the focus should remain on home demolitions. Other stakeholders indicated that the various actors continue to compete with one another.

The strongest criticism came from some of the private lawyers contracted to work with the unit. According to one lawyer, the programme as it was initially established functioned well with a lot of oversight but little legal steering provided. This interviewee explained that problems arose in 2009 when the Danish-funded project ended and the PA decided to get more heavily involved under the guise of 'coordinating' efforts. Yet, rather than coordinating efforts, the PA's involvement seems to have hindered the work of the unit and the private lawyers alike. According to one lawyer, "There is no oversight, no strategy, and no review." He also explained that the lawyers have not been paid since 2009, although new cases continue to be sent to them and existing cases continue to require follow-up. As no budget has been allotted for 2011, this situation is likely to continue. One lawyer said in this regard, "They are cheating us, (...) they are doing these cases 'for show' but what they've shown is that they don't care about East Jerusalem."



## Summary

As the above two sections demonstrate, legal aid was not envisaged as one of the PA's core functions upon its inception. Its involvement in the sector developed as needs increased, particularly after the outbreak of second *Intifada*. The PA's assistance efforts are confined to a few areas and the methods employed to provide the services are similar across the various ministries: instead of establishing a legal aid clinic or centre, each ministry contracts a number of lawyers privately to carry out the legal work, with varying degrees of oversight provided by each ministry. Lawyers' contracts are reviewed and renewed annually and while each ministry has stated policies (although no procedural manuals) for overseeing the work of each contracted lawyer. In most cases, there is little review over the *substance* of the work being performed by the lawyer with more attention paid to the lawyer's *conduct*.

The following table summarizes the various ministries and entities that provide legal services, the number of lawyers contracted, and the level of oversight and supervision.

**Table 2: Breakdown of Legal Assistance Provided by the Palestinian Authority by Ministry**

Institution	Lawyers	PA Oversight	Eligibility and Method of Assigning Lawyers	Cost of Services	Type of Oversight
Ministry of Detainees and Ex-Detainees	38	3 lawyers 2 support staff	All detainees are eligible Lawyers present at all detention centres and military tribunals and automatically represent all detainees unless instructed otherwise; family may also request assistance.	Free	While the Ministry's staff assign and oversee the general work of contracted lawyers, the staff does not assess the efficacy of the lawyer's work, particularly in the case of plea bargains. Rather, the Ministry acts as a conduit for providing legal assistance.
Palestinian Prisoners' Club	29	3 lawyers 3 support staff	All detainees are eligible Lawyers present at all detention centres and military tribunals and automatically represent all detainees unless instructed otherwise; family may also request assistance.	Free	While the Ministry's staff assign and oversee the general work of contracted lawyers, the staff does not assess the efficacy of the lawyer's work, particularly in the case of plea bargains. Rather, the Ministry acts as a conduit for providing legal assistance.
Wall and Settlements Unit	6	1 coordinator 6 field researchers	All are eligible to receive assistance Cases are referred by governor or by field researcher or by individual request.	Free	The Unit assigns and oversees the work of the lawyers and ensures that lawyers work within stated guidelines. The Unit does not oversee the work that is referred to other institutions (such as JLAC and St. Yves) but works in coordination with these entities
Jerusalem Unit	3	Committee	Request made directly to governorate office where the case is reviewed for eligibility. Only private contractors are ineligible.	NIS 500 to 1,000	While the Unit assigns work to lawyers, the Unit does not oversee the work it assigns but prefers instead to place trust in contracted lawyers (including for strategic matters)

## 4. Legal Assistance in the Palestinian Court System

### 4.1. Overview

Within the Palestinian court system, the PA only provides legal assistance for felony cases, as provided for under Palestinian law. Legal assistance is not provided for civil cases or for cases before Palestinian family courts. In the case of the latter, legal assistance is largely provided by the WCLAC, while the PA's support is confined to supporting pre-marital counselling to couples.<sup>46</sup>

In addition, the ICHR, a quasi-governmental body, provides legal assistance for matters pertaining to the actions of the government and associated bodies.

### 4.2. The Palestinian Bar Association and High Judicial Council

#### 4.2.1. Eligibility

The main area in which legal assistance is provided is for particular cases before Palestinian criminal courts. Article 9 of the Palestinian Basic Law states: "All Palestinians are equal before law and judiciary, without discrimination because of race, sex, colour, religion, political opinion or disability". The right to legal counsel is contained in several Palestinian laws, including Article 61 of the Civil and Commercial Procedure Law (2001) and Article 14 of the amended Palestinian Basic Law which enshrines the concept of innocence until proven guilty and guarantees the right to legal defence.

Under Palestinian criminal law there are two types of cases: misdemeanours carrying a fine or prison sentence of less than three years; and felonies where the prison term exceeds three years. Article 244 of the Penal Code Procedure Law No. 3 (2001) stipulates that in the case of felonies, the Court shall appoint legal representation to represent an accused individual if the accused is unable to secure his/her own counsel. The head of the Court shall appoint for the person a lawyer who has practiced law for a minimum of five years or worked for two years at the least in the public prosecution or judiciary before obtaining a degree in law. The Law of the Legal Profession No. 3 (1999) require the PBA to provide legal aid for those who cannot afford it.

#### 4.2.2. Legal Aid Delivery Methods

According to the PBA, in situations which involve felonies where legal assistance is required, the defendant is generally required to indicate before a judge his/her inability to pay legal fees. After noting the matter on the record, the Court forwards requests for legal assistance to the PBA where the Chairman appoints a lawyer to the accused in order to serve as his/her counsel of record on the basis of predetermined criteria.

According to Mr. Ali Muhanna, Chairman of the PBA, few requests are made for legal assistance despite the fact that many Palestinians live below the poverty line and legal fees are generally high for criminal cases. Mr. Muhanna believes that the low number of requests stems from the fact that most defendants either (a) do not want to demonstrate to the Court that they do not have the financial means to pay for a lawyer; or (b) believe that a court-appointed lawyer will not provide the same quality of services. Based on this, the Court generally does not assess the financial background of the person seeking legal assistance, believing instead that a person requesting assistance is generally in need.

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<sup>46</sup> Interview with Maha Abu Dayyeh, *Director, Women's Center for Legal Aid and Counselling* (1 August 1 2011).

After the Court forwards the request for legal assistance to the PBA, the head of the PBA chooses a lawyer based on four criteria: (i) the lawyer must be from the same geographic area as the accused and the court; (ii) the lawyer must have been a member of the PBA for more than five years; (iii) the lawyer must have extensive experience in criminal defence and, in particular, in defending against allegations that the accused is charged with; and (iv) the lawyer must not be violation of any of the rules governing the legal profession or with the PBA.

According to Mr. Muhanna, in 2010, there were only 34 requests for legal assistance, but according to Seyada, there were a total of 80 cases for the years 2009-2010, with JD 20,458 (or US\$ 28,740) in legal fees dispensed by the Palestinian courts to cover the legal fees.<sup>47</sup> This amounts to a fraction of the total number of felony cases in the West Bank; there were 23,357 criminal cases in 2009 and 15,422 cases in 2010.

**Table 3: Number of Cases and Amount of Money for Legal Assistance in Palestinian Courts, 2009-2010**

Governorate	Number of Cases	Amount Paid to Lawyers (in JD)
Ramallah	18	4,220
Nablus	17	5,450
Bethlehem	19	5,270
Jenin	7	2,088
Qalqilya	5	1,150
Tulkarm	14	2,280
<b>Total</b>	80 (0.02 percent of all cases)	20,458

The low number of supported cases must be viewed in light of the prevailing poverty rates in the West Bank. According to the Palestinian Central Bureau of Statistics, in 2009 and 2010 the poverty rates in the West Bank were 19.4 and 18.3 percent respectively. These figures are highlighted in Table 4 below. Based on these figures, one can surmise that there may be a number of reasons for the low number of requests for legal assistance including: (i) lack of awareness by defendants of the availability of legal assistance; (ii) lack of confidence in court-appointed lawyers; and (iii) social stigma attached to requesting assistance.

**Table 4: Poverty Rates Among Individuals According to Household Monthly Consumption (2009-2010)**

Region	Poverty		Deep Poverty	
	2009	2010	2009	2010
West Bank	19.4	18.3	9.1	8.8
Gaza Strip	38.3	38.0	21.9	23.0
oPt	26.2	25.7	13.7	14.1

### 4.2.3. Criticisms of the Legal Services Provided

Criticism of the way in which legal assistance is provided centres on the fee structure through which lawyers are paid. According to Mr. Muhanna, lawyers are generally reluctant to take on court-assigned cases as the fee schedule provided is approximately one-tenth to one one-hundredth of the fee a lawyer normally charges. For example, according to Mr. Muhanna, a criminal trial involving murder can run upwards of JD 50,000 (US\$ 70,240) whereas the Court pays a mere JD 500-800 (US\$ 700-1,100), leaving lawyers with little incentive to provide the best representation, except for the fear of censure by the PBA. As a result, many lawyers often 'hand-over' these cases to junior lawyers in their firms, with the senior lawyer providing only basic oversight. A breakdown of the success of legal aid cases was not available, although a request was made to the HJC and the PBA for this information.

47 Dr. Nasir Abdelkarim, Analysis of the Needs and Costs of Legal Assistance in the Palestinian Areas, *Working Paper*, February 2011 (in Arabic) p. 4-5.

## 4.3. Independent Commission for Human Rights

### 4.3.1. Overview

The ICHR was established as a semi-governmental institution, but it receives the majority of its funds from external donors. It provides legal assistance to Palestinians seeking redress from government action and specifically for cases of human rights violations; complaints submitted by citizens in relation to abuse of power; and generally integrating human rights into Palestinian law and practice. The responsibilities of ICHR are:

“To follow-up and ensure that different Palestinian laws, by-laws and regulations, and the work of various departments, agencies and institutions of the State of Palestine and the Palestine Liberation Organization meet the requirements for safeguarding human rights”.

### 4.3.2. Eligibility for Receiving Assistance

The ICHR provides free legal assistance and generally aims to monitor the actions of the PA and its security services. The ICHR works on the following types of cases:

- Violations of basic liberties by PA security services or civil authorities;
- Violations related to the security services which include arrest and detention without following legal procedures; torture and ill-treatment during detention; deaths in prisons and detention centres; delays in bringing detained persons to trial; and delays in charging detainees;
- Non-compliance by the PA with its legal obligations;
- Appointment and employment procedures in which legal requirements or the right to equality are not enforced;
- Discriminatory practices related to the application of the rule of law, based on sex, religion, race, colour or political affiliation;
- Failure to explain decisions, delays in the implementation of decisions, incorrect application of the law, and cases where false or misleading information is given;
- Cases of intervention in the jurisdiction of the Judicial Authority and non-compliance with its rulings;
- Cases in which public office and authority are exploited and abused;
- Cases in which the Executive Authority infringes on citizens' property; and
- Failure of the Executive Authority to provide services stipulated in laws such as, but not limited to, housing, education, and medical treatment.

The ICHR does not provide assistance for: (i) complaints regarding conflicts between individuals or private institutions; (ii) cases already filed in courts or other bodies of arbitration; (iii) complaints related to obtaining humanitarian aid; or (iv) complaints regarding Israeli violations of Palestinian human rights.

### 4.3.3. Methods of Providing Assistance

Legal assistance is provided following the receipt of a complaint by a complainant or if the ICHR determines, following its field research, that there is a human rights violation. The ICHR has two staff lawyers and the majority of complaints are handled outside of the formal court system, with the ICHR lobbying government officials, including the President and Prime Minister, to address issues such as:

- Arbitrary detention, and torture and ill-treatment (for which 381 complaints were received in 2010);
- The non-execution of court decisions (for which 181 complaints were received in 2010);
- Barring Palestinians from holding public service positions for 'security' reasons (for which 193 complaints were received in 2010);
- The use of the death penalty in the Gaza Strip; and
- The use of military courts to prosecute civilians.

In supporting these types of cases, the ICHR works closely with other NGOs to try to change policy or effect change in individual cases.

## 5. Conclusions and Recommendations

This study examines legal assistance provided by the PA to support Palestinians. As detailed above, the assistance provided is largely *ad hoc* in nature and focused on a few legal areas namely, support for: (i) detainees in Israeli prisons (ii) land confiscations, evictions and home demolitions carried out by Israeli authorities; (iii) felony crimes committed in the areas under PA authority and (iv) human rights violations claims against the PA.

The vast majority of support is provided to assist Palestinians who come into contact with the Israeli legal system. The support provided generally follows a similar pattern wherein private lawyers are contracted by the PA or its agencies to provide legal assistance for an unspecified number of cases. The main criticism surrounding this support relates to the lack of strategic and legal oversight provided by the PA in general, for instance through the Ministry of Justice. Each institution tends to operate independently, thereby creating a perception that the services provided are of poor quality and that private lawyers need to be paid additional sums in order to ensure that a case is prioritized. Moreover, the lack of strategic oversight may have negative consequences, particularly in the realm of plea bargaining.

More surprisingly, the assistance provided by the PA overlaps with, rather than supplements the assistance provided by other NGOs or private lawyers. For example, several of the lawyers contracted by the PA's Wall and Settlements Unit are also contracted by NGOs working in the same field. Therefore, the PA's legal services are indistinguishable from the services provided by NGOs.

Finally, limited assistance is provided for Palestinians seeking redress in Palestinian courts. While according to statistics financial need is high, few Palestinians seek the support of legal aid lawyers. In addition, legal aid is not provided to women in family courts despite the fact that they are generally more vulnerable to unfair treatment in the courts. Instead, private lawyers and a limited number of NGOs provide support for these cases.

## ANNEX A: List of Interviewees

- Dr. Ali Khashan, Minister of Justice
- Dr. Daoud Darawi, Consultant, Ministry of Justice
- Jawad Amawe, Legal Advisor, Ministry of Detainees and Ex-Detainees
- Luna Barakat, Consultant, Ministry of Detainees and Ex-Detainees
- Qaddura Fares, Palestinian Prisoner's Club
- Muhammad Nazzal, Head of Wall and Settlements Unit
- Ahmad Ruwaidy, Legal Advisor to President's Office on Jerusalem Affairs
- Dr. Mamdouh Aker, Independent Commission for Human Rights
- Dr. Sabri Saydam, Fatah Revolutionary Council
- Ali Muhanna, Chairman, Palestinian Bar Association
- Usama Halabi, Lawyer
- Norwegian Refugee Council
- Sh'awan Jabarin, Al-Haq
- Maha Abu-Dayyeh, Director, Women's Center for Legal Aid and Counselling
- Sahar Francis, Addameer Prisoner Support and Human Rights Association
- Nidal Al-Azraq, Lajee Centre
- Sami Ersheid, Lawyer
- Amira Hass, Journalist, Ha'aretz
- Khawla Al-Azraq, Social Worker and sister of long-term political prisoner
- Salah Ajarma, former Head of Palestinian Prisoners' Club
- Dr. Sufyan Abu-Zayda, former Minister of Detainees and Ex-Detainees

Note: Four anonymous interviews with family members of Palestinian prisoners were also conducted.