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A Review of Palestinian Justice and Security Sector Data

August 2013

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- The Palestinian Ministry of Justice
- The Palestinian Civil Police
- The Palestinian Attorney-General's Office/Public Prosecution
- The Palestinian High Judicial Council
- The Palestinian Shari'a Courts
- The Palestinian Military Courts
- The Palestinian Bar Association
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DATA COLLECTION

Palestinian Central Bureau of Statistics

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The analysis and recommendations of this report do not necessarily reflect the views of the United Nations Development Programme. The report is an independent publication commissioned by UNDP/PAPP

Acronyms

AGO	Attorney General's Office
BCPR	Bureau for Crisis Prevention and Recovery (UNDP)
CPD	Continuing Professional Development
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DCO	District Coordination Office (PCP)
GBV	Gender-Based Violence
EUPOL COPPS	EU Police Coordinating Office for Palestinian Police Support
HJC	High Judicial Council
IBA	Israeli Bar Association
ICCPR	International Covenant on Civil and Political Rights
ICHR	Independent Commission for Human Rights
ILF	International Legal Foundation
IT	Information Technology
JD	Jordanian Dinar
MOI	Ministry of Interior
MOJ	Ministry of Justice
MOSA	Ministry of Social Affairs
MOU	Memorandum of Understanding
MOWA	Ministry of Women's Affairs
M&E	Monitoring and Evaluation
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner of Human Rights
oPt	occupied Palestinian territory
PA	Palestinian Authority

PAPP	Programme of Assistance to the Palestinian People (UNDP)
PBA	Palestinian Bar Association
PCBS	Palestinian Central Bureau of Statistics
PCP	Palestinian Civil Police
PJI	Palestinian Judicial Institute
PLC	Palestinian Legislative Council
PP	Public Prosecution
PPMU	Planning and Project Management Unit (AGO/HJC)
TAU	Technical Advisory Unit (MOJ)
UNDP	United Nations Development Programme

Table of Contents

- Executive Summary6
- Recommendations..... 10
- 1. Introduction..... 17
- 2. Methodological Note 19
- 3. The Palestinian Ministry of Justice..... 21
- 4. The Palestinian Civil Police 28
- 5. The Palestinian Attorney-General’s Office/Public Prosecution..... 39
- 6. The Palestinian High Judicial Council 45
- 7. The Palestinian Shari’a Courts 57
- 8. The Palestinian Military Courts 62
- 9. The Palestinian Bar Association 66
- ANNEX I - Gaza Data 69



Executive Summary

This review of Palestinian justice and security sector data represents the first attempt to collect and analyse available data across seven key justice and security institutions: the Ministry of Justice; the Palestinian Civil Police; the Attorney-General's Office/Public Prosecution; the High Judicial Council; the shari'a courts; the military courts; and the Palestinian Bar Association.

This report is the culmination of a process coordinated by the Palestinian Central Bureau of Statistics (PCBS) with UNDP support, spanning more than 18 months, bringing together for the first time justice and security actors to engage in an ambitious data collection process. This process has been an important exercise for all stakeholders: it has provided the PCBS with the opportunity to enhance its knowledge and expertise in relation to the rule of law sector, and has enabled justice and security institutions to work together, learn from each other and to benefit from the expertise and support of the PCBS in establishing relevant indicators and collecting data.

Aside from these benefits, the review establishes much needed baseline data, using 2011 as the reference year, which can now be used as a starting point for measuring progress in the rule of law sector. It is hoped that the data will be relevant to, and assist, a wide range of actors and stakeholders. In the immediate term it will support the work of those involved in developing the forthcoming justice sector strategy for 2014-2016 and other actors engaged in national policy development and planning processes. It also aims to provide institutions with a new source of empirical information to help identify institutional strengths and weaknesses and guide the development of strategic plans to be translated into the activities of departments, units and ultimately, the work of individual employees. It aims to provide donors and development partners with new data to help identify gaps and unmet needs, as well as baseline data for measuring the impact of support and interventions, and civil society with new material upon which to base their advocacy, reporting, research, litigation and community empowerment efforts. However most importantly, it provides greater transparency and insight to the Palestinian public of how the justice system is currently functioning and a tool for it to hold justice and security institutions to greater account for their performance and public service provision.

As important as the data it has provided, the review process also exposed significant gaps both in institutional capacity to reliably collect data and in the data sets themselves. This review will hopefully act as a springboard for further capacity building efforts to achieve high quality data collection throughout the justice and security sectors. PCBS and UNDP both stand ready to support justice and security institutions to implement the recommendations in this review and to support data collection processes on a regular basis as capacity continues to be developed. Ultimately, the aim is to create a sustainable data collection process which is strengthened through the exercise of data gathering and reporting, and progressively managed and led by the institutions themselves as a core institutional activity.

The structure of this report has been designed to be as user-friendly and accessible as possible. Each section commences with a brief overview of the functions surveyed, followed by key findings based on analysis of the data, recommendations designed to address these and, finally, the data sets themselves. The first set of data presented in each section concerns the personnel working within each institution, including the number and type of positions, gender, age, educational backgrounds and relevant

comparative regional data where available. The second set of data presented relates to the functions and services performed by the different rule of law institutions.

The review found that most of the institutions are, when compared to the region, understaffed. The most dire area of understaffing was evident in the shari'a court system. PCBS and UNDP found that the shari'a courts shoulder an enormous and largely hidden workload much of which is categorised as 'non-case' related. In reality, much of this work relates to uncontested cases, but which still require careful judicial consideration through review of the facts, application of the law and disposition. If this additional workload is taken into account, the shari'a judiciary caseload in 2011 was more than 90,000 matters (compared to 109,810 cases in the regular courts). At present, the shari'a judiciary is comprised of only 42 judges and 29 clerks spread across 23 courts. This is less than one quarter of the 178 judges and 879 clerks in the regular courts, which already is very low when compared to the region. The West Bank has 7.6 judges per 100,000 inhabitants¹ compared to Jordan's 12.7, Egypt's 16.0, and Tunisia's 15.4 judges per 100,000 inhabitants.

Significant understaffing also exists in the Attorney-General's Office/Public Prosecution which has 4.9 prosecutors per 100,000 inhabitants. Each prosecutor shoulders a hefty average caseload of 327 cases annually with some handling up to 495 cases per year, which may pose a danger to quality and professionalism. This danger is exacerbated by the lack of support staff who are also in short supply with a ratio of 0.76 support personnel per prosecutor, compared to 5 support staff per judge in the regular courts.

One of the most startling findings regarding acute understaffing relates to the Enforcement Department of the High Judicial Council which has only nine execution officers to enforce all regular and shari'a court decisions in the West Bank. It is therefore not surprising that only one fifth of total judgments were enforced in 2011, with a backlog soaring to 64,897. As unreliable and slow enforcement of judgments can easily drain public confidence across the justice system, properly resourcing this aspect of the justice chain is a critical challenge.

It comes as no surprise that in the relatively new Palestinian justice and security sectors, the average age of institutional actors is low. While this generally correlates with low years of experience, the PCP is the exception: 64% of the police force has 10 years or more of policing experience. While Palestinian police officers boast strong practical experience, in relation to educational attainment the PCP lag behind with almost half of all police not holding a secondary school certificate. The military courts also have relatively low levels of educational attainment, as contrasted to the regular prosecution support staff who appear to have the highest levels of educational attainment across the sectors and the shari'a judiciary which has higher levels of educational attainment than the regular courts' judiciary.²

Women are underrepresented across the board, however especially in the PCP where women comprise only 3.3% of the force and in the military justice system where women only represent 2.0% of the staff. One notable exception was the shari'a prosecution where five out of the seven prosecutors are women. Another was the MOJ which has solid representation of women in both legal and administrative roles, although it lacks women in forensic medicine roles who are especially needed for the proper treatment of victims of GBV. The low representation of women requires innovative policy solutions, especially in light of the low turnover and age of existing staff and the limited new recruitment opportunities in the context of the PA's continuing financial crisis.

1 See Section 2.4 explaining this calculation; for practical reasons only, the figures exclude from the total population those living in annexed East Jerusalem. The ratio of judges per capita is even lower when the East Jerusalem population is factored in

2 40% of military court personnel hold a secondary school certificate or less

Assessing performance is much more difficult than assessing human resource characteristics, as current record keeping does not generate the data needed to gain a clear picture of performance or function. It is notable that this review provides for the first time comparative disposal and congestion rates across the regular and shari'a courts as well as the prosecution service. While this is a necessary and promising start, case disposal and congestion rates only provide a fairly crude picture of the extent to which judges and prosecutors are able to keep up with the incoming caseload and address backlogs. In addition, these say nothing as to the quality or lawfulness of decision-making.³

The overall court disposal rate suggests that the courts are, overall, managing their incoming case load but are not able to address backlogs. Case backlogs are greatest and growing in relation to first instance criminal trials, first instance civil cases and criminal appeals. Those courts with high congestion rates are the conciliation courts, first instance civil trial cases, first instance criminal trial cases, and criminal appeals. These courts require focused and specialised attention including possibly a greater allocation of judges and streamlined case management. The full range of case management tools within the MIZAN2 electronic case management system need to be brought to bear, especially in these jurisdictions. Other caseloads within the regular court system flow better, as they do within the shari'a courts and the prosecution services, evidenced by more moderate disposition and congestion rates. Unfortunately, data was not available which would allow for the calculation of disposition and congestion rates in the military courts; however, the data gathered still provides new insights into the kinds of matters being heard in the military courts. It is notable that 44% of military court cases decided in 2011 concerned charges of 'causing harm', 'issuing a dishonoured cheque' or 'insult, slander or libel'.

As mentioned previously, serious data gaps were exposed in this review. In relation to all of the courts, there is no data generated that can, for example, tell us whether case processing times are appropriate or excessive, why case backlogs are being created or where in the system bottlenecks exist. In addition, oversight data is not readily available. For example, no data was available concerning the content or theme of complaints against judges or information to explain why 147 out of 180 complaints against judges were dismissed on the basis of 'incompetence'.

Current record keeping within the PCP and the AGO/PP does not generate the kind of information needed to inform policy or generate key crime statistics. There was no data available concerning the number and types of criminal offences reported or investigated; the number of cases closed by the police because of lack of evidence; and the number and causes of case attrition between the police and the prosecutor's office.

There was also no data regarding the number of arrests made or the use of force by police. There was also no information available regarding pre-charge decisions, discontinuances, warrants, court dismissals, the timeframes within which indictments are issued, the number of cases to proceed to trial, pleas, verdicts, sentences or data on why cases did not proceed. The review identified particular concerns in relation to the lack of reliable data concerning charges against juveniles and the detention of juveniles. This lack may suggest either poor data collection or, more worryingly, ad hoc decision-making. While there is some data concerning the number and nature of complaints made against police, there is unfortunately no data indicating which, if any, of the complaints were investigated and whether disciplinary or criminal proceedings were initiated and their result.

Incarceration rates are low at 41 persons per 100,000 inhabitants, placing the PA in 208th place worldwide. However the proportion of 'unconvicted' detainees is worryingly high (nearly half of the total number of detainees), as is the length of their detention periods with 73 having been held for

3 Although appeal success rates may shed some light on this latter point

more than 2 years and another 51 held for over one year. These cases of prolonged pre-trial detention should be investigated urgently and the detainees brought to trial or released. It is also notable that the average length of sentence is fairly low, with almost half of convicted prisoners sentenced to less than one year, suggesting that exploration of non-custodial sentencing options may be fruitful.

In relation to the Ministry of Justice, the review revealed a clear lack of capacity in relation to data collection across the Ministry whose participation in the review process was unfortunately not sustained throughout the process. For this reason, a more ad hoc approach to data collection was necessary based on intensive remedial follow up and even then the data ultimately provided was sparse and did not cover all key areas of the Ministry's substantive work.

As for the legal profession, the review found that, like other parts of the justice sector, the profession is generally young, inexperienced, and does not adequately engage women. In terms of geographic coverage, there is a reasonable spread of lawyers across the main population centres of the West Bank. However, there remain important data gaps concerning the legal practice environments of lawyers, the breakdown of case types and jurisdictions and a lack of data concerning substantive functions and obligations of the legal profession, such as to provide legal aid.⁴

For example, there is no data concerning the number of cases referred by the courts to the PBA for the appointment of pro bono counsel for indigent defendants, or statistics regarding other pro bono assistance provided by the profession. Data on all of these matters is essential to directing the focus of the PBA to ensure that it is meeting its legal obligations, the needs of the courts, its members and society.

In conclusion, this first review of justice and security sector data is an important achievement in and of itself. The participation of the seven institutions spanning both the justice and security sectors reflects the increasing cooperation and coordination between these two critical sectors which is especially important in the context of the highly complex legal and political environment.

The completion of this review also reflects a collective expression of commitment and the evolving priorities of justice and security institutions with heightened focus upon data collection and M&E. It is evident that institutions themselves are increasingly grasping the importance and value of having at their disposal reliable empirical data to form the basis of their planning, implementation and measurement of impact. Aside from the end result, it is also noteworthy that the process of the institutions working together with each other and in partnership with the PCBS, marks an important turning point of cooperation, ownership and development in the justice and security sectors; a milestone which should be supported and built upon to achieve progressive improvement in the quantity, quality and sustainability of institutional data collection in subsequent years.

4 Including, for example, whether lawyers work for government, privately, in firms, CSOs or other environments



Recommendations

Following detailed analysis of the data, the review makes the following general and specific recommendations for further action and follow-up.

General recommendations

It is recommended that all seven institutions involved in this survey:

- Allocate dedicated human resources to developing sustainable capacity in the areas of data collection and M&E and maintain strong commitment to participation in ongoing data collection activities across the rule of law sector
- Carefully review the key findings and recommendations in this report and develop a coordinated work plan with the PCBS to implement the recommendations and address the data gaps identified
- Disaggregate data in accordance with common definitions concerning case type, sex, and adult or juvenile status of parties (defendants, victims and plaintiffs)
- Develop a common data recording system across the justice and security sector for capturing numbers and details of all incidents where justice and security actors were constrained or prevented from performing their functions due to the imposition of Israeli movement and access restrictions

Ministry of Justice

- Further develop and clarify the roles and the vision of the MOJ, especially in relation to core functions including public service provision, so that the most relevant indicators to achieving those goals can be developed
- Develop new baselines and targets to measure the MOJ's functionality in relation to its core competencies and collect data on each on a regular basis
- Start collecting data on legislative drafting, including measuring the frequency and quality of legislative impact and cost assessments
- Streamline and unify public complaints processes to ensure no duplication or gaps occur in receiving and handling public complaints⁵
- Maintain up to date records on accredited translators and include sign language interpreters to support justice users with hearing disabilities
- Examine the workload of the MOJ's forensic doctors in greater depth
- Appoint at least one woman forensic doctor as a matter of urgency. Until more female forensic

⁵ Data should be collected on the number of complaints received, the nature of the complaints, the number of complaints investigated and referred to other bodies, and the final outcomes

doctors are trained, female nurses or other medical professionals should be engaged to play supportive technical roles to women undergoing forensic examinations

Palestinian Civil Police

- Disaggregate all police data by offence group, sex, and adult or juvenile status
- Introduce new record keeping mechanisms to generate and provide data on the number and types of criminal offences reported/complaints received; the number and types of criminal offences investigated at the police level; the number and types of criminal offences investigated under public prosecution supervision; the number and types of investigated cases closed at the police stage; and the number and types of cases resolved informally at the police level. At each stage of the process, a reported criminal offence should be classified as either violent (general), violent (gender-based) or non-violent and particular attention paid to all reported deaths of females to ensure no suspicious circumstances. Data should also be kept on any familial relationship that exists between victims and suspects to readily identify cases of family violence
- Collect and provide data on the number of arrests made. Data on arrests made should be collected and disaggregated by the following categories: age, gender, arrests made with or without a warrant; and arrests made with or without the use of force (if with the use of force, the type of force used and the circumstances of its use)
- Introduce new record keeping to generate and provide data on any other incidents where force was used outside of the context of arrest (i.e. control a crowd or when suspect is already under arrest or in police custody) to gain a clearer picture of police use of force
- Step up efforts to redress the gender imbalance in the police force, including by employing affirmative action policies and by addressing obstacles to women's entry into the service⁶
- Explore ways in which the police service could be made more attractive to graduates, for instance, through the development of a targeted graduate recruitment scheme
- Review the adequacy of existing professional training opportunities in light of the educational attainment rates presented in this report
- Look into the feasibility of supporting high achieving officers with leadership potential to enrol in higher education programmes

Juvenile justice

- Launch an immediate investigation into the detention of children by the police, commencing with the cases where the children have been held for more than one month, and ensure all children are released from police custody into appropriate alternative care as a matter of urgency
- Collect and publish data on the numbers and locations of police officers who have been trained to work with children
- Amend the data recording system so that detention periods of less than one month can be more accurately recorded

⁶ These barriers include the absence of separate sleeping and restroom facilities for women officers, inadequate transportation facilities, and resistance to women working outside of the home at night

- Ensure the collection and constant monitoring of data concerning the places where children are detained and intervene where necessary to ensure that children are never held with adults or for long periods in police cells

Pre-trial detention

- Launch an urgent investigation into the cases of long-term pre-trial detention identified in the review and either release the detainees or charge them and bring them to trial at the earliest possible opportunity
- Amend the data recording system in order that 'unconvicted' detainees are disaggregated into 'un-indicted' detainees and detainees who have been indicted and are awaiting trial
- Ensure that data on the number of persons held in detention are disaggregated by age and sex
- Hold national consultations on the issue of short-term custodial sentences in order to examine the costs and benefits of developing non-custodial alternative sanctions
- Conduct a study on the specific challenges posed to the Palestinian prison system by an aging prison population
- Ensure that services within the prisons are adequate and that women prisoners, despite their small numbers, have equal access to all facilities. This include opportunities for education and learning, vocational skills development, adequate time and facilities for exercise, access to social workers/ counsellors, gender segregated medical services of equivalent standard including specialist medical services such as psychiatrists

Police oversight

- Publish information about any actions taken pursuant to complaints made
- If investigations were not opened into the complaints, open investigations and instigate disciplinary and/or criminal proceedings against individual officers where appropriate.
- Streamline and publicise police complaints processes
- Ensure that future record keeping collects data on any follow-up made in relation to public complaints. This information should, at a minimum include information about any investigations made, any disciplinary actions instituted as a result of the investigations, and any criminal proceedings launched
- Finalise and endorse a Code of Conduct for police, provide training on the Code and ensure full monitoring of implementation of the Code

Attorney-General's Office/Public Prosecution

- Significantly increase the number of prosecutors and support staff as soon as the situation allows
- When recruitment opportunities arise, affirmative action policies should be employed as a means of redressing the gender imbalance
- Explore ways to attract highly experienced legal professionals to the prosecution service such as

recording and taking into account the number of years of relevant pre-prosecutorial experience held by lawyers in determining the salary scale of newcomers to the prosecution service

- Promote and support the enrolment of prosecutors in specialised higher education programmes
- Introduce new record keeping frames and processes on MIZAN2 to enable the justice and security sector data discussed above to be generated for performance management and policy formulation purposes. In doing so, the public prosecution may benefit from input from regional or international experts who have previously set up such systems in other jurisdictions
- Use the new MIZAN2 link to the prosecution offices to extract data on a range of matters including pre-charge decisions, discontinuances, warrants, court dismissals, the time frames within which indictments are issued, number of cases to proceed to trial, pleas, verdicts, the sentence or the reasons why cases did not proceed
- Disaggregate data on juvenile justice cases and include data concerning justifications for detention of juveniles, presence of parent/guardian during interviewing, charging decisions, pleas, verdicts and sentences
- Disaggregate data on GBV cases and include data concerning number of cases where prosecutors are involved in the investigation stage, number of cases referred to the prosecutor, decisions to close GBV prosecution files, data concerning cases where victims are subject to 'protection orders', number of informally resolved cases, charges, pleas, verdicts, sentences, number of cases in which prosecution seeks criminal damages on behalf of victims, number of cases where criminal damages are granted to victims and their quantum

High Judicial Council

- When reviewing existing and formulating future justice sector strategies, take the relatively low number of judges per 100,000 inhabitants into consideration, with a view to recruiting additional judges especially for first instance civil and criminal trials, and criminal appeals
- Develop and implement a diversity strategy for judicial recruitment and retention in order to strengthen the participation of underrepresented groups including women
- Explore ways in which to attract highly experienced legal professionals to the judiciary
- Promote and support the enrolment of judges in specialised higher education programmes
- Record the number of years of relevant pre-judicial experience held by sitting judges
- Drawing on international best practice relating to diagnosis of causes of case backlogs and delays, develop a system to identify the stage of the case process at which a delay is encountered and the means to identify the main reasons for the delay
- Collect additional data sets as identified in this review through tailored use of the MIZAN2 electronic case management system
- Create and maintain records on case processing times for the specific stages of a case as well as the entire trajectory
- While these records are being created, conduct a number of random samples of case files, especially for the types of cases that are generating an increased backlog, and calculate case processing times. The figures collected can be compared between courts and with those available in international

databases for comparable types of cases. It is important to note that international comparisons for some types of cases, such as major felonies or unfair dismissal disputes, will be more meaningful than for other types of cases such as complex fraud cases⁷

- Consider using pre-trial detention rates as a proxy indicator for criminal case delays; however, it is important to identify the point in the process at which a delay is most likely to occur as pre-trial detention rates reflect the work of the police, the prosecution and the legal profession as well the courts
- Concentrate capacity building initiatives for the judiciary on the types of cases that the judiciary is unable to keep pace with
- Consider setting up alternative dispute resolution mechanisms in order to divert particular types of cases away from the courts as a means of enabling the judiciary to adequately deal with the backlog

Enforcement of judgments

- Urgently increase the number of enforcement officers in the West Bank as soon as the situation allows for this
- Address transportation issues and other needs of enforcement officers
- Improve the data disaggregation of enforcement cases to case types including a breakdown of regular court and *shari'a* court cases and further disaggregation of custody cases
- Document in detail the causes of delay in enforcement, including any impact of Israeli restrictions upon movement and access of enforcement officers
- Improve procedures and tracking of enforcement of court rulings. MIZAN2 could be better utilised in this regard

Judicial oversight

- Review the extent to which the Inspections Department is able to fulfil its mandate with a view to strengthening its capacity if required. This review should, *inter alia*, determine whether High Court judge immunity from inspection complies with international and regional standards
- Create and maintain the following additional records and ensure that they are regularly made publicly available: the specific nature of the complaints made against judges, the nature and gravity of any misconduct identified, the meaning of the term 'incompetence' in excluding complaints, disciplinary actions taken, the number of judges inspected, the nature of the inspection visits, the procedures adhered to, the findings reached and the number of times each judge has disqualified him/herself as a result of a conflict of interest
- Address any substantive and procedural weaknesses in the Inspections Department functions that may emerge from more complete data

⁷ For more information about case auditing please see: World Bank, Justice Sector Assessments: A Handbook http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JSAHandbookWebEdition_1.pdf (3 May 2013)

Shari'a courts

- Steadily increase the number of *shari'a* court judges, prosecutors and clerks, as resources permit
- Develop and implement a diversity strategy to ensure that the gender imbalance among judges and court clerks is addressed as new recruitments are made. Such a strategy should take into account the need to build the capacity of women attorneys working in the *shari'a* court system to ensure that they are able to compete for positions in the judiciary on an equal basis to men
- Enhance access to justice data, collect data on: the reasons for the dismissal of cases; the numbers of litigants requesting court user fee exemptions; the number of legal aid requests filed and granted; and the number of appearances by legal aid lawyers
- Collect data on *shari'a* court judgments as they relate to the rights of women and children
- Re-classify some of the 'non-casework' transactions as uncontested cases to more accurately reflect the heavy burden upon the *shari'a* courts
- Explore the costs and benefits of establishing a *shari'a* notary public system as a means of reducing a proportion of the workload of the *shari'a* judiciary
- Identify the cases that are generating an increase in the backlog, and design and deliver targeted capacity development initiatives aimed at enabling the judges to reduce any remaining backlogs⁸

Military courts

- Review and overhaul the legislative framework concerning military justice and security forces
- Halt the practice of trying civilians before military courts and strictly limit the jurisdiction of military courts to offences of a military nature committed by military personnel⁹
- Record information about the civilian/military status of all defendants and the location and context of any offences committed; this should shed light on whether the offence was of a military or a civilian nature
- Provide opportunities for military court personnel to undertake further studies and increase educational requirements for future recruitments
- Take steps to redress the gender imbalance in the military court system, including by instituting affirmative action policies
- Collect and publish information about the types of cases handled by the military courts, the judgments issued, and whether the judgements were enforced
- Record and publish data about how each complaint was followed up; whether investigated, referred for criminal prosecution and the outcome
- Collect and publish information on any amnesties issued to military offenders

8 As noted earlier, it is not clear what proportion of the older cases that remain open are 'backlog' or are matters under the active supervision of the court

9 Article 101 of the Basic Law (amended 2003) restricts the jurisdiction of the military judiciary to military affairs

Palestinian Bar Association

- Maintain records on the gender balance among new entrants to the profession (or disaggregate existing records on age by gender as well)
- Conduct a survey of the registered women lawyers in order to determine what proportion currently practise law, and whether there is an adequate representation of women in all areas of law, especially in areas of law such as criminal law where access to justice can hinge on the presence of a woman attorney
- Collect information on the number of registered lawyers who are in full-time employment or equivalent and open dialogue with the Ministry of Education and law schools to ensure that the number of new lawyers being educated and trained is appropriate to existing public and private sector needs
- Collect data on the number of CPD hours offered and delivered per annum. These data should be disaggregated by governorate, sex and years of experience
- Collect data on the number of *pro bono* cases handled by lawyers each year, an estimation of the number of hours invested and the outcomes of cases.
- Clarify and publicise the complaints mechanism against lawyers and ensure that cases are properly investigated and approach disciplinary/other legal decisions taken, where necessary



1. Introduction

A well-functioning rule of law sector can provide a vital mechanism by which vulnerable and excluded individuals and communities can defend and realise their rights. Moreover, justice and security sector institutions can provide accountability, prevent the abuse of power and ensure that the poor receive the services to which they are entitled. Conversely, ineffective or malfunctioning justice systems can allow abuses to go unchecked, discrimination to go unchallenged and victims to be blamed for the actions of perpetrators. Justice and security sector instability and unpredictability also hinders economic growth and development. For these reasons, the development community places great emphasis on reforming and strengthening justice and security sector institutions around the world.

The experience of many countries, however, shows that realising reform is rarely straightforward. Consensus needs to be built, political will generated and spoilers neutralised. At the same time, specific problems need to be identified and prioritised, potential solutions piloted, and progress monitored and reviewed. Generating the information that is needed to accurately identify justice and security sector problems and monitor the efficacy of interventions is a significant challenge. 'Soft' information such as qualitative studies, laws, informant interviews and observations can provide crucial insights. Equally, among the 'hard' or more quantitative sources available, public perceptions and attitudinal surveys also play an important role. Ultimately, however, much of the information required to inform an intervention can only be generated by each individual justice and security sector agency creating and maintaining records of their operations.

The creation and maintenance of accurate records capable of producing disaggregated statistics can be more difficult than it sounds. Records are usually scattered among different teams and offices, and even within the same institution there are often inconsistencies in how information is categorised and counted. These inconsistencies often come to light only when analysis is attempted and therefore records sometimes have to be collected several times before they can be used.

This report represents the first attempt by the PCBS to conduct a comprehensive review of the records currently maintained by seven rule of law institutions: the Ministry of Justice, the Palestinian Civil Police, the Attorney-General's Office/Public Prosecution, the High Judicial Council, the *shari'a* courts, the military courts, and the Palestinian Bar Association. In close coordination with each of these agencies and with input from independent experts, the PCBS has used the records collected by these institutions to generate a significant number of data sets which provide detailed information about the Palestinian rule of law sector. Regrettably, for a number of reasons, the records collected from the Gaza Strip could not be completed; therefore, the predominant focus of this report is on the West Bank. The initial data available from Gaza which is limited to some basic information regarding the courts and prosecutors, is nevertheless presented in Annex I and can hopefully be further built upon in future surveys.

Equally important is the fact that the gaps in record-keeping at these seven institutions have been identified for the first time. The PCBS and UNDP can now work with these agencies over the coming year to assist them to create and maintain additional records which will be capable of generating other much-needed justice and security sector data.

Ultimately and most importantly, this initiative will enable the Palestinian public to better understand how their justice and security institutions are functioning and whether Palestinian duty-bearers are meeting their national and international legal obligations vis-à-vis their citizens.

This report proceeds in nine sections. Section 2 presents a brief methodological note which readers are advised to read carefully. Recommendations are presented within each section and many relate to filling data gaps identified through this initial survey. With UNDP support, it is planned that the PCBS will continue to assist security and justice institutions to fill these gaps over the coming year so that a greater range of data sets can be collected in subsequent surveys. Other recommendations are based upon analysis of the data collected and pertain to substantive matters related to the functioning of the institutions that warrant further attention. It is acknowledged that implementation of some of these recommendations will be constrained by the dual and related factors of the continuing occupation and the persistence of the financial crisis experienced by the PA.



2. Methodological Note

This report is the culmination of work that was commenced by the PCBS in late 2011 when PCBS and UNDP entered into an agreement to work with justice and security institutions in the West Bank and Gaza to collect from them their available data. In order to obtain a full year of data, it was decided that the reference year for the data should be 2011, thus all of the data collected in this report relates to 2011. As this survey of justice and security institutions' data was the PCBS's first foray into the justice and security sectors, several months of preparatory work in partnership with the institutions was needed and it is hoped that these links will endure and enable subsequent surveys to be conducted.

The data survey process involved several primary stages: mobilisation and design; data collection; analysis, interpretation of findings and preparation of a report.

Mobilisation and design

In late 2011, UNDP and PCBS reached agreement to conduct a survey of data held by justice and security institutions and jointly developed an implementation plan. PCBS established a technical committee comprised of legal experts, sampling and database design experts and template data designers. Together, this technical committee developed proposed general indicators for data across justice and security institutions and a proposed breakdown of values for disaggregation of the data. The PCBS identified and contacted justice and security institutions considered potential data sources and established a working group which included the MOJ, the PCP, the AGO/PP, the HJC, and the PBA. The HJC also facilitated involvement of the *shari'a* courts and the military courts.

Based upon input from the working group participants, the PCBS created a full draft list of indicators across all the institutions and then invited a wide range of governmental and civil society actors to provide their feedback on the draft indicators in a number of participatory workshops.¹⁰ From a long list of potential indicators, 32 final indicators across all of the institutions were identified, in line with international indicators to enable direct comparison. Regular monthly meetings bringing together the focal points continued throughout to fine-tune the data collection plan. The PCBS provided training to 13 field workers tasked to support the justice and security institutions in interpreting the indicators and supporting the data collection process.

Data collection and processing

The PCBS commenced the data collection process in May 2012 and the process took around eight months. The process of collecting the data was undertaken by the staff of the institutions, with the support and advice of the 13 field workers who supported and monitored the data collection process as needed.

¹⁰ In addition to the different rule of law institutions, participants included the Ministry of Justice, the Ministry of Social Affairs and the juvenile rehabilitation centre Dar Al-Amal; Ministry of Women's Affairs; the Ministry of Finance; the Ministry of Health; the Ministry of Detainees and Ex-Detainees; the Ministry of Planning; the Ministry of Labour; the Ministry of Public Works; the Ministry of Transportation; the Ministry of Tourism; the municipalities of Ramallah, Bethlehem, Jericho and Qalqilya; Al-Haq - Law in the Service of Man; the Coalition for Accountability and Integrity AMAN; Birzeit University; and An-Najah University

Once the data was collected, the PCBS aggregated and cleaned the data and ensured that no confidential details or information was liable to be released. As the PCBS still lacked in-house expertise in the justice and security sectors, they advertised for a legal consulting company to analyse the data and prepare an initial draft of the report. The draft was then shared with UNDP and the relevant justice and security institutions and significant revisions were then made in second and third drafts. As the writing process progressed, points requiring elaboration arose and were directed back to the institutions and the PCBS for final clarification, therefore this first report is the result of a collaborative process which has taken some time.

Survey limitations

All efforts were made to include Gaza institutions in the process. The PCBS visited and coordinated with justice and security institutions in Gaza including the MOJ, HJC, AGO and the police; however, there was some sensitivity in relation to the data-collection objects of the project.¹¹ Limited data was received from Gaza and due to its incompleteness it was with regret that PCBS and UNDP decided not to include Gaza in this inaugural report; however, some data is presented in Annex I and it is hoped that progress can be made on ensuring Gaza's full participation in subsequent years.

It should be noted at the outset that no data source is completely reliable. Figures can be inaccurately recorded at numerous stages of the data collection or data entry process. In addition, when people realise that the statistics being collected can be used to negatively appraise performance they may be tempted to manipulate or tamper with the figures, a phenomenon that has been observed in numerous countries around the world.

Therefore, while every effort has been made to ensure the accuracy of the figures presented herein, the reliability of each and every dataset cannot be absolutely guaranteed. Users of these data sets are therefore advised to use this report in conjunction with corroborating information sources such as surveys, interviews and focus groups wherever possible. In this regard, it may be helpful to consult the survey of *Public Perceptions of Palestinian Justice and Security Institutions* which was commissioned by UNDP/PAPP in 2011 under the programming framework of its Rule of Law & Access to Justice Programme in the oPt.¹² Some of the findings of that survey are also presented in this report.

Population calculations

A final but important methodological note: the total population of the West Bank for 2011 was 2,580,168. However, only 2,338,359 persons fell under the jurisdiction of the Palestinian court system as 241,809 persons were resident in 'J1' (the parts of Jerusalem that were annexed by Israel in 1967). The ratio of judges per 100,000 inhabitants has been calculated on the basis of a total West Bank population of 2,338,359 i.e. excluding those Jerusalem residents who fall under *de facto* Israeli control.) This is without prejudice to the status of 'J1' as an illegally annexed territory under international law.

11 The first field worker to initiate discussions with the MOI was arrested, detained and questioned for two days until the object and purpose of the project could be clarified by the PCBS which was then able to secure the staff member's release

12 Please see: <http://www.undp.ps/en/newsroom/publications.html>



3. The Palestinian Ministry of Justice

The Ministry of Justice was established in 1994.¹³ While some aspects of the MOJ's mandate remain unclear due to lack of clarity in the applicable legal framework, the MOJ's mandate clearly includes the following areas: promoting and ensuring a justice system capable of protecting human rights and providing quality, accessible justice to the public (paying special attention to marginalised groups); initiating and reviewing draft primary and secondary legislation; providing legal advice to the government; leading justice sector planning processes; providing justice-related public services (such as public information, justice records including non-conviction certificates, and other certifying services); accreditation of translators and arbitrators; international legal cooperation work in coordination with other relevant ministries and justice sector coordination with Israeli counterparts.¹⁴

Before setting out the available data on the work of the MOJ, it is important to consider public perceptions of the MOJ's performance. The most relevant tool for measuring public perceptions of the MOJ in 2011 was UNDP's *Public Perceptions of Palestinian Justice and Security Institutions* survey of 6,710 Palestinian households conducted in both the West Bank and Gaza. This survey established that public knowledge of the MOJ's role is low, with only 20.7% of participants aware of what the MOJ is and does. While ministries typically have a lower profile than other justice institutions that provide more direct public services, additional factors contributing to this low result may include the continuing contest regarding some aspects of the MOJ's legal mandate and the establishment by Hamas of a second Ministry of Justice in 2007, based in Gaza City.

The survey also demonstrated that the MOJ enjoys solid public confidence in relation to perceptions of its integrity, in particular its ability to defend the independence of the judiciary (37.6%) and to lead justice sector reform (37.3%). Opinions concerning the MOJ's ability to ensure the protection of the rights of vulnerable groups are lower (33.4%) and satisfaction with the MOJ's ability to defend citizens against human rights abuses perpetrated by Israeli actors is especially low at 27.5%. Satisfaction with the MOJ's performance with respect to delivering public services (such as non-conviction certificates that are commonly required by potential employers) is lower still at 24.4%, suggesting that both the demand for these services and the need for a 'customer service' orientation, are high. It remains to be seen how the MOJ's concentrated efforts to improve customer services over the previous year will be reflected in the 2012 survey results (forthcoming).

Capacity to collect data within the MOJ remains generally low and regrettably the MOJ was not able to sustain its participation in the data collection process through to its conclusion. Much of the data appearing in this report was collected through the comprehensive UNDP/MOJ joint capacity assessment undertaken in June 2011. The data was subsequently updated for the whole of 2011 and confirmed through additional data collection efforts undertaken by MOJ staff in collaboration with the PCBS and UNDP.

¹³ It should be noted the major upheaval caused to the MOJ by the physical re-location of its headquarters after the Hamas' take over in 2006 in the Gaza Strip to Ramallah. The MOJ was forced to re-establish itself with new, untrained personnel and fewer resources, operating before 2010 with 15% of its current staff

¹⁴ The Judicial Authority Law (2002) is unclear on several matters and all attempts to resolve this issue through law reform have subsequently failed. For example, the Judicial Authority Law No. 15 (2005) was enacted in 2005 but subsequently declared invalid by the High Court on the grounds it contravened the Basic Law. Subsequent decree laws such as No. 2 of 2006 that sought to amend the Judicial Authority Law have also been declared invalid and are not applied

3-1 Personnel

The presence of an adequate number of qualified, educated and experienced staff within the MOJ is essential to its ability to fulfil its core legal and administrative functions. Tables 3.1.1 and 3.1.2 below outline the available data.

Key findings

- There are 103 full-time permanent civil servants and 32 contracted staff working in the MOJ in the West Bank. By the end of 2011, 7 of the contracted staff had been transferred onto permanent civil servant posts¹⁵
- There are also an additional 82 full-time employees in Gaza (excluding *diwan al-fatwah* staff) who not attend work due to the political situation
- In addition, there are 8 civil servant staff of the *diwan al-fatwah* working in the West Bank (4 legal and 4 administrative) and an additional 25 (10 legal and 15 administrative) who are in Gaza but not working due to the political situation. These staff are separated in this survey from other MOJ civil servants, as the *diwan al-fatwah* operates and is administered separately due to the continuing jurisdictional confusion over whether or not it reports to the President's Office¹⁶
- In relation to gender breakdown, 37.8% of the MOJ's workforce in the West Bank are women. It is encouraging that almost half of the MOJ's permanent legal staff are women
- Women are drastically underrepresented in the services and the medical staff areas. It is notable that none of the 9 medical staff are women. This is especially concerning given their key role in providing forensic examination of rape and sexual assault victims who are predominantly women and children. It is positive that this issue has been identified by the MOJ and is being addressed through a forensic medicine programme where 4 of the 8 new trainee forensic doctors selected will be women
- In relation to educational background it is heartening that 80.7% of MOJ staff have a tertiary qualification, 69.6% have a bachelor degree or higher and that the number of women with masters degrees is 50%

Recommendations

- That the MOJ continue to transfer contracted staff onto permanent civil servant posts where possible to ensure the sustainability of the additional human resource capacity gained by the MOJ through contracted staff
- That the number of lawyers in the MOJ be gradually increased to enable the MOJ to better fulfil its core mandate including as a competent authority to initiate draft laws and to properly develop the MOJ's work across all the substantive units and directorates
- That the number of women doctors in the area of forensic medicine be urgently increased

¹⁵ The splitting of the MOJ's human resources following the takeover of Gaza by Hamas led to the manifest understaffing of the MOJ in the West Bank. This has been partially addressed through the provision of support to enable the MOJ to contract additional staff

¹⁶ According to its founding legislation, the *diwan al-fatwah* reports to the President; however, there have been subsequent decisions of the cabinet to the effect that it reports to the MOJ

Presentation of the data

Table 3.1.1: MOJ staff by sex and employment status

Type of Post	Permanent/F	Permanent/M	Contracted/F	Contracted/M	Total
Administrative/ financial	17	13	5	6	41
Legal	14	16	3	6	39
Services ¹⁷	1	10	3	5	19
IT	4	3	-/-	2	9
Medical	-/-	9	-/-	-/-	9
Other	4	12	-/-	2	18
Total by sex	40	63	11	21	135
Total	103		32		135

Total female staff: 51 - total male staff: 84

Table 3.1.2: MOJ staff distributed by professional category, highest attained qualification and sex

Type of Post	<Secondary		Secondary		Diploma		Bachelor's		Master's		PhD		Total
	F	M	F	M	F	M	F	M	F	M	F	M	
Administrative	-/-	-/-	3	1	7	3	7	12	3	3	-/-	1	40
Legal	-/-	-/-	-/-	-/-	-/-	-/-	11	16	6	5	-/-	1	39
Services	3	14	-/-	-/-	-/-	0	1	1	-/-	-/-	-/-	-/-	19
IT	-/-	-/-	-/-	1	1	2	3	1	-/-	1	-/-	-/-	9
Medical	-/-	-/-	-/-	2	-/-	3	1	10	-/-	-/-	-/-	-/-	16
Other	-/-	-/-	-/-	1	-/-	-/-	5	6	-/-	-/-	-/-	-/-	12
Total by sex	3	14	3	5	8	7	28	46	9	9	-/-	2	
Total	17		8		15		74		18		2		135

3-2 Core functions

Measuring the output of the MOJ in data when many key activities do not lend themselves easily to empirical capture constitutes a challenge. This section of the report provides data on some of the key areas of the MOJ's work including:

- Its role as a competent authority to initiate draft legislation¹⁸
- Provide public information on the work of the MOJ and the justice sector as a whole
- Receive and process public complaints relating to justice and human rights issues
- Provide a range of public services in relation to non-conviction certificates, document authentication/certification, registration of NGOs, translators and mediators
- Provide forensic medicine services

¹⁷ Includes medical staff (doctors, forensic experts, lab assistants etc), IT and other specialised staff

¹⁸ See Palestinian Basic Law (amended in 2003) Article 71(4)

Key findings

- The available data suggests that the MOJ is steadily increasing the portfolio of public services that it provides across a range of important areas
- The MOJ is an active player in relation to legislative drafting, but the available data provides no insight into the quality of drafting or quality of consultative processes used
- Available data concerning public complaints does not provide insight into the nature of complaints received, how they were handled or their outcomes. Therefore, the data does not provide a basis for accountability to complainants or development of policy/systemic interventions to address commonly arising problems
- The MOJ's public services relating to issuance of non-conviction certificates and document certifications are clearly being well utilised and meeting strong public demand
- Forensic medical services are in high demand

Recommendations

- Further develop and clarify the roles and the vision of the MOJ, especially in relation to core functions including public service provision, so that the most relevant indicators to achieving those goals can be developed
- Develop new baselines and targets to measure the MOJ's functionality in relation to its core competencies and collect data on each on a regular basis
- Start collecting data on legislative drafting, including measuring the frequency and quality of legislative impact and cost assessments
- Streamline and unify public complaints processes to ensure no duplication or gaps occur in receiving and handling public complaints¹⁹
- Maintain up to date records on accredited translators and include sign language interpreters to support justice users with hearing disabilities
- Examine the workload of the MOJ's forensic doctors in greater depth
- Appoint at least one woman forensic doctor as a matter of urgency. Until more female forensic doctors are trained, female nurses or other medical professionals should be engaged to play supportive technical roles to women undergoing forensic examinations

¹⁹ Data should be collected on the number of complaints received, the nature of the complaints, the number of complaints investigated and referred to other bodies, and the final outcomes

Presentation of the data

Initiating the draft legislation

Table 3.2.1: Laws and bylaws contributed to by the MOJ

	Laws	Bylaws
	Penal Code	Bylaw on Fuel
	Forensic Medicine Centre Law	Bylaw on the High Media Council
	Law to Combat Violence Against Women	Bylaw on Medical Waste
	Juvenile Justice Law	Bylaw on the Legislative Plan
	Legal Aid Law	Bylaw on Alimony
	Bankruptcy Law	Bylaw for the Council of Youth and Sport
	Judicial Records Law	
	Audio-Visual Media Law	
	Legislative Drafting Law	
	Health Insurance Law	
	Parks Law	
	Palestinian State Law for Arts and Human Science	
	Public Lottery Law	
	Model Arab Anti-Corruption Law	
	Fodder Law	
	Unified Arab Law Against Internet Related Drug Trafficking	
	Leasing of Property Law	
	Amendment to the Taxi Service Law	
	Amendment to the Law on Animal Health	
	Public Procurement Law	
	Provision of Electricity Law	
	Model Arab Law Against Human Trafficking	
Total	22	6

Providing Public Information on the work of the MOJ and the Justice sector

Table 3.2.2: Average monthly hits on MOJ website²⁰

Month	Hits	Visits	Pages	Files
January	104,814	3,638	16,212	35,895
February	28,702	3,379	7,574	17,445
March	26,327	3,456	7,401	16,740
April	28,920	2,860	6,050	14,497
May	15,618	2,410	4,531	11,104
June	14,965	2,670	4,648	10,763
July	32,953	3,295	8,156	20,495
August	297,940	5,706	50,713	90,533
September	286,953	6,297	59,946	136,697
October	500,702	9,241	84,819	244,608
November	310,823	5,717	56,406	136,666
December	538,359	7,815	143,054	258,851
Total	2,187,076	56,484	449,510	994,294

²⁰ Please see: www.moj.pna.ps

Receiving and Processing Public Complaints

Table 3.2.3: Public complaints lodged with MOJ

Directorate/Unit	Number of complaints received
Judicial Affairs Unit	59
Human Rights Unit	20
Total	79

The streamlining and improving of citizens' complaints mechanisms are listed as goals in the National Justice Sector Strategy (2011-2013). The Judicial Affairs Unit receives complaints relating to the legal process and the judiciary. In practice, the complaints relate mainly to non-implementation of court decisions by governmental bodies. Complaints are registered, archived and then followed up with the government body in question. The MOJ then advises the complainant on available legal remedies.

The Human Rights Unit also fulfils a citizens' complaints function; it receives complaints relating to alleged human rights abuses perpetrated by the PA and complaints against the Ministry of Justice for failing to perform its duties adequately.

Providing Non-conviction certificates

Table 3.2.4: Non-conviction certificates issues and documents verified/certified

Year	Number of non-conviction certificates issued	Number of documents verified/certified
2011	16,261	26,921

The National Judicial Registry was established as part of the Public Services Directorate in 2009 in accordance with the National Judicial Registry Bylaw and a 2005 cabinet decision.²¹ The National Judicial Registry is responsible for issuing non-conviction certificates, which are required for, *inter alia*, all civil service appointments, many private sector job applications, bank loan applications and foreign visa applications.²² The directorate also has some notary public functions for validating official documents, mainly powers of attorney for use abroad and foreign official documents that need to be validated for use within the PA. Notary functions are carried out in accordance with the Jordanian Notary Law (1952).

The Public Services Directorate is the only Ministry department with sub-offices outside of Ramallah; there are two in Hebron and one in Nablus.²³ These sub-offices are fully equipped with IT and e-links.

Providing Forensic medicine services

Table 3.2.5: Forensic medicine services

Year	Number of forensic medical exams	Number of forensic autopsies	Number of GBV victim statements
2011	1,359	165	72

Since 2011, the MOJ has assumed responsibility for the provision of forensic medicine services, whereas the MOI is responsible for the forensic laboratory and forensic testing. The Department of Forensic Medicine conducts forensic medical examinations, forensic autopsies and takes statements from victims of gender-based violence.

21 See Decision No. 97 (2005) concerning the establishment of a National Judicial Registry

22 Under Article 1 of the National Judicial Registry Bylaw the certificate is granted to applicants not convicted of either a misdemeanour or a felony

23 As of 30 October 2010

NGO administrative and financial oversight

By law, the MOJ has a role in providing administrative and financial oversight of civil society organisations working on democracy and human rights, as well as of civil society organisations that do not fall under the mandate of other ministries. The MOJ is responsible for the initial registration of these civil society organisations while the MOJ is required to ensure, *inter alia*, that registered organisations hold annual elections and prepare and publish financial reports. By the end of 2011, 175 civil society organisations fell under the oversight umbrella of the MOJ, up from 163 in 2010.

Accredited legal translators

The MOJ is responsible for accrediting translators to provide services to the courts and to all parts of the justice chain. As of end of 2011, the MOJ had accredited a total of 131 translators of which 109 were accredited in 2010, (thus 22 were accredited in 2011, 12 in English and 10 in Hebrew). There are no accredited sign language interpreters. The accreditation process requires the successful completion of a test and the taking of an oath of professional service. Once granted, accreditation is valid for twelve months after which it must be renewed at the MOJ.

Accredited arbitrators

The third strategic objective of the National Justice Sector Strategy (2011-2013) relates to expanding the use of alternative dispute resolution in order to reduce the burden on the courts, including by providing a suitable legal framework, developing criteria and control over the licensing of mediators and arbitrators, and strengthening the capacity of mediators, arbitrators and mediation judges. The MOJ is also responsible for developing the legislative framework and capacities of a regular arbitration system.

The work of the MOJ's Alternative Dispute Resolution Unit is guided by the Arbitration Law (2000) and Cabinet Decision 39 (2004).²⁴ Section 2 of the decision stipulates that arbitration cannot be employed in cases related to public order, criminal law or family law. Although this is not explicitly noted in the legislation, arbitration is usually confined to commercial cases. There is no legislation regulating mediation.²⁵ The qualifications and experience required for persons to become accredited arbitrators is provided for in the Arbitration Law and depend upon the monetary value of the dispute.²⁶

As of end of 2011, there were 60 accredited arbitrators in the West Bank, including 40 in category 1 (disputes whose value exceeds JD 100,000) and 20 in category 2 (disputes whose value ranges between JD 50,000-100,000). No further data concerning the number or nature of cases where accredited arbitrators were used was available.

24 Law No. 3 (2000)

25 Criminal law-related mediation or diversion is also occasionally referred to as alternative dispute resolution or restorative justice. These are distinct legal areas and are not related to the work of this unit

26 Article 8, Law No. 3 (2000)



4. The Palestinian Civil Police

The Palestinian Civil Police (PCP) is responsible for public protection and safety, and creating a secure environment that is conducive to democratic governance and human development. The legal framework for the PCP is incomplete with no organic law in place yet. The police are characterised as part of the security forces and some disciplinary matters are provided for under the Status of Forces Law. The PCP carries out standard policing functions such as surveillance, investigations, searches, seizures, arrests and interrogations. It also manages the West Bank's seven detention/prison facilities. There is also a juvenile detention facility for girls in Bethlehem and boys in Ramallah but data are held by MOSA.

In the 2011 public perceptions survey, the police received the highest satisfaction rating among all justice and security institutions in the West Bank: 75% of respondents said that they trust the police; 65% said that they are satisfied with the effectiveness of the police in enforcing court judgments; 81% said that they are satisfied with the ease with which the police are contactable by telephone; and 67% said that they were satisfied with the speed and seriousness with which the police respond to requests for assistance.²⁷

4-1 Personnel

Key findings

- There are 64 police stations in the West Bank. Governorates with relatively high populations such as Nablus, Hebron, Jenin appropriately have the largest number of police stations
- There are 7,675 police personnel in the West Bank of which 2,269 work in the Ramallah headquarters and only 256 (3.3%) are women. The PCP has taken steps to recruit more women to the service during the last few years and these efforts are commendable. However, while a ratio of 3.3% is comparable to some other countries in the region, it is very low compared to the global average (9.0%).²⁸ While the presence of women officers on its own is not enough to ensure that women receive the services to which they are entitled, recruiting women is an important component of a gender-responsive justice system²⁹
- It may be difficult to redress the current gender imbalance in the near term without increasing the overall size of the force as few police employees are nearing the age of retirement and turnover appears to be low (please see below). When recruitment opportunities arise, affirmative action policies should be employed as a means of redressing the gender imbalance
- There are 319 police personnel per 100,000 inhabitants in the West Bank (excluding police personnel who work in the detention/prison facilities).³⁰ Unfortunately, there are no regional comparators for the year 2011. However, in 2006 Jordan had 121 police personnel per 100,000 inhabitants and

²⁷ Please see supra note 10

²⁸ For further information, please see: UN Women, *In Pursuit of Justice: Progress of the World's Women (2011-2012)* <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf> (20 July 2013)

²⁹ Idem

³⁰ Please see below for an explanation of how this ratio was calculated

Lebanon had 678; in 2008, Turkey had 481 police personnel per 100,000 inhabitants; and in 2009 Morocco had 164 police personnel per 100,000 inhabitants³¹

- Educational attainment rates among the police are relatively low: only 1,196 (15.6%) hold a Bachelors degree and 89 (1.2%) hold a postgraduate (Masters or PhD) degree. Almost half (3,667) do not hold a secondary school certificate. These educational attainment rates have serious implications for operational effectiveness. Moreover, they may indicate that the PCP is not able to attract university graduates in sufficient numbers. Future datasets should be disaggregated by both education and age group in order to determine whether new recruits have higher education levels than their older counterparts, many of whom were absorbed into the police force in the context of the large number of Palestinian 'returnees' who immigrated during the Oslo Accords' era
- Palestinian police personnel are relatively young: 36.0% are under the age of 30 and 50.0% are aged 30-39. Only 13.6% are aged 40-49 and just 0.5% are over 50
- The vast majority of the police have more than 10 years' experience (63.7%) which indicates a low turnover. Turnover rates are likely to remain low as long as alternative employment opportunities remain limited in the oPt

Recommendations

- Step up efforts to redress the gender imbalance in the police force, including by employing affirmative action policies and by addressing obstacles to women's entry into the service³²
- Explore ways in which the police service could be made more attractive to graduates, for instance, through the development of a targeted graduate recruitment scheme
- Review the adequacy of existing professional training opportunities in light of the educational attainment rates presented in this report
- Look into the feasibility of supporting high achieving officers with leadership potential to enrol in higher education programmes

Presentation of the data

As outlined in Table 4.1.1 below, there are 64 police stations in the West Bank. The three police stations based in the Jerusalem governorate are located in 'J2', which constitutes the areas of Jerusalem that were illegally annexed by the state of Israel in 1967.

³¹ Please see: European Institute for Crime Prevention and Control, International Statistics on Crime and Justice (2010)

³² These barriers include the absence of separate sleeping and restroom facilities for women officers, inadequate transportation facilities, and resistance to women working outside of the home at night

Table 4.1.1: Number of police stations in the West Bank by governorate

Governorate	Number of police stations
Jenin	10
Tubas	4
Qalqilya	3
Tulkarem	7
Nablus	8
Salfit	3
Ramallah/Al-Bireh	7
Jericho/Al-Aghwar	3
Hebron	10
Bethlehem	6
Jerusalem	3
Total	64

In terms of the per capita ratio of police personnel, while the total population of the West Bank is approximately 2,580,168, only 2,338,359 persons fall under the jurisdiction of the Palestinian police as 241,809 persons live in the parts of Jerusalem that were annexed by Israel in 1967.³³ If the residents of Israeli-annexed Jerusalem are excluded from the population figures (the 'J1' area), the West Bank has a ratio of 334 police officers per 100,000 inhabitants. If the 331 police officers working in detention facilities are also excluded from the figures (most countries report these separately), the ratio falls to 319 police officers per 100,000 inhabitants.

Table 4.1.2: Number of police personnel by governorate and sex

Governorate	Female	Male	Total
Headquarters	56	2,213	2,269
Jenin	22	629	651
Tubas	6	204	210
Qalqilya	6	364	370
Tulkarem	18	422	440
Nablus	42	726	768
Salfit	9	209	218
Ramallah/Al-Bireh	16	817	833
Jericho/Al-Aghwar	19	354	373
Hebron	31	858	889
Bethlehem	28	458	486
Jerusalem	3	165	168
Total	256	7,419	7,675

As outlined in Table 4.1.3, just 15.6% of the police in the West Bank hold a Bachelor's degree and just 1.2% holds a Master's degree or a doctorate. Almost half do not hold a secondary school certificate.

³³ Figures provided by the PCBS

Table 4.1.3: Police personnel distributed by educational attainment level

Educational attainment level	Number of police officers
Less than secondary school	3,667
Secondary school certificate	2,316
Diploma	407
Bachelor's degree	1,196
Master's degree	89
Total	7,675

Table 4.1.4: Police personnel distributed by function/area of specialisation

Area of specialisation	Number of police officers
Traffic	535
General investigations	330
Security	944
Management	925
Public relations	47
Finance	46
Administration	190
Explosives	41
Police security	143
DCO	25
Family protection	23
Drug control	166
Special police	1,208
Operations	172
Armament	45
Tourism and antiquities	94
Detention/prison facilities	331
Governorate police	2,399
Political mandate	11
Total	7,675

Palestinian police personnel are relatively young: 36.0% are under the age of 30; and 50.2% are aged 30-39 years. Only 13.5% of police personnel are in the age group 40-49 years and just 0.5% is over 50.

Table 4.1.5: Number of police personnel by age

18-19 years	20-29 years	30-39 years	40-49 years	50-59 years	> 60 years	Total
31	2,734	3,838	1,036	36	-/-	7,675

Palestinian police personnel are relatively experienced: 63.7% have 10 or more years of experience, while the proportion of police officers with less than three years' experience is 19.3%.

Table 4.1.6: Number of police personnel by years of experience

< 1 year	1-3 years	4-6 years	7-9 years	> 10 years	Total
17	1,463	627	676	4,892	7,675

4-2 Core functions

4-2-1 Criminal offences and arrests

Key findings

- All police data should also be disaggregated by offence group, sex, and adult or juvenile status
- Unfortunately, existing record-keeping systems within the PCP do not enable the generation of key crime statistics. For example, there is no information about the number and types of criminal offences reported, the number and types of criminal offences investigated at the police level, the number and types of criminal offences investigated under public prosecution supervision, the number and types of investigated cases closed at the police stage, and the number and types of cases resolved informally at the police level. At each stage of the process, a reported criminal offence should be classified as either violent (general), violent (gender-based) or non-violent and particular attention paid to all reported deaths of females to ensure no suspicious circumstances. Data should also be kept on any familial relationship that exists between victims and suspects to readily identify cases of family violence
- There is also no data on the number of arrests made. Data on arrests made should be collected and disaggregated including: arrests made with or without a warrant; and arrests made with or without the use of force (if with the use of force, the type of force used and the circumstances of its use, should be recorded). Any other incidents where force is used outside of the context of arrest (i.e. control a crowd or when suspect is already under arrest or in police custody) should also be documented and recorded so that a clear picture of police use of force, can be formed

Recommendations

- Set up new record-keeping systems to enable the data described in the above section to be generated

4-2-2 Children in conflict with the law

An important aspect of police work concerns cases involving children. Different standards apply to cases involving children because children are particularly vulnerable.

Key findings

- Overall, the data in this section show that the situation of children in conflict with the law is extremely concerning. In 2011, 2,729 children including 111 girls came into contact with the police
- While a juvenile police unit has been established and police officers are receiving specialised training from EUPOL COPPS, there are no available data on the number of police officers who were trained to work with children as of the end of 2011. The total number of trained officers is likely to be small, however, and so it is presumed that a majority of the 2,729 children came into contact with unspecialised police personnel
- Throughout the course of 2011, 740 children were held in police detention; of those, 711 were held for less than 1 month (it is not clear as to whether they were held for a matter of hours or a matter of days); 24 were held for 1 to 6 months; and 2 were held for 7 to 12 months. In addition, the figures show that 2 children detained during 2011 had been held for 1 to 2 years; and 1 had been held for more than 2 years

- By law, children should not be held in police detention at all, let alone for several months or even years and an investigation into these cases should be launched immediately.³⁴ Detained children are extremely vulnerable to ill-treatment, especially when held in the custody of persons lacking in specialised juvenile justice training or detained with adults.³⁵ The courts have a responsibility to supervise the detention of all persons held in custody and a special duty of care to ensure the lawfulness, necessity and appropriateness of detention of children. All children should be provided with a lawyer as soon as possible after they have been arrested or brought to the police station for questioning. Ensuring the systematic appointment of specialised lawyers is one way of increasing the pressure upon the justice system to detain children only if every other option has been exhausted and only for the shortest possible time

Recommendations

- Launch an immediate investigation into the detention of children by the police, commencing with the cases where the children have been held for more than one month, and ensure all children are released from police custody into appropriate alternative care as a matter of urgency
- Collect and publish data on the numbers and locations of police officers who have been trained to work with children
- Amend the data recording system so that detention periods of less than one month can be more accurately recorded
- Ensure the collection and constant monitoring of data concerning the places where children are detained and intervene where necessary to ensure that children are never held with adults or for long periods in police cells³⁶
- Ensure that children are always separated from adults, held only for the shortest possible time and they have immediate access to a lawyer³⁷

Presentation of the data

In 2011, 2,729 cases involving children were registered with the police

Table 4.2.1: Cases involving children

Governorate	Female	Male	Total
Jenin	-/-	-/-	-/-
Tubas	5	140	145
Qalqilya	18	351	369
Tulkarem	13	369	382
Nablus	32	435	467
Salfit	9	80	89
Ramallah/Al-Bireh	23	625	648
Jericho/Al-Aghwar	-/-	103	103
Hebron	-/-	266	266
Bethlehem	5	140	145
Jerusalem	6	109	115
Total	111	2,618	2,729

³⁴ The Juvenile Reform Law (1954) stipulates that children under arrest should be placed in the custody of the Ministry of Social Affairs which runs the Dar Al-Amal Rehabilitation Centre for boys in Ramallah and the Girls Care Centre in Bethlehem

³⁵ See also: http://srsg.violenceagainstchildren.org/document/a-hrc-21-25_505

³⁶ See ICCPR Article 10 (2) (b) and CRC Article 37 (c)

³⁷ See CRC Article 37 (b) (c) (d)

In 2011, 740 children were held in police detention facilities. The vast majority (711) were held for less than 1 month; 24 were held for 1-6 months, 2 for 7-12 months, 2 for 1-2 years and 1 for over 2 years.

Table 4.2.2: Detention of children

Governorate	< 1 month	1-6 months	7-12 months	1-2 years	> 2 years	Total
Jenin	-/-	-/-	-/-	-/-	-/-	-/-
Tubas	126	2	-/-	-/-	-/-	128
Qalqiliya	-/-	4	-/-	1	1	6
Tulkarem	-/-	-/-	-/-	-/-	-/-	-/-
Nablus	217	7	1	-/-	-/-	225
Salfit	-/-	1	-/-	-/-	-/-	1
Ramallah/Al-Bireh	267	-/-	-/-	-/-	-/-	267
Jericho/Al-Aghwar	32	8	1	1	-/-	42
Hebron	-/-	-/-	-/-	-/-	-/-	-/-
Bethlehem	30	2	-/-	-/-	-/-	32
Jerusalem	39	-/-	-/-	-/-	-/-	39
Total	711	24	2	2	1	740

4-2-3 Detention

Please note that a significant number of persons are thought to be unlawfully detained by the General Intelligence Service, the Preventative Security Forces and the Military Intelligence at any one time.³⁸ This situation is extremely concerning, but is beyond the scope of this report.

Key findings

- There are seven detention/prison facilities in the West Bank, each of which has one section for men and one section for women. As of the end of 2011, 443 'unconvicted' detainees and 527 convicted prisoners were being held in these facilities. Unfortunately, these figures have not been disaggregated by gender. In addition, it is unclear whether the category 'unconvicted' includes detainees held without charge or is restricted to indicted pre-trial detainees. It is also unclear as to whether convicted and 'unconvicted' detainees are held together which would contravene international standards³⁹
- The total prison population as of the end of 2011 was 970 in total or 41 per 100,000 inhabitants. This is relatively low in global terms; however, the incarceration rate could rise significantly if the number of individuals detained by the various other security forces were added⁴⁰
- The number of 'unconvicted' detainees is worryingly high (nearly half of the total number of detainees), as is the length of their detention periods. As of the end of 2011, 73 had been held for more than 2 years and 51 had been held for 1-2 years. These cases should be investigated urgently and the detainees brought to trial or released

38 For instance, see: <http://www.addameer.org/userfiles/EN%20PA%20Violations%20Report%202009-2010.pdf>

39 See ICCPR Article 10 (2) (a)

40 Evidently, these figures also exclude Palestinian prisoners held in Israeli detention/prison facilities

- The vast majority of the 527 convicted prisoners serving a sentence in a detention facility as of the end of 2011 were serving a custodial sentence of less than one year. Short-term custodial sentences are usually *ineffective* in preventing re-offending and the relevant authorities are advised to look into the possibility of instituting a system of restorative non-custodial sanctions in their place
- Of the 527 convicted offenders serving a sentence at the end of 2011, the majority were under the age of 40 but a significant minority were aged 50-59 (39 prisoners) or over 60 (16 prisoners) indicating that the PA, like many other countries around the world, will soon have to take steps to address the challenges of an aging prison population.

Recommendations

- Launch an urgent investigation into the cases of long-term pre-trial detention
- Amend the data recording system in order that 'unconvicted' detainees are disaggregated into 'un-indicted' detainees and detainees who have been indicted and are awaiting trial
- Ensure that data on the number of persons held in detention as of the end of a given year are disaggregated by sex
- Hold national consultations on the issue of short-term custodial sentences in order to examine the costs and benefits of developing non-custodial alternative sanctions
- Conduct a study on the specific challenges posed to the Palestinian prison system by an aging prison population
- Ensure that services within the prisons are adequate and that women prisoners, despite their small numbers, have equal access to all facilities. These include opportunities for education and learning, vocational skills development, adequate time and facilities for exercise, access to social workers/ counsellors, medical services including specialist medical services such as psychiatrists

Presentation of the data

As Table 4.3.1 below demonstrates, as of the end of 2011, there were 443 'unconvicted' detained persons being held in custody. While the majority had been in custody for less than a month (176) extremely high numbers had been in custody for more than 2 years (73) or for 1-2 years (51). As emphasised above, these figures are extremely concerning and those cases should be urgently investigated.

Table 4.3.1: Number of 'unconvicted' persons held in detention

Detention/prison facility	< 1 month	1-6 months	7-12 months	1-2 years	> 2 years	Total
Jenin	18	9	2	10	6	45
Tulkarem	25	7	1	-/-	2	35
Nablus	39	22	9	10	17	97
Ramallah/Al-Bireh	41	37	14	18	27	137
Jericho/Al-Aghwar	14	4	-/-	4	1	23
Hebron	28	17	7	7	15	74
Bethlehem	11	11	3	2	5	32
Total	176	107	36	51	73	443

It is also extremely concerning that of the 443 'unconvicted' detainees being held in detention as of the end of 2011, 18 were under the age of 18 (please see Table 4.3.5 below). Again, as stressed above, all cases of the detention of a child by the PCP should be investigated urgently.

Table 4.3.2: Number of 'unconvicted' persons held in detention distributed by age

Detention/ prison facility	< 18 years	18-19	20-29	30-39	40-49	50-59	> 60 years	Total
Jenin	4	2	15	17	7	-/-	-/-	45
Tulkarem	2	4	19	9	1	-/-	-/-	35
Nablus	7	12	40	22	14	1	1	97
Ramallah/Al- Bireh	4	19	47	32	24	6	5	137
Jericho/Al- Aghwar	1	1	7	11	3	-/-	-/-	23
Hebron	-/-	5	29	30	8	2	-/-	74
Bethlehem	-/-	5	10	8	6	2	1	32
Total	18	48	167	129	63	11	7	443

While there were 443 'unconvicted' individuals in detention as of the end of 2011, 7,232 'unconvicted' individuals were held in detention throughout the course of 2011, the vast majority of which must have been held for a short period of time given.

Table 4.3.3: Number of persons arrested and held in detention

Detention/ prison facility	Female	Male	Total
Jenin	42	1,353	1,395
Tulkarem	17	740	757
Nablus	-/-	1,763	1,763
Ramallah/Al- Bireh	130	1,791	1,921
Jericho/Al- Aghwar	4	320	324
Hebron	-/-	674	674
Bethlehem	23	375	398
Total	216	7,016	7,232

As Table 4.3.4 shows, as of the end of 2011, there were 527 individuals serving a sentence in a detention facility in the West Bank. The vast majority of those individuals were serving a custodial sentence of less than one year.

Table 4.3.4: Individuals serving sentences in Palestinian detention/prison facilities

Detention/prison facility	< 1 year	1-4 years	5-9 years	> 10 years	Total
Jenin	38	20	13	18	89
Tulkarem	34	14	4	-/-	52
Nablus	39	19	16	36	110
Ramallah/Al-Bireh	43	8	6	18	75
Jericho/Al-Aghwar	18	6	34	31	89
Hebron	50	4	9	3	66
Bethlehem	25	12	7	2	46
Total	247	83	89	108	527

As Table 4.3.5 shows, the majority were under the age of 40. A significant minority, however, were aged 50-59 or over 60.

Table 4.3.5: Individuals serving sentences distributed by age

Detention/prison facility	< 18 years	18-19	20-29	30-39	40-49	50-59	> 60 years	Total
Jenin	-/-	-/-	10	40	28	8	3	89
Tulkarem	-/-	4	19	14	10	2	3	52
Nablus	-/-	2	36	32	29	9	2	110
Ramallah/Al-Bireh	1	5	21	27	12	7	2	75
Jericho/Al-Aghwar	-/-	-/-	26	46	10	5	2	89
Hebron	-/-	1	23	21	12	6	3	66
Bethlehem	-/-	-/-	13	18	12	2	1	46
Total	1	12	148	198	113	39	16	527

In the course of 2011, a total of 5,442 individuals served a custodial sentence; the overwhelming majority were men.

Table 4.3.6: Individuals serving sentences distributed by sex

Detention/prison facility	Female	Male	Total
Jenin	18	1,080	1,098
Tulkarem	-/-	507	507
Nablus	-/-	1,310	1,310
Ramallah/Al-Bireh	22	1,179	1,201
Jericho/Al-Aghwar	3	374	377
Hebron	-/-	576	576
Bethlehem	10	363	373
Total	53	5,389	5,442

4-2-4 Police oversight

Key findings

- In the course of 2011, the PCP received 106 complaints from the public. The allegations include charges of 'failure to implement court rulings', 'inflicting injuries', 'physical assault', and 'coercing confessions'
- Regrettably, there is no data indicating which if any of the complaints were investigated and whether criminal proceedings were initiated as a result
- It is notable that almost half of the complaints were received from the Hebron governorate and that most of these related to allegations of physical assault or torture. The next highest number of complaints is from Ramallah/Al-Bireh and again, most of these complaints relate to allegations of physical assault
- The ICHR report (2011) does not disaggregate complaints against PCP from those made against 'security services'; however, the figures are still informative. In 2011, 1,702 complaints were made against the security forces which comprised 61% of all complaints made to ICHR. During 2011, there were 112 complaints of ill-treatment and/or torture, a significant reduction from 161 in 2010 and 164 in 2009⁴¹
- While the Basic Law (amended in 2003) prohibits torture and the admissibility of any evidence obtained through use of torture, there is no crime of torture in the Penal Code or any other provision that can be used to bring a case against police for mistreatment, aside from ordinary assault charges⁴²
- The PCP lack a streamline internal complaints mechanism and is yet to officially endorse and implement the draft Code of Conduct

Recommendations

- Publish information about any actions taken pursuant to complaints
- If investigations were not opened into the complaints, open investigations and instigate criminal proceedings against individual officers where appropriate
- Ensure that future record keeping collects data on any follow-up made in relation to public complaints. This information should at a minimum include information about any investigations made, any disciplinary actions instituted as a result of the investigations and any criminal proceedings launched
- Endorse the draft Code of Conduct and provide police officers with training on the Code and ensure full monitoring of implementation of the Code of Conduct

⁴¹ The Status of Human Rights in Palestine (ICHR, 2011), p. 12-24

⁴² See Articles 333-337 of the Jordanian Penal Code (1960) for the ordinary assault offences which would be the only recourse to prosecute a police officer/public official for acts of torture



5. The Palestinian Attorney-General's Office/Public Prosecution

The public prosecution is responsible for the investigation, indictment and prosecution of an accused person. It defends the rights of the state, society and victims. Under Palestinian law, it is the only body that has the competence to initiate a criminal lawsuit. The Palestinian public prosecution is also mandated to enforce court rulings in criminal cases and in civil cases that involve the state or a state body.⁴³

Unlike many other jurisdictions where police are legally mandated to conduct aspects of investigations, the Palestinian Code of Criminal Procedure assigns prosecutors to direct all aspects of criminal investigations. The role of the prosecutor in each and every criminal case is particularly onerous, creating a need for sufficient prosecutors to ensure that legal obligations can be adequately met.

The 2011 public perceptions survey found that 47.7% of households were satisfied with the role of the public prosecution in maintaining dignity and human freedom, 45.2% were satisfied with the prosecution's initiation of criminal lawsuits, 38.6% were satisfied with the integrity and independence of the public prosecution and 39.9% were satisfied with the efficiency of the public prosecution. In terms of trust, the public prosecution scored 2.97 on a scale of 1-5, placing them 5th out of the seven institutions included in the survey.

5-1 Personnel

All core elements of the justice system require an adequate number of qualified, educated and experienced personnel, with the prosecution service being no exception. Tables 5.1.1 - 5.1.4 below outline the available data.

Key findings

- There are 12 public prosecution offices in the West Bank with 109 prosecutors and 87 support staff (80 clerks and 7 prosecution officers). This provides a ratio of 4.7 prosecutors per 100,000 inhabitants
- This ratio is significantly lower than those in other countries in the region: in 2011, Jordan had 13.2 prosecutors per 100,000 inhabitants; Egypt had 16.1 prosecutors per 100,000 inhabitants; and Tunisia had 17.1 prosecutors per 100,000 inhabitants
- In 2011, the average annual caseload was 400 cases. This is very high and suggests that prosecutors are currently spread too thinly to properly fulfil their legal mandate and responsibilities in each and every case. This is likely to be compromising the quality of work performed by prosecutors and thus enforcement of the law. In addition, there is significant variation between offices. Prosecutors working in Ramallah/Al-Bireh, Tubas, and Jenin have significantly higher caseloads than in other prosecution offices with caseloads of 446, 485 and 607, respectively

43 Code of Criminal Procedure No. 3 (2001)

- Of the 109 prosecutors just 17 are women. This gender balance compares favourably with some countries in the region such as Jordan but unfavourably with others such as Lebanon
- The AGO/PP employs 87 support staff which provides a ratio of 0.8 support personnel per prosecutor, compared to the judiciary who have 5 support staff per judge. The vast majority of Palestinian prosecutors are - relative to their counterparts in other parts of the world - young, with 71.6% of all prosecutors being aged between 30 and 39.
- Overall, prosecutors lack higher level qualifications. One prosecutor holds a PhD degree and 13 hold Master's degrees with the remainder holding Bachelor's degrees. Conversely, the support staff are relatively highly educated 37 holding Master's degrees, 31 holding Bachelor's degrees and the remainder all holding post-secondary qualifications. The AGO/PP has worked hard to develop and deliver training programmes for prosecutors and support staff. However, there are limits to the potential impact of short-term 'on the job' training initiatives which can never be an adequate substitute for opportunities to study for relevant post-graduate level qualifications. Given the young age of the Palestinian legal system, these findings are unsurprising. Nevertheless, they draw attention to the need to strengthen the capacities of prosecutors and attract to the profession larger numbers of more established legal professionals who will set the bar high for the prosecution service as a whole.

Recommendations

- Increase the number of prosecutors and support staff as soon as the situation allows
- If and when recruitment opportunities arise, employ affirmative action policies as a means of redressing the gender imbalance
- Explore ways to attract highly experienced legal professionals to the prosecution service such as taking into account the number of years of relevant pre-prosecutorial experience held by lawyers in determining the salary scale of newcomers to the prosecution service
- Promote and support the enrolment of prosecutors in specialised higher education programmes

Presentation of the data

Table 5.1.1: AGO/PP caseload

Public prosecution office	Number of prosecutors	Number of cases per prosecutor	Total
Jenin	7	607	4,252
Tulkarem	9	356	3,202
Qalqilya	6	418	2,506
Nablus	16	361	5,781
Salfit	3	447	1,342
Ramallah/Al-Bireh	20	446	8,911
Jericho/Al-Aghwar	4	292	1,168
Hebron	9	291	2,623
Bethlehem	9	356	3,204
Dura	5	346	1,728
Tubas	3	485	1,455
Halhoul	3	476	1,429
Total	94⁴⁴	400	37,601

44 The 15 specialised prosecutors are not included

Table 5.1.2: Prosecutors and support staff distributed by sex

Public prosecution office	Prosecutors /F	Prosecutors/M	Support staff/F	Support staff/M	Total
Jenin	0	۷	2	8	17
Tulkarem	1	۸	3	5	17
Qalqilya	1	۵	2	4	12
Nablus	2	۱۴	3	8	27
Salfit	0	۳	3	2	8
Ramallah/Al-Bireh	7	۱۳	3	10	33
Jericho/Al-Aghwar	0	۴	3	2	9
Hebron	2	۷	3	3	15
Bethlehem	1	۸	4	3	16
Dura	1	4	1	3	9
Tubas	-/-	3	1	2	6
Halhoul	0	3	1	3	7
Specialised prosecutors	2	13	5	-/-	20
Total	17	92	34	53	196

Table 5.1.3: Prosecutors distributed by highest attained qualification

Public prosecution office	Bachelor's degree	Master's degree	PhD degree	Total
Jenin	7	-/-	-/-	7
Tulkarem	9	-/-	-/-	9
Qalqilya	5	1	-/-	6
Nablus	13	3	-/-	16
Salfit	3	-/-	-/-	3
Ramallah/Al-Bireh	19	1	-/-	20
Jericho/Al-Aghwar	4	-/-	-/-	4
Hebron	9	-/-	-/-	9
Bethlehem	8	1	-/-	9
Dura	5	-/-	-/-	5
Tubas	3	-/-	-/-	3
Halhoul	2	1	-/-	3
Specialised prosecutors	8	6	1	15
Total	95	13	1	109

Table 5.1.4: Support staff distributed by highest attained qualification

Public prosecution office	Diploma	Bachelor's degree	Higher diploma	Master's Degree	Total
Jenin	2	3	-/-	5	10
Tulkarem	-/-	2	-/-	6	8
Qalqilya	-/-	2	-/-	4	6
Nablus	3	4	1	3	11
Salfit	1	3	-/-	1	5
Ramallah/Al-Bireh	2	4	-/-	7	13
Jericho/Al-Aghwar	-/-	3	-/-	2	5
Hebron	3	1	-/-	2	6
Bethlehem	-/-	5	1	1	7
Dura	-/-	1	-/-	3	4
Tubas	-/-	2	-/-	1	3
Halhoul	1	1	-/-	2	4
Specialised prosecutors	-/-	-/-	5	-/-	5
Total	12	31	7	37	87

5-2 Core functions

'Incoming cases' at the public prosecution refer to:

- Cases that have been registered by a public prosecution office for investigation (following a public complaint or referral by the police); and
- Cases that are registered by a public prosecution office for preparation for trial after they have already been investigated by a different prosecution office

The Public Prosecution is aware that this means that a single incident can be double counted (listed as an 'incoming case' more than once) and it has taken steps to amend this record-keeping system.

'Disposed cases' at the public prosecution refer to cases that have been investigated and passed to one of the following parties:

- The Attorney-General's Office for review (in felony cases)
- The court directly following investigation (in misdemeanour cases)

Pending cases are cases that are still being investigated having been opened for investigation in a previous year. Data on cases pending, cases entering the system and cases disposed are useful as they enable disposition and congestion rates to be calculated.

Disposition rates show whether or not the Public Prosecution has been able to keep up with its incoming cases in a given time period. However, they do not consider existing case backlogs. Disposition rates are calculated by dividing the number of cases disposed by the new entries; a figure of less than 1.0 means that the court is not keeping up with its cases and is creating or adding to a backlog.

- *Congestion rates show whether or not the Public Prosecution has been able to resolve its entire caseload (comprising incoming cases and the backlog of cases from previous years) in a given time period. The congestion rate is calculated by dividing the total caseload by the number of cases disposed. A congestion rate of 1.0 means that the Public Prosecution has resolved its entire caseload for a given period of time. A falling congestion rate indicates that the backlog has gone down. Conversely, a rising congestion rate indicates that the backlog has gone up*

Thus, while disposition and congestion rates provide useful insights into the justice system, they are not able to:

- Determine whether case processing times are excessive (a rising backlog could indicate that the number of prosecutors is too low or that the number of incoming cases is rising)
- Explain why backlogs are being created
- Identify where in the system specific bottlenecks exist

Key findings

- In light of the above-described double-counting, the data collected on the number of incoming and disposed cases may not be very informative
- Unfortunately, current record-keeping systems within the public prosecution do not generate the type of information that is needed to inform policy. For example, there is no information about pre-charge decisions. There are also no records with which to generate information about out-of-court disposals issued at the pre-charge stage (such as the issuing of a caution or informal resolution)
- There is also no means with which to determine how many defendants were indicted in a given time period and of those how many cases proceeded to trial or a guilty plea or could not proceed and why
- Information about case outcomes is also lacking. For instance, there is no information about discontinuances (where proceedings have been discontinued at any time before the start of a trial); warrants (where the prosecution cannot proceed because the defendant has failed to appear at court and a warrant has been issued for his/her arrest); dismissals after trial (a 'not guilty' verdict); guilty pleas; convictions after trial; and sentences
- From the data that is available, the prosecution service has a very consistent disposal rate of around 1 indicating that it is currently keeping up with the incoming caseload. However it is not able to deal with the backlog, indicated by the average higher congestion rate (1.15), although this is noticeably lower than the average congestion rate of the regular courts (1.36)
- Data on the number of enforced rulings (14,255 in 2011) are not very informative as there is no information about the type of cases that these rulings relate to (traffic misdemeanours, other misdemeanours, felonies etc.), the total number of rulings requiring enforcement in 2011, and the number of days taken to enforce each ruling
- There is also no data relating to the oversight of prosecutors including complaints made against prosecutors, cases investigated, outcomes or case type

Recommendations

- Introduce new record keeping mechanisms to enable the justice and security sector data discussed above to be generated for performance management and policy formulation purposes. In doing so, the Public Prosecution may benefit from input from regional or international experts who have previously set up such systems in other jurisdictions

Presentation of the data

Table 5.2.1: Incoming, disposed and pending cases

Public prosecution office	Incoming	Pending (2010)	Disposed	Carried-over (2012)	Disposal rate	Congestion rate
Jenin	4,048	204	4,223	29	1.04	1,01
Tulkarem	2,368	834	2,228	974	0.94	1.44
Qalqilya	2,456	50	2,469	37	1.01	1.01
Nablus	4,897	884	4,901	880	1.00	1.18
Salfit	1,283	59	1,276	66	0.99	1.05
Ramallah/Al-Bireh	7,676	1,235	7,418	1,493	0.97	1.20
Jericho/Al-Aghwar	1,011	157	1,008	160	1.00	1.16
Hebron	2,233	390	1,994	629	0.89	1.32
Bethlehem	3,175	29	3,181	23	1.00	1.00
Dura	1,580	148	1,546	182	0.98	1.12
Tubas	1,213	242	1,075	380	0.89	1.35
Halhoul	1,327	102	1,283	146	0.97	1.11
Total	33,267	4,334	32,602	4,999	0.98	1.15

Table 5.2.2: Rulings enforced by AGO/PP

Public prosecution office	Number of rulings enforced
Jenin	3,551
Tulkarem	1,332
Qalqilya	1,165
Nablus	1,845
Salfit	266
Ramallah/Al-Bireh	1,324
Jericho/Al-Aghwar	2,200
Hebron	139
Bethlehem	461
Dura	1,151
Tubas	223
Halhoul	598
Total	14,255



6. The Palestinian High Judicial Council

There are three separate Palestinian court systems: civil courts (also referred to as ‘regular courts’), religious courts (*shari’a* courts) and military courts. This section presents data on the regular courts; data on the *shari’a* courts are presented in section 7 and data on military courts in section 8.

The 2011 public perceptions survey indicates that public confidence in the regular court system needs to be improved: only 51.2% of the respondents said that they were confident that they could resolve a civil dispute fairly through the courts. Moreover - and as explained in more detail below - the regular courts are seen by many as slow and inaccessible.

In relation to the structure of the courts, the passage of the Judicial Authority Law in 2002 brought regular courts under a single administrative body, the High Judicial Council (HJC).⁴⁵ The Law of the Formation of Regular Courts establishes the following regular courts; the High Court (consisting of the Court of Cassation and the High Court of Justice), the Courts of Appeal, the Courts of First Instance and the Conciliation Courts.

The High Court of Justice exercises its jurisdiction over disputes related to elections, applications for cancellation of final administrative regulations, decisions and decrees concerning persons or assets of public judicial persons and appeals for the release of persons who are illegally detained.⁴⁶ The High Court of Justice also continues to serve the functions of the Constitutional Court until its establishment as provided for under the Basic Law.⁴⁷

The Court of Cassation reviews cases related to criminal and civil matters and has jurisdiction over appeals brought before it from the Courts of Appeal in felony cases, civil cases, personal status matters for non-Muslims, appeals brought before it from Courts of First Instance in their appellate capacity, and other ancillary matters.⁴⁸ The Courts of First Instance have jurisdiction over all felonies and misdemeanours and appeals from the Conciliation Courts.⁴⁹ Less serious misdemeanours are dealt with by the Conciliation Courts which have jurisdiction over all contraventions and some misdemeanours. The Courts of Appeal review appeals filed before them against judgments and decisions rendered by the Courts of First Instance in their capacity as courts of initial jurisdiction.⁵⁰

6-1 Personnel

The existence of an adequate number of qualified, educated and experienced justice sector personnel drawn from all walks of life and fairly representative of both men and women is a fundamental part of a well-functioning system. Section 6.2 presents the records that exist about judges, judicial support staff and notification officers. Data on enforcement officers are presented in section 6.3 below alongside data on the enforcement of court rulings.

45 The High Judicial Council is comprised of the Chief Justice, the Attorney-General and the Deputy Minister of Justice as well as two judges from the High Court and the presiding judges of the Courts of Appeal in Jerusalem, Ramallah and Gaza

46 Please see Article 33 of the Law of the Formation of the Regular Courts No. 5 (2001)

47 Please see Article 94 of the Basic Law (amended 2003) and Article 37 of the Law of the Formation of the Regular Courts No. 5 (2001)

48 Article 30

49 Article 15

50 Article 22

Key findings

- There are 23 courts in total comprised of ten Conciliation Courts, ten Courts of First Instance, two Courts of Appeal and a High Court (which also sits as the Constitutional Court until constituted)
- There is significant variation in the caseloads of judges within each court type. Judges working in the Conciliation Courts in Ramallah/Al-Bireh and Qalqilya have significantly higher caseloads per judge than other conciliation courts. It is of note that these two courts are also heavily overrepresented in relation to complaints against judges, between them accounting for more than half of the total number of complaints. This may suggest that the high judicial caseloads in these areas, may be contributing to deficiencies in the quality of justice provided
- There are 178 judges in the West Bank which provides a ratio of 7.6 judges per 100,000 inhabitants. This ratio is significantly lower than those in other middle income countries in the region: Jordan has 12.7 judges per 100,000 inhabitants, Egypt has 16.0 judges per 100,000 inhabitants, and Tunisia has 15.4 judges per 100,000 inhabitants⁵¹
- The data presented below demonstrates that the vast majority of Palestinian judges are - relative to their counterparts in other parts of the world - young, judicially inexperienced and lacking in opportunities to pursue higher academic qualifications
- If older and more experienced legal professionals are to be drawn into the judiciary, the profession must be made more attractive; for instance, through the development of a fast-track promotion scheme for highly experienced newcomers or by finding a way to take pre-judicial experience into account when setting salary scales
- Of the 178 sitting judges just 27 are women. This gender balance compares favourably with some countries in the region such as Jordan but unfavourably with others such as Lebanon
- The HJC employs 879 support staff which provides a ratio of nearly 5 support personnel per judge⁵²

Recommendations

- When reviewing existing and formulating future justice sector strategies, take the relatively low number of judges per 100,000 inhabitants into consideration, with a view to recruiting additional judges especially for first instance civil and criminal trials, and criminal appeals
- Promote and support the enrolment of judges in specialised higher education programmes
- Explore ways in which to attract highly experienced legal professionals to the judiciary
- Develop and implement a diversity strategy for judicial recruitment and retention in order to strengthen the participation of underrepresented groups, including women

51 In this regard, it is interesting to note that the Palestinian public is concerned with the adequacy of the number of sitting judges. In the 2011 public perceptions survey, just 35% of the respondents said that they were satisfied with the number of judges working in Palestinian courts

52 These include 309 women, representing over 35% of the workforce

Presentation of the data

Table 6.1.1: Conciliation Courts, Courts of First Instance and Courts of Appeal

Court	Conciliation Court	Court of First Instance	Court of Appeal	Total
Jenin	1	1	-/-	2
Tulkarem	1	1	-/-	2
Qalqilya	1	1	-/-	2
Nablus	1	1	-/-	2
Salfit	1	1	-/-	2
Ramallah/Al-Bireh	1	1	2	4
Jericho/Al-Aghwar	1	1	-/-	2
Hebron	1	1	-/-	2
Bethlehem	1	1	-/-	2
Tubas	1	1	-/-	2
Jerusalem	-/-	-/-	1	1
Total	10	10	3	23

Table 6.1.2: Number of judges distributed by sex

Level of court	Female	Male	Total
Conciliation Courts	17	60	77
Courts of First Instance	7	46	53
Courts of Appeal	3	17	20
High Court	1	27	28
Total	27	151	178

Table 6.1.3: Caseload per judge

Level of court	Conciliation Court	Court of First Instance	Court of Appeal
Jenin	1,691	393	n/a
Tulkarem	1,172	375	n/a
Qalqilya	2,203	271	n/a
Nablus	1,614	466	n/a
Salfit	1,452	No data	n/a
Ramallah/Al-Bireh	2,146	327	255
Jericho/Al-Aghwar	1,289	245	n/a
Hebron	3,636	519	n/a
Bethlehem	1,931	241	n/a
Tubas	1,484	No data	n/a
Jerusalem	n/a	n/a	262

The vast majority of judges sitting in the conciliation courts hold a Bachelor's degree as their highest academic qualification; just 14.3% hold a Master's degree. Among judges sitting in the first instance courts the ratio is similar: 83.0% hold a Bachelor's degree and just 17.0% hold a Master's degree. For

appeal court judges the ratios are as follows: 75.0% hold a Bachelor degree and 25.0% hold a Masters degree. There are no holders of a PhD degree at any of these three court levels and there are no available records on the academic qualifications of High Court judges.

Table 6.1.4: Judges distributed by highest attained qualification

Court level	Bachelor's degree	Master's degree	PhD degree	Total
Conciliation Courts	66	11	-/-	77
Courts of First Instance	44	9	-/-	53
Courts of Appeal	15	5	-/-	20
Total				

No judge sitting in the conciliation courts has sat as a judge for more than three years. Of the total number of judges sitting at that level, 24 have less than one year's judicial experience and the remainder 53 have sat as judges for 1-3 years. At the level of the first instance courts, 2 have 1-3 years experience; 35 have 4-6 years experience; 15 have 7-9 years experience; and 1 has more than 10 years experience. At the level of the appeals courts, 1 has 1-3 years experience; 5 have 4-6 years experience; 10 have 7-9 years experience; and 4 have over 10 years experience.

Table 6.1.5: Judges distributed by years of judicial experience

Court level	< 1 year	1-3 years	4-6 years	7-9 years	> 10 years	Total
Conciliation Courts	24	53	-/-	-/-	-/-	77
Courts of First Instance	-/-	2	35	15	1	53
Courts of Appeal	-/-	1	5	10	4	20
Total	24	56	40	25	5	150 ⁵³

Palestinian judges are relatively young. At the level of the conciliation courts, 14 judges are under the age of 30 and 41 are aged 30-39; at the first instance court level, 32 judges are under the age of 50; and at the appeal court level 16 are under the age of 60.

Table 6.1.6: Judges distributed by age

Court level	20-29 years	30-39 years	40-49 years	50-59 years	> 60 years	Total
Conciliation Courts	14	41	21	-/-	1	77
Courts of First Instance	-/-	8	24	18	3	53
Courts of Appeal	-/-	1	4	11	4	20
Total	14	50	49	29	8	150 ⁵⁴

⁵³ The 28 High Court judges are not included

⁵⁴ The 28 High Court judges are not included

6-2 Core functions

6-2-1 Adjudication of civil and criminal cases

The delivery of timely justice is important for a multitude of reasons. In civil cases, delays can frustrate litigants, reduce the value of any eventual remedy and, ultimately, undermine public confidence in the ability of the justice system to resolve societal disputes. With respect to criminal law, the right to be tried without undue delay is explicitly provided for in the International Covenant on Civil and Political Rights (ICCPR). Lengthy delays can prevent a fair trial from taking place as suspects, witnesses and even evidence may become difficult to locate, and the judge hearing the case is more likely to be promoted or retire before its conclusion.

Lengthy trials also cause hardships for individuals charged with an offence including pre-trial detention, loss of income and employment, and social or community exclusion. Lengthy trials can also drive people to act outside of the law and lead to 'revenge' killings or an increase in reliance on informal justice.

The apparent dissatisfaction of the Palestinian public with the length of the formal justice process is therefore cause for concern. In the 2011 public perceptions survey, 15.0% of respondents in the West Bank (and 37.0% in Gaza) said that they would not seek to resolve disputes in the formal courts because informal justice mechanisms are faster and 50.0% of all the respondents who said that they would not use the formal court system said that this was because 'court cases take too long'.⁵⁵

Case statistics can provide vital insights into the causes and prevalence of delays, and chart progress towards managing and reducing backlogs. Unfortunately, however, the PCBS review found that as in many other justice systems across the world Palestinian court records are limited to information on:

- Cases pending (cases remaining open from the previous year)
- Cases incoming (new cases filed in a given year)
- Cases disposed (cases resolved in a given year)

Data on cases pending, cases entering the system and cases disposed are useful as they enable disposition and congestion rates to be calculated.

- *Disposition rates show whether or not a court has been able to keep up with its incoming cases in a given time period.* They do not consider existing case backlogs. Disposition rates are calculated by dividing the number of cases disposed by the new entries; a figure of less than 1.0 means that the court is not keeping up with its cases and is creating or adding to a backlog
- *Congestion rates show whether or not a court has been able to resolve its entire caseload (comprising incoming cases and the backlog of cases from previous years) in a given time period.* The congestion rate is calculated by dividing the total caseload by the number of cases disposed. A congestion rate of 1.0 means that the court has resolved its entire caseload for a given period of time. A falling congestion rate indicates that the backlog has gone down. Conversely, a rising congestion rate indicates that the backlog has gone up

55 This figures rise to 64% in the Gaza Strip - compared to 58.4% in East Jerusalem and 41.5% in West Bank - affirming the need to prioritise rule of law investments in this area

Thus, while disposition and congestion rates provide useful insights into the justice system, they are not able to:

- Determine whether case processing times are excessive (a rising backlog could indicate that the number of judges is too low or that the number of incoming cases is rising)
- Explain why backlogs are being created
- Identify where in the system specific bottlenecks exist

Key findings

- As explained above, record-keeping in the regular courts does not generate the information that is needed to determine whether case processing times are appropriate or excessive; why case backlogs are being created; or where in the system bottlenecks exist
- The Palestinian courts taken as a whole were almost able to dispose of their incoming cases in 2011, but they were unable to reduce the backlog of cases carried over from 2010 which in 2011 numbered 38,247 cases (overall disposition rate of 0.99)
- Data disaggregated by court level show that the conciliation courts had a disposition rate of 1.0 in 2011; this shows that they were able to keep up with incoming cases, but not reduce their backlog (which in 2011 was 27,043 cases)
- When the data are disaggregated further by type of case they demonstrate that the main problem at the level of the conciliation courts is in the area of civil law: the conciliation courts were unable to keep up with their incoming civil cases and therefore the backlog for civil cases actually increased in 2011. The conciliation courts were, however, able to keep up with their incoming criminal cases and even reduce the criminal case backlog slightly
- The disposition rates at the first instance courts are of less concern. In 2011, the disposition rate was 1.74, meaning that the first instance courts were able to keep up with their incoming cases while making a significant contribution to the reduction of the backlog
- The picture is more positive for criminal cases at the trial-level: the disposition rate of 1.5 shows that the courts were able to manage their incoming cases and reduce the backlog in 2011; however, the problem is that the backlog of 3,399 cases held over from previous years, creates a high congestion rate of 3.11, which requires focused attention to clear. For first instance court civil law cases at the appeal-level, the disposition rate is 0.94 and for first instance court criminal cases at the appeal-level the rate is 0.95. Therefore, at the first instance court level, both civil law appeal cases and criminal law appeal cases are gradually contributing to the backlog
- At the appeal courts the pattern reverses: with a disposition rate of 1.23, all of the incoming civil law appeals for 2011 were disposed and a contribution to reducing the backlog made; for criminal appeals, however, the disposition rate was 0.86 meaning that the backlog for this type of case was increased in 2011. The high number of held-over criminal appeals results in a high congestion rate of 3.19, indicating some focus attention on clearing this backlog is necessary. When all appeal court cases are taken together the disposition rate was 1.03, meaning that appeal courts are managing their incoming cases, but not significantly addressing the backlog

Recommendations

- Drawing on international best practice relating to diagnosis of causes of case backlogs and delays, develop a system to identify the stage of the case process at which a delay is encountered and the means to identify the main reasons for the delay
- Create and maintain records on case processing times for the specific stages of a case as well as the entire trajectory
- While these records are being created, conduct a number of random samples of case files, especially for the types of cases that are generating an increased backlog, and calculate case processing times. The figures collected can be compared between courts and with those available in international databases for comparable types of cases. It is important to note that international comparisons for some types of cases, such as major felonies or unfair dismissal disputes, will be more meaningful than for other types of cases such as complex fraud cases.⁵⁶
- Consider using pre-trial detention rates as a proxy indicator for criminal case delays; however, it is important to identify the point in the process at which a delay is most likely to occur as pre-trial detention rates reflect the work of the police, the prosecution and the legal profession as well the courts
- Concentrate capacity building initiatives for the judiciary on the types of cases that the judiciary is unable to keep pace with
- Consider setting up alternative dispute mechanisms in order to divert particular types of cases away from the courts as a means of enabling the judiciary to adequately deal with the backlog

Presentation of the data

In the course of 2011, 110,662 new cases were filed at the regular courts. These included:

- 54,239 traffic misdemeanours⁵⁷
- 14,607 civil law trial cases
- 33,459 criminal law trial cases
- 2,425 civil law appeal cases
- 3,562 criminal law appeal cases
- 2,370 enforcement appeals⁵⁸

In the same period, 109,810 cases were disposed, giving a disposition rate of 0.99. Broadly speaking, therefore, the regular courts were able to keep up with their incoming cases but unable to tackle the sizeable backlog of 38,247 cases carried over from the previous year. The total caseload was therefore 148,909 in 2011, giving a congestion rate of 1.36.

Conciliation courts: in 2011, 96,922 cases were filed at the conciliation courts in the West Bank. Table 6.2.3 below provides the distribution by type of case. In the same year, 96,700 cases were disposed

⁵⁶ For more information about case auditing please see: World Bank, Justice Sector Assessments: A Handbook http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JSAHandbookWebEdition_1.pdf (3 May 2013)

⁵⁷ Traffic misdemeanours are handled by the police, but passed to the courts for signature when a fine is imposed

⁵⁸ Civil cases in which a judge rules on the enforcement of a civil court ruling and this is then appealed

which gives a disposition rate of 1.0. This means that the conciliation courts were able to keep up with their incoming cases. However, the total caseload for 2011 was 123,965 giving a congestion rate of 1.28.

The disposition and congestion rates for the conciliation courts also vary by the type of case. For civil cases the disposition rate is 0.91, meaning that the courts are unable to keep up with their incoming civil cases and are gradually adding to the backlog. For criminal cases the rate is 1.02, meaning that the courts are able to keep up with their caseload and (gradually) reduce the backlog. The congestion rate for civil cases is 2.16 and the congestion rate for criminal cases is 1.52.

First instance courts: In 2011, 4,987 cases were filed at the first instance courts (both trials and appeals from reconciliation courts). Table 6.2.4 below provides the distribution by type of case and case level (trial or appellate). In the same year 8,707 cases were disposed which gives a disposition rate of 1.74. This means that the first instance courts were able to keep up with their incoming cases while reducing the backlog. The total caseload for 2011 was 19,557 giving a congestion rate of 2.25.

As with the conciliation courts, the disposition and congestion rates vary by the type of case. For civil cases at trial level the disposition rate is 0.77, meaning that the courts are unable to keep up with their incoming cases and are adding to the backlog. Conversely, for criminal cases the disposition rate is 1.5, meaning that the courts are keeping up with their incoming cases and reducing the backlog. For appeals of civil law cases the disposition rate is 0.94 and for criminal appeals the rate is 0.95. At the appellate level taken as a whole, therefore, the courts are unable to keep up with the incoming cases and are adding to the backlog.

Appeal courts: In 2011, 5,387 cases were filed at the appeal courts while 4,403 cases were disposed. The overall disposition rate was therefore 0.82 which means that the appeals courts were unable to keep up with their incoming cases. The rates for civil and criminal appeals differ significantly, however: 1,192 civil appeals were filed in 2011 and 1,468 were disposed which gives a disposition rate of 1.23 for civil appeals; at the same time, 717 criminal appeals were filed and 619 were disposed which gives a disposition rate of 0.86. Thus while the backlog for civil appeals decreased in 2011, the backlog for criminal appeals increased.

Table 6.2.1: Disposition and congestion rates

Level of court	Disposition rate	Congestion rate
Conciliation Courts - civil cases	0.91	2.06
Conciliation Courts - criminal cases	1.02	1.52
Sub-total (conciliation courts)	1.00	1.28
Courts of First Instance - civil trial cases	0.77	2.80
Courts of First Instance - criminal trial cases	1.50	3.11
Courts of First Instance - civil appeal cases	0.94	1.67
Courts of First Instance - criminal appeal cases	0.95	1.35
Sub-total (first instance courts)	1.74	2.25
Courts of Appeal - civil appeal cases	1.23	1.32
Courts of Appeal - criminal appeal cases	0.86	3.19
Sub-total (appeals courts)	1.03	1.22
Total	0.99	1.36

Table 6.2.2: Number of cases overturned on appeal and status of appeals backlog

Court	Overturned	Reopened	Renewed	Halted	Postponed	Repealed	New	Temporary appeal
Jenin	50	-/-	-/-	79	3,333	33	8	17
Tulkarem	106	-/-	-/-	98	3,768	122	5	8
Qalqilya	29	1	-/-	33	1,705	20	13	9
Nablus	165	14	-/-	178	6,805	106	6	36
Salfit	-/-	-/-	-/-	7	399	13	-/-	4
Ramallah/ Al-Bireh	247	-/-	1	166	13,881	84	1,583	43
Jericho/ Al-Aghwar	-/-	-/-	1	12	830	8	12	3
Hebron	166	-/-	-/-	89	4,879	71	4	20
Bethlehem	49	2	-/-	47	4,166	29	30	33
Tubas	9	-/-	-/-	-/-	-/-	-/-	-/-	-/-
Jerusalem	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total	821	17	2		39,766		1,661	173

The total number of appeals heard in 2011 was 4,403 with 821 of those resulting in the original decision being overturned, giving a decision overturn rate of 18%.

Table 6.2.3: Conciliation Courts - number of incoming, disposed and carried-over cases

Case type	Incoming	Disposed	Carried-over
Traffic misdemeanours	54,239	54,224	138
Civil law trials	10,133	9,264	9,903
Criminal law trials	32,550	33,212	17,902
Total	96,922	96,700	27,943

Table 6.2.4: Courts of First Instance - number of incoming, disposed and carried-over cases

Case type	Incoming	Disposed	Carried-over
Civil law trials	4,474	3,453	5,175
Criminal law trials	909	1,384	3,399
Civil law appeals	1,233	1,156	699
Criminal law appeals	2,845	2,714	823
Total	9,461	8,707	10,006

Table 6.2.5: Courts of Appeal - number of incoming, disposed and carried-over cases

Case type	Incoming	Disposed	Carried-over
Civil law appeals	1,192	1,468	759
Criminal law appeals	717	619	328
Enforcement appeals	2,370	2,316	21
Total	4,279	4,403	1,108

6-2-2 Enforcement of rulings

There is a substantial public interest in ensuring that where a ruling is made by the court it is subsequently enforced. Failure to do so undermines confidence in the rule of law and impedes access to justice. In criminal cases and in civil cases that involve the state or a state institution, the public prosecution has

a duty to ensure that the judgment is enforced.⁵⁹ Data on enforcement in these cases are therefore presented in section 6 of this report which presents public prosecution data. However, in civil cases and family law cases, judges, supported by enforcement officers, are required to ensure that court rulings are enforced. The following sections deal exclusively with these categories of cases.

Enforcement officers have the authority under the Enforcement Law No. 23 (2005) to enforce court rulings and arbiters' decisions by:

- Seizing debtors' properties and selling the seized property
- Issuing arrest warrants against the persons who are the subject of the enforcement and taking them into custody

Key findings

- There are only 9 enforcement officers in the West Bank. It is therefore not surprising that there is a significant backlog in the enforcement of court judgments: 49,847 cases were carried over from 2010 to 2011 and 33,116 new cases were referred for enforcement in 2011 but only 18,066 cases were successfully enforced in 2011. This means that only one fifth of total judgments were enforced in 2011. The backlog of cases amounts to 64,897 cases, an alarming increase upon the almost 50,000 cases carried over from 2010
- Data on the enforcement of court rulings are not disaggregated by type of case which limits their utility. In addition, there are no data on the time it takes to enforce each decision or why delays are caused. Common reasons put forward for delays are restricted access to Areas C and inadequate transportation facilities
- The lack of current capacity to reliably enforce judgments represents a major crisis in the justice system and threatens the progress being made in many other areas. If left unchecked it is likely to seriously erode public confidence in the formal justice system

Recommendations

- Urgently increase the number of enforcement officers in the West Bank and improve transportation facilities
- Collect additional data through tailored use of the MIZAN2 electronic case management system
- Improve the data disaggregation of enforcement cases to case types and document in detail the causes of delay
- Improve procedures and tracking of enforcement of court rulings

6-2-3 Judicial oversight

Judges are entrusted with the exercise of considerable power. The exercise of this power has dramatic effects on the lives of those individuals who come into contact with the justice system. This is why it is vital to promote and support a range of internal and external oversight mechanisms, especially in light of the fact that just 36.0% of the Palestinian public are satisfied with the normative performance of the judiciary ('independence'; 'honesty'; fairness of verdicts').

⁵⁹ See article 395 (1) of the Code of Criminal Procedure No. 3 (2001) and Article 3 (c) of the Governmental Lawsuit (or Proceedings) Law No. 25 (1958)

Internal judicial inspections are carried out by the Judicial Inspections Department as required by the Judicial Authority Law (2002). The department has a mandate to receive and investigate complaints made against judges and carry out inspections as follows:

- A department to inspect judges shall be established and attached to the High Judicial Council and it shall be composed of the head of the Technical Office and an adequate number of appeal court judges or members of the public prosecution at an equivalent level
- The High Judicial Council shall develop bylaws for the inspection department indicating its powers, operational rules and procedures to assess adequacy, including the outcomes of training courses and reasons for cancelling, revoking or amending a ruling
- Adequacy shall be assessed at one of the following levels: excellent, very good, good, average, and below the average

As required, the High Judicial Council issued Resolution 4 (2006) to regulate the procedural and formal rules of inspections.

Key findings

- The data show that 192 complaints were received in 2011 of which 180 were investigated and 12 were carried over to 2012. Of the 180 complaints investigated, 147 were dismissed on the basis of 'incompetence' and notes were addressed to the remaining 33 judges for matters related to conduct, administrative actions or lengthy processing
- Unfortunately, however, there is no further information to explain the specific nature of the complaints made, the nature and gravity of any misconduct identified, or what disciplinary actions were taken in relation to the remaining 33 complaints, beyond a 'note' being issued to the judge
- The data show that 76 inspection visits were conducted in 2011. It is not clear, however, how many judges were inspected in the course of these 76 visits. There is also no information about the nature of the inspection visits, the procedures adhered to or the findings reached
- Other important data, such as the number of times each judge has disqualified him/herself as a result of a conflict of interest is also not available

Recommendations

- Review the extent to which the Judicial Inspections Department is able to fulfil its mandate with a view to strengthening its capacity if required. This review should, *inter alia*, determine whether High Court judge immunity from inspection complies with international and regional standards
- Create and maintain additional records as discussed above and ensure that they are regularly made publicly available
- Address any substantive and procedural weaknesses in the Inspections Department functions that may emerge from more complete data

Presentation of the data

Table 6.3.1: Number of notes issued

Court	Number
Jenin	3
Tulkarem	1
Qalqilya	8
Nablus	3
Salfit	1
Ramallah/Al-Bireh	9
Jericho/Al-Aghwar	1
Hebron	3
Bethlehem	3
Tubas	1
Jerusalem	-/-
Total	33



7. The Palestinian *Shari'a* Courts

Religious courts, which deal with family matters such as marriage, divorce, inheritance, paternity, guardianship, alimony and child custody, play a central role in the lives of all Palestinians and are especially relevant to women's rights. As in many other parts of the world, the affairs of each religious group are governed by denomination-specific legislation and adjudicated in denomination-specific courts: *shari'a* courts for Muslims and church courts for Christians.⁶⁰ Unfortunately, due to time constraints, the PCBS was unable to review church courts for this report which is therefore confined to a review of *shari'a* court records. It is hoped that church court records can be included in subsequent reports.⁶¹ *Shari'a* courts are divided into three levels: first instance courts; appeal courts; and the High Court.

The 2011 public perceptions survey found that the Palestinian public is significantly more satisfied with the performance of the religious courts than the regular courts. The higher satisfaction levels relate both to 'normative' performance ('independence'; 'honesty'; and 'fairness of judgments') as well as to 'technical performance' ('queuing systems'; 'sign-posting'; and 'case processing times'). For example, while 32% of respondents were satisfied with the independence of the regular courts from partisan influences, 40% were satisfied with the independence of the religious courts. Similarly, while 30% of respondents were satisfied with case processing times for regular courts, 41% were satisfied with the religious courts' processing times. Equally, while 36% of respondents were satisfied with the extent to which the regular courts treat litigants equally, 45% were satisfied with the performance of the religious courts in this regard.

It is important to note, however, that the satisfaction levels expressed vary by sex for both court systems with men being generally more satisfied than women, especially in respect of cases involving children, murder and violence against women.

7-1 Personnel

Key findings

- There are 23 *shari'a* courts in the West Bank excluding Jerusalem.⁶² These 23 courts are located in relatively small communities such as Yatta and Anabta as well as in the major urban centres. The ease with which *shari'a* courts can be physically accessed may be one reason why the public is more satisfied with *shari'a* courts than with regular courts
- There are only 42 *shari'a* judges. This number is clearly insufficient especially when the 'non-casework' judicial load is also taken into consideration
- Of the 42 *shari'a* judges, 3 are women. Given the paucity of women *shari'a* judges in the region, the appointment of 3 female judges is no small achievement. Clearly, however, more needs to be done to ensure that women are able to compete on an equal basis to men for judicial positions
- It is interesting to note that educational attainment is higher among *shari'a* judges than among their counterparts in the regular courts. Over 30.9% of *shari'a* court judges hold a Master's degree-

⁶⁰ A Review of Palestinian Legislation from a Women's Rights Perspective (UNDP, 2012)

⁶¹ It should be noted that commencing in 2012, church court decisions have been included in the Al-Muqtafi legal database. See <http://muqtafi.birzeit.edu/en/>

⁶² The only *shari'a* court in Jerusalem is based in J1 and does therefore not fall under the jurisdiction of the PA

level versus 20% of sitting judges in the regular courts. As noted below, this pattern is similar with respect to the educational attainment levels of prosecutors in both systems. The presence of better educated judges and prosecutors may be a contributory factor with respect to the higher levels of public satisfaction with the *shari'a* courts

- There are only 7 prosecutors in the *shari'a* court system, placing an unmanageable workload onto the shoulders of these individuals. The paucity of prosecutors requires urgent redress
- It is of considerable note that five out of the seven prosecutors are women
- Of the 7 prosecutors, 5 hold a Master's degree, a significantly higher ratio than in the AGO/PP
- There are just 29 *shari'a* court clerks, providing a ration of just over one per court. Again, this number falls well short of what is needed to properly manage the workload of the courts
- The gender imbalance among the 29 *shari'a* court clerks is also striking: as of the end of 2011, there was just 1 female clerk
- The educational attainment levels among court clerks are again relatively high: 79.3% hold a Bachelor's degree and 20.7% also hold a Master's degree

Recommendations

- Steadily increase the number of *shari'a* court judges, prosecutors and clerks, as resources permit
- Develop and implement a diversity strategy to ensure that the gender imbalance among judges, prosecutors and court clerks is addressed. Such a strategy should take into account the need to build the capacity of women attorneys working in the *shari'a* court system to ensure that they are able to compete for positions in the public prosecution and the judiciary on an equal basis to men

Presentation of the data

There are 42 *shari'a* court judges in the West Bank, 3 women and 39 men. The judges are distributed among three levels of courts, the Courts of First Instance, the Courts of Appeal and the High Court - as follows:

Table 7.1.1: Judges by level of court

Level of court	Number
Courts of First Instance	15
Courts of Appeal	15
High Court	12
Total	42

Table 7.1.2: Judges by distributed by educational attainment level

Educational attainment level	Number
Bachelor's degree	29
Master's degree	13
Total	42

There are 7 prosecutors in the *shari'a* court system including one chief prosecutor who is classified as a judge. Five of the seven prosecutors (including the chief prosecutor) are women. The prosecutors are distributed fairly evenly throughout the West Bank.

Table 7.1.3: Prosecutors by distributed by region

Region	Number
North	2
Centre	3
South	2
Total	7

Educational attainment levels are relatively high with five holding a Master's degree.

Table 7.1.4: Prosecutors distributed by educational attainment level

Educational attainment level	Number
Bachelor's degree	2
Master's degree	5
Total	7

There are 29 court clerks of whom one is a woman. The vast majority of court clerks hold at least a Bachelor's degree-level qualification and six also hold a Master's degree.

Table 7.1.5: Court clerks distributed by educational attainment level

Educational attainment level	Number
Secondary school certificate	5
Diploma	1
Bachelor's degree	17
Master's degree	6
Total	29

7-2 Core functions

7-2-1 Adjudication of cases

Key findings

- By and large, the *shari'a* courts were able to keep up with their incoming caseload in 2011. They were not, however, able to deal with the backlog of cases⁶³
- The *shari'a* courts deal with a large amount of 'non-case' related work, much of which should be re-classified as uncontested casework as all of these 'transactions' demand the time of a judge and most require a review of the file, application of the law and disposition of the matter. Where transactions involve only reviewing and verifying power of attorney documents, or certifying copies of official documents, the establishment of a *shari'a* notary public system could remove some of these tasks from the courts and enable them to focus on their casework and reduce the backlog
- As with the regular courts, *shari'a* court record-keeping does not generate information about case processing times for different types of cases; the numbers of hearings and adjournments per case; and the reasons for any dismissals or adjournments (e.g. occupation-related access and movement impediments; inadequate notification of litigants, witnesses and experts; inadequate case preparation by representing lawyers etc.)

⁶³ Some of these cases may not in fact be 'backlog' but may be cases that remain open because the court has ongoing monitoring responsibilities, such as in the case of custody decisions over children where cases can remain open and the arrangements a responsibility of the court until the child turns 18

Recommendations

- In terms of access to justice indicators, it may be helpful to collect data on the reasons for the dismissal of cases, the numbers of litigants requesting court user fee exemptions, and the number of legal aid requests filed and granted
- Re-classify some of the 'non-casework' transactions as uncontested cases to more accurately reflect the heavy case burden upon the *shari'a* courts
- Explore the costs and benefits of establishing a *shari'a* notary public system as a means of reducing the workload of the *shari'a* courts
- Identify the cases that are generating an increase in the backlog, and design and deliver targeted capacity development initiatives aimed at enabling the judges to reduce any backlog⁶⁴

Presentation of the data

As outlined in Table 7.2.2 below, 7,935 new contested cases were filed and 7,675 contested cases were disposed at the *shari'a* courts in 2011, meaning that the courts were almost able to keep up with their incoming cases (disposition rate of 0.97). Of the cases disposed, 4,941 were decided and 2,734 were dismissed. However, the courts also had to deal with a backlog of 919 cases meaning that the total caseload was 8,854. The congestion rate was 1.15 and the backlog increased by 260 cases.

Table 7.2.1: Disposition and congestion rates

Court	Disposition rate	Congestion rate
Jenin	0.90	1.31
Tulkarem	0.95	1.16
Qalqilya	0.92	1.15
Nablus	0.95	1.15
Bidya	1.02	1.11
Anabta	2.50	1.40
Atteel	0.53	4.00
Salfit	0.88	1.23
Qabatya	0.90	1.20
Al-Ram	0.98	1.07
Eizariyeh	0.95	1.11
Ramallah/Al-Bireh	1.05	1.13
Jericho/Al-Aghwar	0.99	1.09
Birzeit	0.95	1.09
Hebron	1.01	1.06
West Hebron	1.02	1.10
Bethlehem	0.97	1.10
Silwad	0.89	1.17
Yatta	0.97	1.16
Dura	1.04	1.07
Tubas	1.05	1.25
Halhoul	0.94	1.15
Thahriyeh	0.94	1.15
Total	0.97	1.15

⁶⁴ As noted earlier, it's not clear what proportion of the older cases that remain open are 'backlog' or are matters under the active supervision of the court

Table 7.2.2: Number of pending, incoming, disposed and carried-over cases

Court	Pending (2010)	Incoming	Disposed	Carried-over
Jenin	150	821	740	231
Tulkarem	72	748	708	112
Qalqilya	31	520	479	72
Nablus	132	1,315	1,253	194
Bidya	17	129	132	14
Anabta	10	4	10	4
Atteel	17	15	8	24
Salfit	10	113	100	23
Qabatya	19	206	187	38
Al-Ram	6	124	121	9
Eizariyeh	5	85	81	9
Ramallah/Al-Bireh	202	1,113	1,168	145
Jericho/Al-Aghwar	16	224	221	19
Birzeit	7	188	179	16
Hebron	51	685	695	41
West Hebron	20	161	164	17
Bethlehem	28	432	419	41
Silwad	3	73	65	11
Yatta	19	149	145	23
Dura	38	352	366	24
Tubas	38	122	100	60
Halhoul	24	305	286	43
Thahriyeh	4	51	48	7
Total	919	7,935	7,675	1,179

As outlined below in Table 7.2.3, the *shari'a* court system is engaged in a large amount of 'non-case work' related to, *inter alia*, divorce, marriage, powers of attorney, notary public and inheritance. In 2011, the courts dealt with 82,127 such cases. Many of these matters are in fact uncontested cases provided with a final dispensation, or decisions concerning the channelling of cases to the appropriate court. Each requires a judicial decision to finalise including examination of the file and correct application of the law in order to confirm or deny the legal action/status sought. Unfortunately, no breakdown of the 'other' category is available; according to the court, however, these include cases of uncontested custody, alimony, oversight of guardianship arrangements and the financial affairs of orphans and other usually vulnerable community members unable to manage their own affairs. Many of these matters are nonetheless complex and time consuming.

Table 7.2.3: 'Non-case work'

Case type	Number
Certificates confirming single status	2,919
Marriage	22,403
Divorce	3,498
Inheritance	5,938
Powers of attorney	2,230
Official copies	25,139
Other	20,000
Total	82,127

7-2-2 Enforcement of rulings

Shari'a court rulings are enforced by the regular courts. For further information, please see section 6 above. It is noteworthy that the *shari'a* courts seek their own enforcement powers to improve the rates of enforcement and ensure that humanitarian aspects of judgements, such as the custody transfer of a child from one to parent to another, are always handled sensitively and in appropriate locations.



8. The Palestinian Military Courts

The use of military courts to try civilians constitutes a serious violation of international human rights standards. Regrettably, this practice has been widespread in the oPt and it has been duly criticised by national and international human rights organisations.⁶⁵

International standards require the jurisdiction of military courts to be limited to offences of a strictly military nature committed by military personnel.⁶⁶ Where they exist, military courts should be an integral part of the regular judicial system and their rulings should fall under the oversight of the civilian courts. These principles and others are laid out in the International Standard Principles Governing the Administration of Justice through Military Tribunals which were deliberated by UN member states in 2009 and signed by the Palestinian delegation. International standards also prohibit the trying of military personnel accused of human rights-related offences in military courts as these trials rarely result in accountability for the victims.⁶⁷

8-1 Personnel

Key Findings

- The military justice system is staffed by 100 individuals, including 98 men and only 2 women. Of the total number of employees, 51 work in judicial positions
- Educational levels of staff in the military justice system are significantly lower than in either the regular or *shari'a* courts with some 20.0% of staff not having completed secondary school and a further 20.0% for whom secondary school was the highest qualification attained
- 144 charges were brought by the military courts in 2011, although the status of the individuals indicted is not clear. There is no information about the outcomes of any criminal prosecutions and many of the charges listed do not appear to be of a military nature and therefore should not fall under the jurisdiction of the military courts
- The military justice system investigated 1,271 complaints made by civilians against the security forces. Under the existing (incomplete) legal framework for the law enforcement and security sector, this includes national security, preventative security, intelligence, presidential guards and the police, despite it being a civilian law enforcement agency.⁶⁸ It is not clear, however, what the complaints related to and whether any of the complaints involved allegations of human rights violations. Some of the complaints investigated were made against the PCP which is a civilian law enforcement agency, not a military force.

65 See for example a report by Al-Haq: <http://www.alhaq.org/publications/publications-index/item/illegal-trial-of-palestinian-civilian-persons-before-palestinian-military-courts> (23 August 2013)

66 See: International Standard Principles Governing the Administration of Justice Through Military Tribunals (DCAF, 2011)

67 See in this regard Federico Andreu-Guzmán, *Military Jurisdiction and International Law: Military Courts and Gross Human Rights Violations*, vol. 1 (Geneva: International Commission of Jurists) 2004

68 The Palestinian Civil Police are included in the Law of Service in the Palestinian Security Forces No. 8 (2005)

Recommendations

- Review and overhaul the legislative framework concerning military justice and security forces
- Halt the practice of trying civilians before military courts and strictly limit the jurisdiction of military courts to offenses of a military nature committed by military personnel
- Review national legislation to ascertain whether human rights-related allegations committed by military personnel can be referred to civilian rather than the military courts in line with international standards
- Take steps to redress the gender imbalance in the military court system including by instituting affirmative action policies
- Provide opportunities for military court personnel to undertake further studies and increase educational requirements for future recruitments
- Collect and publish information about the types of cases handled by the military courts, the judgments issued, and whether the judgements were enforced
- Record information about the status of all defendants and the location and context of any offences committed; this should shed light on whether the offence was of a military or a civilian nature
- Collect and publish information on any amnesties issued to military offenders
- Record and publish data about how each complaint was followed up

Presentation of the data

Table 8.1.1: Distribution of military justice personnel

Post	Number
Chief justice	1
Attorney-general	1
Attorney-general’s assistants	2
Prosecutors	17
Prosecution support staff	11
Judges	13
Heads of directorates and departments	6
Court clerks	49
Total	100

Table 8.1.2: Military justice personnel distributed by educational attainment level

Educational attainment level	Number
< Secondary school	20
Secondary school certificate	20
Bachelor’s degree and above	60
Total	100

8-2 Core functions

In 2011, 144 charges were brought by the military courts. Unfortunately, there is no information available about the status (military or civilian) of the individuals indicted, or about the outcomes of the prosecutions.

Table 8.2.1: Charges brought by the military justice system

Charges	Number
Assault	29
Issuing a dishonoured cheque	25
Insult, slander or libel	11
Theft	9
Making threats	5
Acting against the security and general policy of the PA	5
Abusing power	4
Behaviour contravening proper military conduct	4
Attempted murder	3
Traffic violations	3
Personal use of narcotic substance	3
Disreputable behaviour	3
Aiding the enemy	2
Destruction of property	2
Possession of a commercial quantity of narcotics	2
Possession of unlicensed arms	2
Rape	2
Sexual assault	2
Sodomy	2
Absenteeism	2
Breaching sanctity of homes	2
Illicit trade in weapons	2
Desertion	2
Drunk and disorderly	2
Resisting security personnel	2
Murder	1
Abusing professional duties	1
Abusing confidence	1
Taking justice into own hands	1
Impersonation	1
Malingering (feigning illness to avoid duty)	1
Manslaughter	1
Fraudulent conduct	1
Disclosure of secrets	1
Profane conduct	1
Incitement to commit arson	1
Abuse of service	1
Forgery	1
Obstructing security personnel in performing their duties	1
Total	144

A total of 1,271 complaints made by civilians against security personnel were examined by the military justice system in 2011.

Table 8.2.2: Complaints examined by the military justice system

Agency	Number
National security	435
Preventative security	204
General intelligence	157
Presidential guards	87
Police	388
Total	1,271



9. The Palestinian Bar Association

An independent legal profession constitutes a vital part of any democratic system and it is therefore a matter of public interest that the legal profession's strength and integrity are sustained. In particular, the legal profession has a key role to play in promoting and protecting access to justice and equality before the law. *Pro bono* provision is an important element in this regard, especially in legal jurisdictions such as the PA which have underdeveloped legal aid systems.

With its highly educated population and numerous university law faculties, the oPt is not lacking in lawyers. However, few Palestinians are likely to be able to afford to contract their services: according to the 2011 public perceptions survey, just 25% of the respondents said they were satisfied with the cost of contracting a lawyer. In this regard, it is important to note that NGOs are viewed by the Palestinian public as the most trusted legal aid providers. Out of a maximum of 5, NGOs achieved a trust score of 3.12: 3.03 amongst males, and 3.20 amongst females. Along with the police, NGOs therefore top the 'trust table' by which justice and security actors are ranked. Satisfaction with NGOs' legal assistance services is highest in the Gaza Strip. By contrast, the Palestinian Bar Association appears at the bottom of the 'trust table', with a score of 2.88.

9-1 Personnel

Key findings

- There are 2,084 lawyers registered at the Palestinian Bar Association in the West Bank (some residents of Jerusalem will be registered at the Israeli Bar Association given Israeli *de facto* control over parts of that governorate). Of the total, 397 are women. This ratio compares favourably to the gender balance in the police, the prosecution and the judiciary. It is unclear as to whether there is a more equal gender balance among new entrants to the profession. It is also unclear as to whether registered women lawyers are actually practising law or whether they are concentrated in particular areas of law, such as family law and civil law⁶⁹
- Lawyers are distributed reasonably equally throughout the West Bank's various governorates once the population sizes of those governorates are taken into consideration; this finding is in line with the public perception survey's finding that around 75% of the Palestinian public is satisfied with the availability lawyers
- There are a relatively large number of new entrants to the profession with 38.7% of lawyers being under the age of 30 and a further 29% aged 30-39
- Unfortunately, there is no information available about the practice settings of lawyers (i.e. private practice, private industry, legal aid); the distribution of working lawyers among different areas of law; and how many PBA-registered lawyers are in full-time employment or equivalent. This would provide a good indicator as to whether the number of lawyers being educated and trained to work in particular areas of law is appropriate to the existing needs of the public and private sectors

⁶⁹ In 2010, the International Legal Foundation reported difficulties in identifying women attorneys working in the area of criminal law

- There is no information about the number of CPD training hours offered and delivered per annum nor about the number of *pro bono* cases undertaken by lawyers in fulfilment of the existing legal obligations of the state to provide indigent persons charged with felonies with a lawyer and of the PBA to meet its goal to provide free judicial assistance to needy persons⁷⁰
- There is also no information concerning the oversight of lawyers, such as the number of complaints received by the PBA against lawyers, the nature of those complaints, how the complaints were investigated and the results of any investigations in relation to disciplinary decisions and/or charges laid

Recommendations

- Collect information on the number of registered lawyers who are in full-time employment or equivalent and open dialogue with the Ministry of Education and law schools to ensure that the number of new lawyers being educated and trained is appropriate to existing public and private sector needs
- Maintain records on the gender balance among new entrants to the profession
- Conduct a survey of the registered women lawyers in order to determine whether there is an adequate representation of women in all areas of law, especially in areas of law such as criminal law where access to justice can hinge on the presence of a woman attorney
- Collect data on the number of CPD hours offered and delivered per annum. These data should be disaggregated by governorate, sex and years of experience
- Collect data on the number of *pro bono* cases handled by lawyers each year, an estimation of the number of hours invested and the outcomes of cases
- Clarify and publicise the complaints mechanism against lawyers and ensure that cases are properly investigated and approach disciplinary/other legal decisions taken, where necessary

⁷⁰ For further information regarding these existing obligations, please see Articles 244 and 245 of the Code of Criminal Procedure (2001) and Law No. (3) for the Year 1999 On Regulating Legal Practice

Presentation of the data

As illustrated in Table 9.1.1, there are 2,084 lawyers registered at the PBA with the largest numbers of lawyers registered in the largest districts such as Ramallah/Al-Bireh and Nablus.

Table 9.1.1: Number of lawyers by governorate

Governorate	Number
Jenin	256
Tulkarem	136
Qalqilya	63
Salfit	35
Nablus	321
Ramallah/Al-Bireh	422
Jericho/Al-Aghwar	25
Hebron	319
Bethlehem	168
Tubas	33
Jerusalem	305
No data	1
Total	2,084

A significant number of lawyers have more than 10 years' experience (around one third of the total), but there are also many newcomers (around 40% have five years or less experience).

Table 9.1.2: Number of lawyers by years of experience

< 5 years	5-9 years	10-14 years	15-19 years	> 20 years	No data	Total
830	271	249	175	282	277	2,084

There are a relatively large number of new entrants to the profession with 38.7% of lawyers being under the age of 30 and a further 29.0% aged 30-39.

Table 9.1.3: Number of lawyers by age

< 30 years	30-39 years	40-49 years	50-59 years	60-65 years	> 65 years	No data	Total
807	605	243	222	80	78	49	7,675



ANNEX I - Gaza Data

As mentioned above, the data collection process could not be completed. Consequently, the data pertaining to the Gaza Strip is limited to some basic information regarding the court structure and the caseload. The information is presented below; it is hoped that more information becomes available in subsequent surveys.

There are 10 courts in total comprised of five Conciliation Courts, three Courts of First Instance, a Court of Appeal and a High Court, both based in Gaza City.

Table A.1: Conciliation Courts, Courts of First Instance, Court of Appeal, High Court

Court	Conciliation Courts	Courts of First Instance	Court of Appeal	High Court
North Gaza	1	-/-	-/-	-/-
Gaza City	1	2	1	1
Dir El-Balah	1	-/-	-/-	-/-
Khan Younis	1	1	-/-	-/-
Rafah	1	-/-	-/-	-/-
Total	5	3	1	1

Table A.2: Number of judges

Court	Number
North Gaza	1
Gaza City	30
Dir El-Balah	2
Khan Younis	17
Rafah	11
Total	42

Of the 41 sitting judges just 2 are women. The vast majority have more than four years of experience, while educational attainment levels are high.

Table A.3: Number of judges by years of experience

< 1 year	1-4 years	> 4 years
5	5	31

Table A.4: Number of judges by educational attainment level

Bachelor's degree	Master's degree	PhD degree
38	1	2

There are 65 prosecutors in Gaza of which 34 work in Gaza City and only two are women.

Table A.5: Number of prosecutors per office

Court	Senior Prosecutors	Prosecutors	Assistant-Prosecutor	Total
North Gaza	2	4	3	9
Gaza City	7	15	12	34
Dir El-Balah	-/-	4	1	5
Khan Younis	5	2	5	12
Rafah	-/-	4	1	5
Total	14	29	22	65

Table A.6: Number of prosecutors by years of experience

< 1 year	1-4 years	> 4 years
12	20	33

Table A.7: Number of prosecutors by educational attainment level

Bachelor's degree	Master's degree	PhD degree
62	3	-/-

Table A.8: Disposition and congestion rates

Level of court	Disposition rate	Congestion rate
Conciliation Courts	0.83	2.54
Courts of First Instance	0.50	5.69
Court of Appeal	1.07	1.91
High Court	0.59	3.11
Total	0.73	3.25

Table A.9: Number of incoming, disposed and carried-over cases

Case type	Pending (2010)	Incoming	Disposed	Carried-over
Conciliation Courts	29,210	26,316	21,840	33,686
Courts of First Instance	30,021	15,859	8,064	37,816
Court of Appeal	2,846	2,708	2,905	2,649
High Court	1,624	1,950	1,149	2,425
Total	63,701	46,833	33,958	76,576