

Date: 13 July 2020
No. 30/2020

His Excellency President Mahmoud Abbas
President of the State of Palestine
Chairman of the Executive Committee of the Palestine Liberation Organization

RE: Judicial Authority

Dear President Abbas,

Al-Haq extends to you its sincerest greetings and its appreciation for your longstanding position on upholding the national rights of the Palestinian people. Al-Haq also values your denunciation of all forms of conspiracy that violate international charters and norms that affirm the Palestinian peoples' rights to freedom, independence and liberation from the Israeli colonial occupation. We share with you our view on the gravity of the situation and what is being hatched for the Palestinian national struggle with regards to the execution of the US-supported annexation plans and the so-called 'deal of the century' by the occupying authority. This is the main challenge that is facing the Palestinian people's struggle for freedom and requires organizing Palestinian internal affairs, restoring national unity, and imminently bringing to an end the internal political division, which holds great significance in uniting efforts to face such challenges.

Mr. President,

The existence of effective official institutions that have the ability to perform their duties with integrity and in an impartial and just manner is one of the most important elements of steadfastness. This is due to the importance of such institutions in maintaining the political system that is daily eroding in light of the absence of democratic practices, mainly elections since the internal political division in 2007 and the dissolution of Palestinian institutions that coincided, namely the dissolution of the Palestinian Legislative Council, which is one of the three powers, and one of the pillars of the State in modern political systems. As the Judicial Authority was drawn into political division coinciding with the internal political divide, Al-Haq expressed its position at the time, calling not to involve the judiciary in the internal political polarization, which would allow judges and prosecutors to become absent from their place of work. This call, however, was not met. Consequently, the judicial system became part of the internal political divide, and two judicial councils were formed; a Judicial Council in the Gaza Strip and a High Judicial Council in the West Bank. The same was true for the Public Prosecution, with two Attorney Generals operating separately, which made the judicial system part of the internal political divide rather than a contributing factor to unity.

The continuation of the state of political division and the delay in achieving national reconciliation for the past 13 years has negatively affected public rights and freedoms, as well as the principles of the rule of law and separation of powers. This is particularly evidenced in the Executive Authority's acquisition of the Legislative Council's powers, specifically through the promulgation of more than 200 Laws by Decrees as "exceptional legislations", in contravention to the requirements set forth by Article 43 of the Palestinian Basic Law of 2003, which restricts the promulgation of Laws by Decrees as "exceptional legislations" to undelayable cases of necessity. This requires serious consideration

when exercising this authority and ensuring that it is exercised within the limits required by the Basic Law without going beyond the rule of law as a basis for good governance.

The Executive Authority's interference with judicial affairs has contributed to the deterioration in the judiciary and the decline of citizens' trust in the judicial system. The appointment of Chairs of the High Judiciary Council contrary to what is stipulated in the Judicial Authority Law, and the resignation of the Chairs of the High Judiciary Council before assuming office, constituted flagrant violations of the principles of judicial independence and the independence and impartiality of judges. This has led to the deterioration of the role of the High Judicial Council in terms of managing its judiciary, and has allowed for increased interference in its affairs.

Mr. President, the favoritism exercised by the Executive Authority, and its interference in judicial affairs through the appointment of the Chair of the High Judicial Council and the Vice-Chair of the Supreme Court, its inclination towards certain individuals, and its preference for one party over another, has contributed to the creation of a bleak phase in the history of the Palestinian judiciary, and has turned the principles of independence and impartiality of the Judicial Authority into mere slogans that are far from implementation.

The latest changes in the judiciary led to the advent of loud voices calling for judicial reform. While some stemmed sincerely from an undoubtful national concern, others were mere attempts to distort what is left of the judicial reputation and its stature. Represented by the Presidential Committee for the Development of the Justice Sector, and prior to announcing its recommendations, the initiatives launched to advance the judiciary have failed. This was due to the conflict of powers and leverage amongst representatives of the justice system therein, as well as the absence of stakeholder and community participation, which turned the principles of reform and development into mere slogans rather than achievable goals.

The recent attempts by the Executive Authority to advance the Palestinian judiciary by issuing Laws by Decrees No. (16/2019) and (17/2019), dissolving the Supreme Judicial Council, appointing a Transitional Council and amending the Judicial Authority Law were grave breaches of the principles of judicial independence and the rule of law. Retaliation prevailed over reform and restoration of the judiciary when some Supreme Court Justice judges, known for their competence, professionalism, impartiality and good conduct, were unjustly forced into early retirement; receiving the same treatment as those who were proven to be dishonest and corrupt. This has led the Constitutional Court to repeal the Law by Decree No. (16/2019) governing the age of retirement, while the Executive Authority continued to operate under the same approach by forcing people into early retirements rather than conducting fair evaluations and ensuring accountability for those who were proven to be involved in corruption crimes in the judiciary.

Mr. President,

One year after the Transitional Council assumed its duties, what prevails is a sense of confusion, and the absence of a clear plan to advance the judiciary. Efforts made by the Transitional Council only served to reinforce the sense of retaliation amongst judges as the forcible referred to early retirement began to be used as a weapon. Judges also became preoccupied with intimidation and fear of being referred to judicial inspection without legal grounds. Further, the recommendation made by the Transitional Council to second ten judges to other official institutions, in contravention of the law and

other norms, is purely a continuation of the approach of retaliation against judges, and is an expression of a serious contradiction to the Transitional Council's claim of a severe shortage in the number of judges.

There is consensus among the Bar Association, legal professionals, judges, academic bodies and human rights organizations that the Palestinian Judicial Authority Law No. (1) of 2002 in force, is one of the best judicial legislations in the Arab region and other countries of the world. There is also consensus that the state of the judiciary today is purely a result of the lack of a transparent application of the provisions of this law. Should the law be applied, it is clear in its provisions that it ensures the preservation of judicial independence and impartiality. This constitutes a solid ground for the advancement of the judiciary and contributes to its unity. The attempt to amend the Judicial Authority Law is merely a continuation of the pattern of interference in judicial affairs and the undermining of the principles of separation of powers and the rule of law as a basis of good governance.

The accession of the State of Palestine to many of the core international human rights conventions requires upgrading institutional performance in line with international standards governing the principles of separation of powers and the rule of law, and the standards for the judicial independence, particularly the 1985 UN Basic Principles on the Independence of the Judiciary and by the International Covenant on Civil and Political Rights. This will enhance Palestine's international status, and will support the efforts by the political leadership in demanding countries of the world and the Security Council to accord the State of Palestine full membership in the United Nations.

Mr. President,

Al-Haq warns against the current deteriorations on the status of the judiciary and on the danger and detrimental repercussions of the continuation of the pattern of interference in judicial affairs on the political system, on public rights and freedoms and on individual rights. Accordingly, Al-Haq calls for the following:

1. Swiftly resuming the formation of a permanent High Judicial Council in accordance with the Judicial Authority Law No. (1) of 2002;
2. Not amending the Judicial Authority Law No. (1) of 2002;
3. Requesting the permanent Judicial Council to proceed with presenting its vision on advancing judicial affairs, in consultation with all official and non-official bodies;
4. Taking serious measures to restore democratic life, most importantly by ending the political division and beginning the preparations for legislative and presidential elections that guarantee the right of everyone to participate in national decision-making, as well as strengthening institutional performance and upholding rights, freedoms and the rule of law.

Yours Sincerely,

Shawan Jabarin
General Director of Al-Haq