

Independent Commission for Human Rights

(ICHR)

The Status of Human Rights in Palestine

Sixteenth Annual Report

1 January– 31 December 2010

Board of Commissioners

Commissioner General – Mamdouh Aker

| | | |
|--------------------|-----------------|-----------------|
| Ahmad Harb | Shawkat Dalal | Mohammad Me'ari |
| Eyad Sarraj | Azmi Shu'aibi | Mahmoud Atshan |
| Zeinab Al-Ghonaimi | Fu'ad Mughrabi | Naseer Arouri |
| Hanan Ashrawi | Varsen Shaheen | Eugene Qatran |
| Rawya Shawwa | Camille Mansour | |
| Raja Shehadeh | Mohammad Hallaj | |

Randa Siniora – Executive Director

ICHR Addresses:**Main Office and Central Regional Office**

| |
|--|
| Main Office |
| <p>Ramallah, behind the Palestinian Legislative Council</p> <p>Opposite Thalasia Center P.O.B 2264 Tele: +972 2 2987536/ 2960241/ 2986958 Fax: + 972 2 2987211</p> |
| Regional Offices |
| <p>North Office</p> <p>Nablus - Sufian Street, Al-Lahham Building, Fl. # 1 Tele : + 972 9 2335668 Fax: + 972 9 2336408</p> |
| <p>Tulkarem</p> <p>Tulkarem-Thabet Thabet Hospital Street-Debas Building, Fl. # 3 Tele: +972 9 2687535 Fax: +972 9 2687535</p> |
| <p>South Office</p> <p>Hebron- Ras Aljoura , near the DMV building, Herizat Building, Fl. # 1</p> |
| <p>Bethlehem</p> <p>Bethlehem- Nazzal Building, above Arab Bank, Fl# 2 Tele: + 972 2 2750549 Fax: + 972 2 2746885</p> |
| <p>Gaza and North Office</p> <p>Al-Rimal – opposite the Legislative Council, behind Palestine International Bank Tele: + 972 8 2836632 / 2824438 Fax: + 972 8 2845019</p> <p>South Gaza Office</p> <p>Khan Younis Jalal Street – Al Farra Building , Fl. # 4 Tele: + 972 8 2060443 Fax: + 972 8 2062103</p> |

Website: www.ichr.ps

e-mail: ichr@ichr.ps

Annual Report No. 16

Working Groups

Team Leader and Supervisor

Randa Siniora

Research Team leader

Ghandi Rab'i

Main Research Team

Hazem Haniyeh

Ma'en Id'es

Yasser Alawneh

Ahmad Al-Ghoul

Program Support Team

Jamil Sarhan / Musa Abu Dheim

Administrative Follow-Up

Nisreen De'bas

Public Relations

Majeed Sawalha

Translation: Diana Khoury

Editor: Mary Jane Fox

Support Team

Emily Hanna

Amani Saif

Sami Jabarin

Suheil Batanja

Subhia Jum'a

Salah Abd Al Ati

Burhan Shtayeh

Majeed Sawalha

Mustafa Ibrahim

Aiche Ahmad

Juline Zaghloul

Bahjat Al Hilou

Field Research Team

Islam Tamimi

Hasan Halasa

Yazan Sawafta

Samir Abu Shams

Alaa' Ghanayem

Fadwa Al-Waa'ri

Remal Hrebat

Mohammad Kamanje

Mahmoud Al Hashash

Mustafa Ibrahim

Nadia Abu Diab

Yaser Salah

Yousef Warasneh

Mohammad Srour

Table of Contents

Preface/Commissioner General

Introduction/Executive Director

Part I: The Political Environment and Variables Indicative of the Status of Human Rights in Palestine

Chapter One: The Political Environment and Its Impact on Human Rights

1. Political Factors
2. The Impact of Political Factors on Human Rights
3. Legislative Policies and Their Impact on Human Rights During 2010
4. Results and Conclusions Arising from the Variables

Chapter Two: Impact of Israeli Violations on PNA Performance and Its Ability to Protect Human Rights

1. Israeli Aggression on the Gaza Strip, and Goldstone Report
2. Impact of Israeli Violations on the Performance of PNA Vital Institutions

Part II: The Situation of Human Rights and Public Freedoms in Palestine in 2010

Chapter One: The Right to Life and Physical Safety

1. The Right to Life and Physical Safety in Light of International Standards and National Legislation
2. The Reality of the Right to Life and Physical Safety in 2010
3. Women's Right to Protection from Violence
4. Medical Errors

Chapter Two: The Right to Personal Liberty, and the Integrity of Legal Proceedings

Chapter Three: The Right to Litigation and Guarantee of Fair Trial

Chapter Four: Public Freedoms

1. Freedom of Media
2. Freedom of Opinion and Expression

3. Freedom of Religion and Religious Rights
4. Freedom of Peaceful Assembly
5. Human Rights Defenders

Chapter Five: The Right to Form Associations

1. The Right to Form Associations in International Covenants and National Legislation
2. The Right to Form Associations in the West Bank
3. The Right to Form Associations in the Gaza Strip

Chapter Six: The Right to Movement and Travel

Chapter Seven: The Right to Work

Part III: Accountability for Human Rights Violations

Chapter One: Patterns of Human Rights Violations Based on ICHR Complaints Received

1. Number of Complaints Received by ICHR during 2010
2. Division of Complaints by Type of Violations
3. Public Bodies on which Complaints Focused
4. Tracking of Complaints According to Follow-ups and Responses
5. Division of Complaints by Complainants

Chapter Two: Mechanisms and Procedures for Accountability for Human Rights Violations

1. Responsibility and Accountability in Accordance with National Legislation
2. Disruption of the Palestinian Legislative Council (PLC) and Its Impact on Accountability
3. Public Policies and Their Impact on Accountability
4. Impunity

Annexes:

Annex (I): Tables from Chapter One/Part II pertaining to Deaths and Murders during 2010

Table (1): List of Deaths Resulting from Weakness of the Rule of Law

Table (2): Categories of Deaths during 2010 by Region and the Background

Annex (II): Recommendations of the Palestinian Independent Investigation Commission (PIIC) in Accordance with the Goldstone Report

Annex (III): Annual Budget of the Independent Commission for Human Rights (ICHR)

Preface

When we review the situation of human rights in Palestine, as expressed in the sixteenth report of the ICHR published in 2010, it is necessary to point out the importance behind identifying the approach through which one can examine the facts presented to us in that report: should we look at these facts from their bright side? Or should we look at them from their dark side? Because the truth has two sides, objectivity requires us to take an approach that looks at these facts from both sides, especially given the fact that the issue here is not black or white. On the other hand, our approach to the situation of human rights in Palestine would enable us to observe the dynamics of this situation and would accordingly equip us with the tools to draw a curve which illustrates the ups and downs of this dynamism, and enables us, in consequence, to monitor the compass that is directed towards it, if any such compass exists to begin with.

Based on the above we can proceed to address some of the facts that might give us a mosaic of the human rights situation in our country which has been subject to Israeli occupation for decades. The Palestinian people's human rights have as a result been violated by the occupation's soldiers and settlers. There is no doubt that one of the very first facts of this mosaic picture is the existence of an independent national commission for human rights in Palestine. Its mere existence, as embodied by the ICHR, which is a fully independent and constitutional organization established by a presidential decree and later consolidated by the provision of Article 31 of the Palestinian Basic Law. The Commission then submits its reports to the President of the Palestinian National Authority (the PNA) and the Legislative Council, which is an important indicator of the willingness and preparedness of the Palestinian political system, even in principle, to abide by the principles of human rights and the rule of the law. Despite the fact that the establishment of the ICHR came as a result of an initiative made by civil society rather than by governmental organizations, the readiness of the Palestinian political system to support its establishment through a presidential decree as well as its Constitution demonstrates the undoubted willingness of the system to function according to the principles of human rights and the rule of law. In fact the PNA has agreed to allow the ICHR to systematically monitor its political behavior and to check for any possible violations committed by its Executive Authority in security and civil matters.

These violations varied in magnitude and impact. In some instances there were major violations and in other instances the violations were minor. The situation remained like this until the division between Hamas and Fatah materialized. This led to a serious deterioration in the overall system of rights and freedoms in both Gaza and the West Bank. The main factor behind such a huge deterioration in the system of rights and freedoms was the obsession both parties had with security issues. Priority was therefore given to security issues over any other consideration.

Consequently, we began to witness arbitrary arrests which lacked the most basic and sound legal procedures. The main reason behind such behavior was the political differences between Hamas and Fatah, which apparently they were unable to hide. In addition, both parties began to follow a policy of exclusion in the area of public service. They both would fire and employ people in the area of public service in accordance with their political affiliation and on the basis of a security clearance. Employment or exclusion from a position in public service was therefore based on what came to be known as a security clearance. In reality of course the motives behind the policy of security clearance were political par excellence. This, in consequence, has seriously encroached on the right of citizens to hold offices in public service on the basis of equal opportunities to everyone regardless of his/her political affiliations.

Civilians were also subjected to military courts which, according to international standards, lacked many of the necessary legal elements and procedures which would enable them to conduct fair trials. Even worse, the authorities in both Gaza and the West Bank began to apply methods of physical and psychological torture which were increasingly degrading to human dignity. In addition, there were cases of extrajudicial killings, field trials, and the shooting of individuals in the joints of their hands and legs.

Civil institutions were not free from the obsession with security expressed by both sides. As a result, some of these institutions were forcibly closed. Freedom of opinion and expression and the right to peaceful assembly were as well not free from obsession with security to the extent that even decisions of Palestinian courts, especially those of the High Court of Justice, were not respected. The situation deteriorated to that level despite the fact that Article 106 of the Basic Law states very clearly that

“judicial provisions are enforceable and any attempt by any individual or group of people to either prevent or disable their implementation will be considered a crime punishable by imprisonment or in the case the accused is a public servant he/she will be removed from office, the sentenced, however, has the right to bring a claim directly to the court concerned and the national authority will guarantee him/her full compensation”.

There are also clear provisions in our Basic Law which prohibit and criminalize any violation of the above-mentioned series of violations. However, I think that the lack of respect for the court decisions is a red line which nobody should attempt to go beyond, for it will definitely lead to absolute chaos which will undermine the rule of law.

And if there exists what deserves to be considered as a compass for our political system, I can promptly say that we can find such a compass present in almost every Article of the Palestinian Basic Law, and which, if we try to adhere to it, we shall neither lose the way nor shall we fall into any chaotic situation.

What is really giving us a glimmer of hope is that our political establishment is becoming aware of the dangers awaiting us and is, in consequence, doing everything it possibly can to avert reaching the point of no return. Accordingly, the Palestinian Cabinet has, more than one and a half years ago, made the decision to oblige all parties concerned to respect all decisions and rulings that are passed by Palestinian courts at all levels. While we in the ICHR have welcomed such a decision and have congratulated the Cabinet on taking such an important step, we have nevertheless come across many cases where there were violations and lack of commitment to decisions made by the courts.

At a later stage orders and instructions were sent to all security chiefs to closely monitor any case of torture and to ensure the non-existence of any form of torture in the future. Despite that, various forms of torture and inhuman or degrading treatments continued to exist. In order to end such an inhumane practice, a declaration prohibiting all forms of torture or degrading treatments should be made by the President of the PNA, and in accordance with the definitions in the Convention Against Torture. Additionally, those who physically engage in torturing people or who give the orders to torture or even try to hide acts of torture should be prosecuted. The ICHR has repeatedly asked the President and the Prime Minister to make such declaration. It is at present still requesting and will continue to request the PNA to do so until a declaration to this effect is made.

Another achievement regarding the implementation of human rights in Palestine was made, when the security apparatuses took the decision on January 15, 2011 to refrain from bringing civilians to military courts and from engaging in arbitrary arrests. However, we in the ICHR and in the human rights community in general are still waiting for a declaration to be made by the President of the PNA that will further consolidate such a decision and will thus ensure an irreversible spiritual as well as textual commitment on the part of the security apparatuses to abide by the contents of the decision. However the more important step which we are still awaiting is a decision that will stop all forms of arbitrary arrests.

A relatively more important development took place, however, when the Prime Minister recently promised to put an end to what came to be known as the “security clearance”. We in the ICHR as well as all those citizens who were arbitrarily removed from their positions as public servants and those who were denied the right to be employed in public service on the basis of equal opportunities to all and without any discrimination, all hope that the system of “security clearance” will be abolished very soon, and the sooner the better...!

The compass therefore exists, but it only lacks the political will. Historical experiences of nations confirm that there is no value in constitutions and laws if there is no political will to implement them and protect them! Accordingly, I truthfully believe that the political establishment needs to take further serious steps to ensure respect for the system of

rights and freedoms. In this context, what is really a priority now is to put an end to the tyranny of preoccupation with security and security considerations...We must move away from the mentality "Security First", for it tends to seriously set aside rights and freedoms and the rule of law. This mentality will definitely lead to total chaos or the abyss...the abyss of security and police regimes which we have witnessed and are still witnessing live on television in neighboring Arab countries, particularly the extent of the brutality these regimes have resorted to in order to suppress their peoples. And I believe that we have also seen live on television how these regimes of oppression have been falling down through the will of the Arab peoples.

This leads me to emphasize again and again the need to expedite the creation of civil overseeing to monitor the actions of the security apparatuses as long as the Palestinian Legislative Council (PLC) continues to be absent from playing its role in controlling the process of how the security apparatuses are built, how their budgets are determined, how they behave and how they could become subject to a strict but fair system of accountability. This civil overseeing is of course different from that necessary system of control which is exercised on the political level. This is a settled question, of course, given that security in general has to be subject to the control of the prevailing political system; otherwise what will emerge is a system of security and police. There is therefore an urgent need to provide a mechanism of control over the security apparatuses now as we are making the necessary preparations for the pre-state phase so as to determine, define and formulate from this very moment onwards the features and major components of our political system to be implemented in our future independent state. It is important to note here that civil overseeing becomes increasingly important once we examine the experiences of intelligence services in Arab and non-Arab states: that security apparatuses tend in their reports to their governments to exaggerate the internal risks and threats that will endanger the stability of their countries. The aim behind this of course was to tighten the hold of these apparatuses over almost everything in the country. In many cases this has empowered the security intelligence services and made them seem more in control rather than the government itself. In fact some governments have come to be at their mercy.

To ensure justice and the protection of the rule of law, and to limit the possibility of the development of a repressive and police regime, an independent, fair and efficient judiciary in Palestine should be created and institutionalized. The independence of the judiciary in particular is an extremely important issue that cannot be disregarded. It should be noted here that what the results of the survey in the judicial system in Palestine, issued by the Supreme Judicial Council, refer to, regarding the partial pressures and the interventions in the work of judges that usually emanate from the Executive Authority, is a very serious and dangerous matter. It is a matter that should not be tolerated. Additionally, we in the ICHR and the human rights community in Palestine should try our best to soon find means and mechanisms that would fully eradicate it as a problem before it succeeds in undermining the independence of the judiciary.

Last but not least there is an issue of great concern which we could not document and include in this report. I find that it is my duty to at least make reference to it, hoping to contribute to raising the awareness, care and concern of the human rights community and other concerned bodies of the unhealthy and dangerous penetration of the security services into our universities. Despite the fact that we should note the information which was provided to us on this issue might have been exaggerated, the consequences of such a problem, if it genuinely exists, on the freedoms of the universities' communities deserve our close attention and caution. This is in fact another reason why there is a need to have civil overseeing on the activities, budgeting and behavior of the security intelligence services in Palestine, especially in the absence of the role of the PLC.

Finally while I am putting this report in the hands of Palestinian citizens and officials to read, I would like on behalf of the Board of Commissioners of the ICHR, to express my thanks and appreciation for the great effort made by the executive team of the ICHR led by its Executive Director in producing such an undoubtedly professional report.

Mamdouh Al-Aker
Commissioner General

Introduction

The Independent Commission for Human Rights (ICHR) has since 1995 endeavored, in its annual report, to address the situation of human rights in Palestine. The purpose behind this was not only to monitor and uncover any violations committed by the Palestinian National Authority (PNA) but to develop as well a general trend in Palestinian society that would reject human rights violations and would accordingly seek to draw the attention of the Palestinian authorities to the necessity of reviewing all policies and legislations which do not comply with human rights standards and would also work on putting an end to all practices which contradict them. We hope in this report to provide a more comprehensive view of the conditions of human rights in Palestine during the year 2010 in accordance with the diversity of areas covered and cared for by ICHR, in particular the Commission's constant interest in shedding light on the most prominent patterns of violations. Additionally, ICHR has worked hard with the Palestinian official institutions so as to find the means which would fully attend to these violations and would further consolidate the principle of the rule of law, and would maintain and respect the system of Rights and Freedoms mentioned in the second chapter of the Palestinian Basic Law and in International Conventions of Human Rights.

According to the methodology adopted in this report, we divide our discussion and examination of the situation of human rights in the PNA into three sections: the first section tracks the major political findings or data which report the conditions of human rights in Palestine and what accompanies the inactivity of the Palestinian Legislative Council, in addition to monitoring the major violations in the system of rights and freedoms during the year 2010 and their implications. In the second part of the first section, ICHR analyses the impact of Israeli violations on the performance of the Palestinian National Authority and its ability to provide all means to enforce the various rights.

In the second part of the first section, entitled "Rights and Freedoms", the report makes note of the alarming rise in the violations of basic rights as a result of the prevailing political division between Fatah and Hamas and the harsh measures taken by the two governments in the West Bank and the Gaza Strip. The report significantly notes the continuous violations of the right to life by issuing and executing death sentences against five citizens, and how the civil and military courts in the Gaza Strip issued fifteen death penalties without ensuring fair trials. The report also observes a considerable rise in the violation of the right to physical safety and personal security, in addition to a rise in the number of abusive arrests, especially of all those suspected of belonging to one of the two opposite or conflicting parties, and then arresting them for long periods, and bringing them to military rather than to civil courts. In addition, the report states how the security agencies continued their policies of either refusing to enforce the courts' decisions or delaying their enforcement.

Moreover, the report records the allegations of detainees in detention centers in regard to being tortured and abused or ill-treated. Security clearance not only continued to be a pre-condition for an individual wishing to have a position in public office, it even became a pre-condition for anyone wanting to have a passport or any other official document issued. He/she has to have the approval of the security services, in particular the General Intelligence and the preventive security forces, and this is all in violation of the provisions of the law.

Security considerations continued to be at the top of the list of priorities at the expense of the system of Rights and Freedoms. This, in consequence, impelled the Commission to renew its warning of the risks that that might end up leading to the emergence of a police or security system. This requires of course ICHR to renew its request from the political leadership to be in charge of matters and to ensure the compliance of the security services to its instructions and guidance as well as their commitment to the laws, order, and Human Rights Conventions while performing their duties. ICHR also stresses the need to promote the role of civil overseeing of the security services as the fundamental guarantee for the safety and security of Palestinian citizens, especially in light of the inactivity of the Palestinian Legislative Council and the absence of its overseeing role of the Executive Authority.

The report also tackles the issues of freedom of opinion and freedom of press. It registers a considerable narrowing in the margins of self expression and other press freedoms as both Fatah and Hamas prevented the publication of some newspapers. The report also discusses many cases where citizens were prevented from practicing their rights to peaceful assembly in the West Bank and Gaza Strip. As for the issue of societies or associations, the report shows how some of these were dismantled. In others, changes were made in the administrative bodies and yet in others the process of their registration was very slow, which was in violation of the Law of Associations.

The third section of the report tackles the issue of accountability as the cornerstone in the area of protecting and promoting human rights, and the basic insurance for holding all those who commit violations of human rights accountable, and thus prosecuting them through developing mechanisms and national procedures of accountability and overseeing of security services, in addition to taking disciplinary measures against them. Moreover, legal proceedings should be filed against perpetrators of crimes of torture and arbitrary detention in order to prosecute them and thus prevent them from promoting the culture of impunity within the Palestinian judicial and political systems. These measures would thus serve as a lesson for others and would deter people from repeating such incriminating actions in accordance with national and international law,

even if these practices did not constitute a systematic approach, and especially as these crimes would not vanish in time.

This chapter also notes the increase in the number of complaints filed to the ICHR during the year 2010, which included allegations of different violations. The Commission received, through its offices and researchers during the year 2010, (3828) complaints in comparison with (3442) complaints in 2009. These numbers show an increase of 11% in the year 2010 when compared to the year 2009.

The report concludes that the procedures for accountability have been confined to political statements and to some procedures and disciplinary measures against their perpetrators. They did not, therefore, reach the point of taking up judicial proceedings to prosecute the perpetrators and punish them. It also noted a significant decline and a failure to hold the violators of human rights accountable, particularly in crimes of torture.

In presenting the view of the Independent Commission for Human Rights on the human rights situation in the PNA areas in 2010, this report acknowledges that the findings reached by the Commission are the result of information obtained by its working team. The information was analyzed by the ICHR group of researchers while taking into consideration the international standards for human rights and the Palestinian national laws, beginning with the Basic Law, which governs the rights and freedoms in Palestine. ICHR has provided a number of recommendations to decision makers in the PNA areas, hoping that they will be taken seriously, and that the needed actions, measures and mechanisms will actively put these recommendations into practice, especially as ICHR has reiterated many of these recommendations in its previous reports. Accordingly, ICHR hopes that this report will help draw the attention to the important fact that sustainable development is founded by human beings, but without respect for his/her dignity, and without ensuring respect for human rights, it will be worthless and meaningless to discuss any kind of development.

Finally, I would like to end this introduction by expressing my sincere gratitude to the ICHR's administrative and program working team for the considerable effort made in the completion of this report, and for the team's willingness to work under pressure for long and continuous hours while maintaining a great team spirit in order to produce this report. Unique in its methodology, it concurrently draws and relies on the efforts of the field research team in each of the programs in the West Bank and the Gaza Strip for the collection of information and data, and for the means used to corroborate and ensure the accuracy and credibility of all collected material. I would also like to thank the main research staff in the Monitoring National Policies and Legislation and to the supporting research staff in other program units for their dedication during the preparation of this report. They are all thanked for their hard work in completing and producing this report with its unique methodology, and for having ensured a quite competent analysis of all

data and available information, and providing conclusions and results reflecting the human rights situation in Palestine for the year 2010. I also extend my thanks to the executive team for the effort put in completing this report, particularly the head of the research team, who followed-up on the process of completion until its final stages so as to ensure a high quality report in terms of form and content. I would also like to thank the Commissioner General and the Board of Commissioners for their tireless efforts in reviewing the draft of the report and on commenting on its value in order to ensure the validity and credibility of its content and to maintain the unique status enjoyed by the Commission as a national constitutional institution at the national, regional and international levels.

Randa Siniora

Executive Director

Part I

The Political Environment and Variables Indicative of the Human Rights Situation in Palestine

Chapter One

The Political Environment and Its Impact on Human Rights

Political Factors

The political environment which has impacted on the human rights situation during 2010 was relatively similar to that of the previous year. The political and geographical divide between the West Bank and the Gaza Strip continued, largely due to the failure of the reconciliation efforts between Fatah and Hamas, as did the Israeli occupation's repressive measures and policies against the civilians of Palestine, occupied in 1967, particularly in East Jerusalem.

Both Fatah and Hamas have used the internal political separation to their advantage in the past few years through disrupting the Palestinian Legislative Council (PLC), delaying elections, confiscating public rights and freedoms, and justifying the practices committed in contravention of the Palestinian Basic Law. While the Palestinian security agencies were successful in ending vigilantism, they did not loosen their grip over public rights and freedoms. Indeed, it is possible to say that the year 2010 witnessed an almost systematic campaign against the freedom of peaceful assembly and freedom of expression, as well as against civil society organizations in general and human rights organizations in particular. In addition to such violations, the practice of torture, arrest and/or arbitrary detention in the West Bank and Gaza Strip continued.

ICHR believes that the restoration of basic freedoms and respect for human rights and democratic values through holding legislative and presidential elections is a major pillar of a stable future for all Palestinians, especially in light of the current environment where the voices for reform, change, democracy, combating corruption and respect for human rights are being raised not only in Palestine, but also in the rest of the Arab world.

The ICHR is founded on a mandate for monitoring human rights violations in Palestine, and forwarding its analysis of the legal and political environment surrounding rights and freedoms as well as their relationship to the two Governments in the West Bank and the Gaza Strip. However, neither Government has obtained the PLC's confidence.

In realizing the complications of the Palestinian crisis, exemplified by the political and geographical divide which ensued due to disregard of the constitutional and legal dimensions, **ICHR** reiterates that it is not responsible for legitimizing either party, and that its basic mission is to guarantee and maintain respect for human rights. It refuses to allow itself to become mired in arguments of legitimacy and illegitimacy, and so the purpose of the description and terms stated in this report is to identify the party responsible for the violations and infringements monitored by ICHR, and to hold each Government accountable for any violations of human rights and freedoms it committed during 2010. To that end, the terms of Government/West Bank and Government/Gaza Strip will be used in this report.

The political factors monitored by **ICHR** in 2010 which had an adverse impact on rights and freedoms in the were: *1)the escalation of Israeli occupation measures; 2) the ongoing political divide between the West Bank and the Gaza Strip, and 3) legislative policies and their impact on human rights.* They are discussed subsequently.

I. Escalation of Israeli occupation measures

The violations committed by the Israeli occupation forces during 2010 constitute continuing violations of International Humanitarian Law and International Human Rights Law. During 2010, the Israeli occupation forces stepped up their policies of extrajudicial executions, killing of civilians, detainment of civilians, erecting checkpoints, building and expanding settlements, expropriating land and building the annexation wall. Besides the siege that the Israeli occupation forces have been imposing on the Gaza Strip since 2007, they have carried out hundreds of air strikes against Gaza's civilians and infrastructure under the pretext of targeting smuggling tunnels.

Israeli raids into Palestinian cities and villages and ransacking citizens' homes continued throughout 2010. Furthermore, the number of Israeli military blocks amounted to 500 during the same year, constituting an increase of 36% compared to August 2005¹. The Israeli occupation forces detained about 4000 citizens either by storming into their homes at night or arresting them at checkpoints and crossings. They also detained MPs and attempted to expel them from Jerusalem in an intensification of the policy of violating citizens' rights and judaizing East Jerusalem.

¹ For more details, see Arij Institute for Applied Research: www.arij.org

In 2010, 107 Palestinians were killed, including 10 children, 4 women and 9 Turkish nationals whom the Israeli occupation military forces killed while they were on board a flotilla sailing to Gaza to express their solidarity with its citizens. Other Palestinian civilians fell due to the ongoing Israeli occupation aggression on Palestinians in the West Bank and the Gaza Strip, including extrajudicial executions. Besides those who sustained light and psychological injuries, 1145 Palestinians were wounded. The Israeli occupation forces carried out 586 attacks against Palestinian property and the total number of reported Israeli occupation violations amounted to 7905².

Recent Israeli Measures

- a. Intensifying the occupation policy of the judaization of Jerusalem and expulsion of its Palestinian residents, the Israeli Knesset (Parliament) adopted a draft law depriving Palestinian residents of Jerusalem from living inside the green line from their residence rights, accusing them of espionage and so depriving them of their right to live in Jerusalem on charges of involvement in resistance activities or affiliation with Palestinian organizations described by Israel as “terrorist” organizations. The Israeli occupation forces use such allegations to justify expulsion of Palestinian residents from Jerusalem. **ICHR** views this decision as an attempt to legitimize the policy of a form of ethnic cleansing exercised by the Israeli occupation authorities against the Palestinian residents of the city. They noticeably started implementation of such a policy in the mid 1990s and intensified it over the last three years under the pretext that these residents live outside the artificial border of Jerusalem municipality. The Israeli Knesset had endorsed this draft law after the occupation authorities’ decision to deport Jerusalemite MP Muhammad Abu Teir from his native city. It is worth mentioning that similar measures were taken previously against other Jerusalemite MPs, including engineer Khalid Abu Arafah, former Minister of Jerusalem.
- b. Among the most recent Israeli measures during the first months of 2010 was the entry into effect of two military orders on April 13, 2010, in a bid to further entrench its occupation deeper into Palestine. These two orders could categorize the population of the West Bank as “infiltrators”. Military order number (1650) preventing infiltration and the military order number (1649) relating to security measures were issued in October 2009. It imposes on “infiltrators” from Jordan, Syria, Egypt and Lebanon, the punishment of imprisonment or expulsion. Such

² Information extracted from a report released by the National and International Relations Department of the PLO, 2010.

orders constitute a flagrant violation of International Humanitarian Law and International Human Rights Law³. The implementation of these two military orders would result in expelling seventy thousand Palestinians from the West Bank, as the target of such a decision are the Palestinians living in Palestine. It also falls within the context of the Israeli policy of ethnic cleansing and forced exile. The scope of the term “infiltrator”, which is used in both orders, has been broadened to the extent that it could apply to any persons living in the West Bank, and so anyone could easily be exiled. Pursuant to military order number (1650), whoever illegally enters the area would serve a seven year term in prison, and whoever enters the area legally but without having a “permit” would serve a three year term in prison as punishment. The military commander can order deportation of whoever this definition applies to, and his order would be executed within 72 hours of issuance or even less. The order of deportation would be treated as an order of detention, and so it constitutes “a legal ground for detainment of the infiltrator pending implementation of deportation order”. Due to such a definition, the order applies to every Palestinian, whether born in the West Bank or whoever entered it legally from the Gaza Strip or from abroad. This means that whoever does not have a permit is an “infiltrator”, and the decision applies to every person living now in the West Bank regardless of their legal status, identity or nationality. Thousands of the Palestinians living in the West Bank could be immediately expelled pursuant to these two new military orders, which as a result, would constitute a blatant contravention of the Fourth Geneva Convention, particularly Article (49), which bans the coercive transit of protected groups or individuals (civilians) or deporting them from their occupied territory. These orders were imposed while the Israeli occupation authorities have been suspending thousands of applications submitted by Palestinians living in the West Bank for reunification with their families. The occupation authorities refuse to grant them legal status.

- c. The content of the two military orders flagrantly contravenes international standards of human rights and principles of international law. They represent another instrument for the Israeli occupation forces to have control over the demographic shape of occupied Palestine and to bestow legitimacy to the coercive exile of civilian Palestinians. Based on these orders, Israel would be taking illegal

³ It is a blatant infringement of the PNA’s jurisdiction, aimed at shrinking its powers or even cancelling them in contravention of what has been agreed in Taba and Washington in 1994-1995 in regard to transferring powers to the PNA in areas (A, B). The interim agreement of 1995 (Oslo 2) bestows powers to the PNA, giving it jurisdiction over civil affairs of all persons except Israelis in areas (A,B) of the West Bank. Only the PNA has the jurisdiction to issue identity cards for the citizens in these areas, and not Israel.

measures with a view to expel the Palestinians from their homeland and to have full control over Palestine⁴.

ICHR highlights that the PNA is still under occupation and has not accomplished its national goal of independence and statehood, meaning the Palestinians are still deprived of their right to self-determination according to international covenants. In addition, Israel is still liable, according to International Humanitarian Law and the Geneva Conventions, particularly the Fourth Geneva Convention relating to protection of civilians in times of war. It also, according to the provisions of International Humanitarian Law, applies to occupied territories (such as the West Bank, Gaza Strip and Jerusalem) making Israel further liable as an occupying power.

Report of Judge Goldstone's UN Fact Finding Mission

During 2010, the Goldstone report on the crimes committed by Israel during its aggression on Gaza in 2009 was followed up. The United Nations Human Rights Council (UNHRC) discussed the report and demanded both the Israelis and the Palestinians to meet a set of recommendations, among which was the formation of two independent investigation committees to follow up the recommendations. Israel has refused the demand and set up an internal committee which exonerated the occupation army from any serious violations during the war on Gaza in hope of aborting the UN's report, which starkly criticized Israel's conduct during the war. The Israeli Defense Minister affirmed that "Israel authorized the army to carry out the mission, and so it is worth all support". He added that "Israel wills to struggle against the legitimacy of the Goldstone Report and works to amend the laws of war to fit into war cases against "terrorists" who carry out their activities amidst civilians"⁵. Complying with the UNHRC recommendation, the PNA has set up an Independent Investigation Committee⁶, as did the Government in Gaza. The

⁴ Palestinian citizens were expelled during April pursuant to these two orders: Fadi Eiadeh al-Azazmeh, 19 years old, holding a Gaza identity card was expelled from the West Bank on April 27. He had been living in Hebron together with his family for 15 years, and was transferred to Gaza after being arrested in Hebron's market place. The occupation authorities also expelled Ahamd Saed Muhammad Sabah, 38, from the village of Zinaba in the vicinity of Tulkarem (West Bank) to Gaza. They detained him on November 1, 2001 and sentenced him to (9) years in prison. On April 21, 2010, he was released at Bet Hanun crossing "Erez" although his family was waiting for him in vain at Dahryeh checkpoint in the West Bank.

⁵ For additional official Israeli statements, see <http://www.alwasatnews.com/2608/news/read/325794/1.html>

⁶ On January 29, 2010, the PNA submitted to the UNa primary report on the mechanisms it will adopt to investigate the war crimes assumedly committed during the war on Gaza in 2009. PM Salam Fayyad sent a letter to the UN's General Secretariat and included a presidential decree establishing a commission of five

committee formed by the PNA submitted its report to the UN⁷, and so did the committee formed by the Government in Gaza⁸.

The Palestinian Investigation Committee in the West Bank concluded with a number of recommendations and conclusions, most of which reflected the conclusions reached by the International Commission, especially those which linked most of the detentions to the Palestinian internal political situation. It noticed that arbitrary detention is practiced due to the political divide, the result of which is the existence of two authorities, one in the West Bank and the other in the Gaza Strip. The detentions carried out in the West Bank targeted the affiliates and supporters of the Hamas movement, as well as the affiliates of the political forces allying with and supporting it. Accordingly, the detentions carried out in the Gaza Strip targeted the affiliates and supporters of the Fatah movement, and affiliates of political forces allying with and supporting it.

It also concluded that neither the law enforcement bodies in the West Bank, nor those of the Government in Gaza respect or take into consideration due process during arrest and detention. They subject detainees to torture and other patterns of cruel, inhuman and degrading treatment as an instrument to extract confessions from them and information about others. It also noticed that the law enforcement officers of the security agencies in the West Bank and the Gaza Strip do not respect the effective laws which stipulate that a detainee must be brought before the regular Public Prosecution according to the provisions of the Palestinian Code of Criminal Procedures. Further, they bring civilian detainees before military courts, and the security agencies in the West Bank turned a blind eye, in many cases, to the decisions of the regular courts⁹.

II. Ongoing Political Divide between the West Bank and Gaza Strip

Despite ongoing efforts exerted by different domestic, Arab and international parties and the aspiration of the Palestinians to achieve reconciliation between

judges and lawyers to consider the accusations from the report of the International Fact Finding Commission. It also contained a primary report from the judicial committee.

⁷ To read the report, see http://www.picigr.ps/details_ar.php?id=w70cfoa2724y9qutbmrpg

⁸ On January, 27, 2010, the Minister of Justice of the Government in Gaza announced that the committee submitted its report to the UN. To read the report, see <http://www.alquds.com/node/232857>

⁹ To read the report from the Palestinian Independent Investigation Committee, see http://www.picigr.ps/details_ar.php?id=w70cfoa2724y9qutbmrpg.

Fatah and Hamas, the divide between both wings of the homeland continued throughout 2010. Both disputing parties held several meetings and dialogues to overcome the thorny issues, especially the files of the PLO and how the security agencies continued to make accusations concerning liability for the divide.

The security agencies of the Government in the Gaza Strip continued to arrest and detain Fatah's members and restrict their activities. Likewise, the security agencies of the Government in the West Bank continued to arrest and detain Hamas' members and restrict the movement's activities. The divide has had severe repercussions in the political, social, cultural and even security sectors of Palestinian society, and to the extent where public freedoms and rights have become subject to continuous violations and suppression.

ICHR believes that the failure of the reconciliation effort and the ongoing division constitutes a blatant breach of constitutional legitimacy, exemplified by hindering legislative and presidential elections¹⁰, and thus pushing the Palestinian political system into an exceptional phase characterized by the existence of an Executive Authority with broad powers and the absence of legislative monitoring.

Due to the failure of the reconciliation efforts between Fatah and Hamas throughout 2010, and the ongoing internal political division, the Palestinians in the West Bank and Gaza Strip have been the primary victims of the political dispute between both parties. **ICHR** documented a set of human rights violations perpetrated by the Governments in the West Bank and Gaza Strip in 2010. They perpetrated these violations due to the political and geographic divide and the mutual reactions between both parties. The violations are covered according to areas of Palestine, then divided into more than ten separate categories, and discussed accordingly below.

West Bank

1. Arbitrary Detention

¹⁰ According to law, the PLC's term is four years, and elections are conducted regularly once every four years. The jurisdiction of the standing PLC ends after the legislative election and swearing in of the new members. Article (47) of the Palestinian Amended Basic Law for 2005 stipulates "PLC's term shall be (4) years from the date elected, and that legislative election shall be held once every four years on a regular basis". It also reiterates that "the jurisdiction of the standing PLC ends once the new council members take the constitutional oath".

Arbitrary detention¹¹ constitutes one of the most worrying indicators of the deterioration of human rights and public freedoms in Palestine. The Government, however, denies that the security agencies carry out arbitrary detention based on political affiliation and stresses that the sole driving force for detention is security reasons.

The *fait accompli* presents the patterns of violations concomitant with detention without substantial accusation and prosecution of detainees before military courts and in contravention of the right to due process. These patterns also include denying detainees the right to visitation and the right to communicate with their lawyers, in addition to delaying implementation, if at all, of court rulings.

The visits **ICHR** carried out to the detention centers and prisons, and the complaints filed during 2010, show that the overwhelming majority of the persons detained by the security agencies in the West Bank are affiliates of the Hamas movement, and they also show the absence of the active role of the monitoring bodies, especially that of the Public Prosecution.

2. Torture and Ill-treatment

ICHR received 161 complaints which contained allegations of torture and ill-treatment in 2010. The visits it made to the prisons and detention centers and the complaints filed reveal that some detainees were subjected to ill-treatment and other patterns of torture in these centers. These patterns of torture include painful standing for long hours (Shabh), beating, deprivation of sleep, punching and psychological pressure¹².

¹¹ According to the magazine "Facts" (Waqaei'), and relating to the United Nations' team concerned with arbitrary detention, detention is arbitrary if: a) it has no legal basis; b) it is conducted due to exercising the rights and freedoms enshrined in the Universal Declaration of Human Rights and International Covenants on Religious and Political Rights, such as the right to equality before law, freedom of thought and opinion, establishment of peaceful associations and the right to participate in public affairs, access to public office and the right to travel; c) international standards of a fair trial are violated.

¹² Torture, according to the United Nations Convention Against Torture is: any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official

ICHR is gravely concerned over subjecting detainees to torture, inhuman, cruel and degrading treatment by the security agencies' personnel during detention and interrogation, and considers all patterns of torture and ill-treatment unjustified. These acts must be criminalized and investigated, and the perpetrators of such acts must be punished, even after they leave office, in order to prevent the reoccurrence of such crimes.

3. Non-execution of Palestinian Courts' Decisions

The phenomenon of delaying, non-executing or circumventing courts' decisions and rulings, especially the rulings of the High Court of Justice and the Court of First Instance, continued throughout 2010 in contravention of the provisions of law.

ICHR documented more than 181 violations of courts' rulings. Neither the security or civilian bodies of the Executive Authority implemented these rulings. In accordance with Article 106 of the Palestinian Basic Law, such an action is deemed to be a crime:

"Judicial rulings shall be implemented. Refraining from or obstructing the implementation of a judicial ruling in any manner whatsoever shall be considered a crime carrying a penalty of imprisonment or dismissal from position if the accused individual is a public official or assigned to public service."

4. Violations of the Right to Hold Public Service on Political Grounds

capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions. Article (2) of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Declaration") by the General Assembly on 9 December 1975 states that "torture and other cruel inhuman or degrading treatment constitute contravention of United Nations norms and violation of human rights and basic freedoms established in the Universal Declaration of Human Rights".

The PNA's employment policy continued to be based on security vetting throughout 2010. The Ministry of Education continued to dismiss teachers and other staff from its departments, and refused to employ or enter into a contract with any person who was not recommended by the security agencies. **ICHR** received 193 complaints in this regard in 2010, raising the number of such complaints it has received since the end of 2008 to 742. **ICHR** considers such a measure to be a blatant breach of the Civil Service Law¹³ and the Palestinian Basic Law, as well as a violation of a citizen's right to assume public office without discrimination. It is worth mentioning that the dismissed public servants sat for oral and written tests and assumed their jobs in accordance with the law, but they were fired upon recommendations from the security agencies.

ICHR believes that subjecting an employee to security vetting and dismissing him/her as a result is not regulated by law and does not have defined conditions. In fact, it is not the jurisdiction of any administrative body to do so, especially since administrative decisions are subject to several restrictions relating to public rights and freedoms lest an administrative unit or department misuse its powers for certain ends under the pretext of security allegations. The bedrock of the PNA's laws is the deep-seated faith in citizens' rights and liberties. According to Article 10 of the Palestinian Basic Law of 2003, "Basic human rights and liberties shall be protected and respected".

5. Disruption of Local Elections

On March 8, 2010, the Council of Ministers decided to hold local and municipal elections in the West Bank and Gaza Strip on July 17, 2010. It demanded that the Central Election Committee make the arrangements necessary for the elections, but altered its decision on June 10, 2010, canceling the date of the election and pledging to set another date. **ICHR** viewed the cabinet's decision of postponing the election as an infringement on democracy and citizens' rights to select their representatives for running public facilities.

¹³ The conditions an applicant for a job should meet, according to Article (24) of the Palestinian Civil Service Law, are the following: to be a Palestinian or an Arab; aged 18 years or over; free of diseases and physical and mental disabilities preventing him / her from fulfilling the duties of the relevant function which he / she could assume upon a medical report; he /she enjoys civil rights and has never been condemned by a competent Palestinian court of a felony or a demeanour breaching honour or trust, unless exonerated from such charges.

On December 13, 2010, the Palestinian High Court of Justice issued a ruling revoking the new decision of the Council of Ministers, and the latter responded by deciding to hold the elections on July 9, 2011.

6. Violations of the Right to Peaceful Assembly

In 2010, the Government in the West Bank restricted the right to peaceful assembly in breach of the provisions of the law. On August 25, 2010, a group of the Palestinian parties' and factions' leaders, together with a number of civil society organizations' representatives, and independent and noteworthy individuals held a conference to express their objection to the Palestinian engagement in direct negotiations with Israel, which were expected to start in September 2010. An organized group of young people targeted the conference with a view to thwart it. Prime Minister Salam Fayyad apologized for the action and pledged that it would not occur again. The security agencies also took several measures to prevent the Liberation Party "Hizb al-Tahrir" from holding its conference. Although it notified the competent departments of its intention to do that in accordance with the law provisions, on June 30, 2010 the Ministry of Interior declined its request

7. Violation of the Right to Establish Associations

According to complaints filed with **ICHR** in 2010 by charitable associations and civil society organizations, the competent department at the Ministry of the Interior continues to infringe on the provisions of the Law of Charitable Associations and Civil Society Organizations No (1) of 2000 and its respective regulation number (9) 2003. According to this law, security vetting is not a condition for associations' registration. Such measures could impede the registration process of applications submitted; the lawful registration duration is no more than two months.

8. Infringement of the Parliamentary Impunity of MPs

During 2010, the ICHR monitored a serious infringement of the Reform and Change Bloc's MP's impunity. ICHR received a number of complaints¹⁴ on

¹⁴ Among the complaints ICHR documented is one submitted by MP Abdul-Rahman Zeidan in which he states that on September 21, 2010, joint forces of the security agencies raided his home in Tulkarem city; they broke the door and entered the home violently. They then grabbed and pushed him to the corner of the room to start searching his personal papers and files. He added that the security forces did not present him with a search or detention warrant or any other legal paper. They also did not introduce themselves. He was detained with his hands cuffed with a chain and transferred to the compound of the

infringement of parliamentary impunity, arrest, detention, search and confiscation of belongings in contravention of the law. This applies especially to Article 53 of the Amended Basic Law of 2003, which states:

“Interrogating MPs for criminal or civil cases against the backdrop of their opinions, votes at the PLC sessions or committees activities or any other action they do outside the PLC enabling them to fulfill their parliamentary missions. Also, it is prohibited to assault any MP or search his luggage, home, car, office or whatever he has of movable or immovable property throughout impunity duration”.

9. Violation of the Right to Freedom of Expression and Press Freedoms

The Government in the West Bank continued to ban newspapers and media agencies supportive of Hamas from working in the West Bank in 2010. **ICHR** monitored the arrest of journalists by the security agencies without complying with due process or informing them of the charges directed to them from the competent judicial body according to the Basic Law and the Palestinian Code of Criminal Procedures No(3) of 2001. Furthermore, the security agencies censored both the printed and electronic press.

10. Refraining from Issuing Passports

ICHR received during 2010 a number of complaints from residents of the Gaza Strip who applied for passports through Passport Agencies there. They reported that the application forms were duly filled in, but the General Intelligence Agency in the West Bank refused to issue passports for them due to security reasons, including their connection to the Hamas movement or the Government in the Gaza Strip.

ICHR views the decline of the Ministry of the Interior to issue passports for the Palestinians who have the necessary documents to be a blatant violation of their right to travel and change residence and is a misuse of authority. According to Article 9 of the Amended Basic Law of 2003 “all Palestinians are equal before law” and according to Article 10, “human rights shall be binding and respected”. Article 20 of the same law affirms that “freedom of residence and movement shall be guaranteed according to the law’.

Preventive Security Agency in the city. He related that they insulted and cursed him and after half an hour of detention he was freed without being allowed to retrieve his confiscated belongings.

Given the fact that the Public Passports Directorate of the Palestinian Ministry of the Interior is the competent and responsible department for issuing Palestinian passports in accordance with the laws of issuance and renewal, the complainants hereof have the right to obtain passports without delay. It is worth mentioning that the security agencies do not have jurisdiction or the legal power to interfere with any passports' issuance.

The Gaza Strip

1. Use of Death Penalty

The courts in the Gaza Strip continued to impose the death penalty, sentencing 15 persons to death in 2010. Four of these sentences were imposed by civil courts and 9 by military courts. Further, the Government in the Gaza Strip carried out 5 death sentences in 2010, executing five citizens in contradiction of the Palestinian Amended Basic Law, which stipulates that death sentences imposed by civil or military courts shall not be carried out without the approval of the PNA's President.

The execution of these death sentences was concomitant with several legal contraventions highlighted by **ICHR** on different occasions. The most serious contravention committed by the Government in Gaza hereof was carrying out death sentences without approval by the President of the PNA. According to Article 109 of the Palestinian Amended Basic Law: "Without approval by the President of the PNA, death sentences imposed by courts shall not be carried out".

ICHR believes that imposing death sentences by Palestinian courts, particularly, military courts, constitutes a grave violation of the right to life and fair trial. Although the death penalty is not banned according to International Human Rights Law, it is considered as a grave and unjustified violation of the basic right to life and non-deterrent penalty which the international community works to obliterate and replace with other penalties complying with the criminal philosophy based on the principle of reformation.

2. Arbitrary Detention

ICHR received during 2010 several complaints on arbitrary detention conducted without due process. The Ministry of the Interior in the Gaza Strip has taken no

measures to prevent the military justice authority from prosecuting civilians or holding them under any pretext.

ICHR was denied access during 2010 to the detention centers affiliated with the Internal Security Agency of the Government in the Gaza Strip. It was also difficult for ICHR to make visits to Gaza Central Prison due to certain preventions. Further, the Ministry of the Interior of the Government in the Gaza Strip has not identified the locations of the detention centers affiliated to the Internal Security Agency despite the frequent demands by ICHR to allow it to make regular visits to these centers.

3. Torture and Ill-treatment

ICHR noted a rise in the number of complaints it received during 2010 from citizens claiming they were subjected to torture and ill-treatment compared to the previous year. It documented 220 complaints, with allegations of different patterns of torture in detention. These patterns include painful standing for long hours (Shabah), flogging, beating with batons, kicking, punching, tying the hands behind the back and being hung with a hook in a high place, being blindfolded for long hours, the use of electric shocks by tying the toes with electrified shackles, and abusive and threatening language as well.

4. Violation of the Right to Freedom of Expression and Press Freedom

The security agencies affiliated with the Ministry of the Interior in the Gaza Strip detained several journalists and media officers during 2010 in the Gaza Strip based on claims that they worked with banned media institutions, such as Palestine TV and Voice of Palestine Radio. **ICHR** has received complaints from different journalists detained by the security agencies in Gaza and from journalists who were assaulted and banned from covering events.

5. Violation of the Right to Freedom of Peaceful Assembly

The Government in the Gaza Strip restricted the right to peaceful assembly on several occasions by banning peaceful assembly, rallies and gatherings. On August 10, 2010, the police agency in Gaza prohibited the PFLP from continuing its sit-in organized in the Square of the Unknown Soldier in Gaza City, protesting against the continuous cutting off of power in the Gaza Strip. On July, 13, 2010, they prohibited the Liberation Party "Hizb al-Tahrir" from organizing a festival in

commemoration of the collapse of the Islamic Caliphate. They dispersed the supporters of the party who were gathering in preparation for the festival and beat them.

6. Violation of the Right to Establish Associations

The violation of the right to establish associations and interference in their affairs continued throughout the year. Also, some of the associations were attacked and shut down. ICHR documented the following violations in this regard:

- *On August 14, 2010, the Internal Security Agency shut down the Rafah-based office of the Popular Committee for Refugees.*
- *On April 12, 2010, the Ministry of Youth and Sport in the Gaza Strip took over Jabalia Services Club.*
- *On April 28, 2010, the Department of Public Affairs of the Ministry of the Interior in the Gaza Strip shut down the Palestinian Youth Association for Leadership and Role Activation (PYALRA) and notified its officers of the necessity of obtaining a license for operating from the Ministry of the Interior in Gaza City. ICHR learnt that (PYALRA) has its headquarters in Ramallah and has been registered with the Ministry of the Interior for several years.*
- *On November 30, 2010, the Internal Security Agency raided and searched Sharek Youth Forum in Gaza City.*
- *On July 11, 2010, the Minister of the Interior of the Government in Gaza issued a decision banning all civil servants refusing to report to their offices from joining the General Assembly of Charitable Associations or becoming members of their boards of directors. In addition, if any board of directors chooses otherwise, it will not obtain the approval of the Ministry of the Interior. **ICHR** believes that this decision constitutes a contravention of Article 9 of the Amended Basic Law and the first Article of the charitable associations and civil society organizations law. The decision applies to the civil servants refusing to report to their offices of the PNA in the Gaza Strip, reflecting discrimination arising from the political divide between the two Palestinian Governments in the West Bank and the Gaza Strip.*

7. Violations of the Right to Movement

The suffering of the citizens of the Gaza Strip due to lack of passports has worsened since November 2008. Despite the decision issued by the President of the PNA in August 2008 to commission governmental departments in the West Bank to take the administrative measures necessary for issuing passports to Gaza residents, the Government in the Gaza Strip reported that the Ministry of the Interior in the West Bank still does not send passports to residents in the Gaza Strip.

On the other hand, the Government in the Gaza Strip continued to issue decisions violating the right of the citizens to movement. For example, the Internal Security Agency in Gaza confiscated a number of passports belonging to members and officers of Fatah movement in the Strip during 2010. **ICHR** believes that confiscating passports and prohibiting Fatah members and leaders from travel by the Internal Security Agency constitutes a grave infringement on the rights and freedoms guaranteed without discrimination and for all citizens.

8. Vigilantism and Unknown Masked Individuals

ICHR monitored during the previous period six incidents of kidnapping, shooting, beating and torturing citizens for a period of time in unknown areas by masked individuals. After **ICHR** followed up such incidents, it was revealed that most of the people who were targeted were also affiliated with Fatah movement and the former security agencies. Furthermore, masked individuals set fire to and vandalized the summer camps (Summer Games) organized and supervised by UNRWA in the Gaza Strip for children aged 6-15 years. It is worth mentioning that **ICHR** has not been informed of what measures the Government in the Gaza Strip has taken to investigate such incidents to arrest and punish the perpetrators.

9. Failure to Take Measures Concerning Tunnel Victims

The Government in the Gaza Strip has taken no measures during the elapsed period to mitigate tunnel related death incidents. Since 2006, 158 people died in tunnels on the border between the Gaza Strip and Egypt, including 33 in 2010. Despite that, the Government in Gaza has not taken into consideration any of **ICHR's** and other human rights organizations' appeals for effective intervention and sufficient measures to mitigate cases of death in the tunnels.

III) Legislative Policies and Their Impact on Human Rights

The PLC has been deficient for the last three years in a row due to the Israeli occupation measures and ongoing political divide, lacking the quorum to convene. This has adversely impacted on the role of the PLC in proposing and ratifying laws and legislations which, in turn, influence the everyday aspects of the Palestinians' life and their rights and contribute to consolidating the Palestinian legal system in the West Bank and the Gaza Strip. Moreover, the paralysis of the PLC did not allow it to play its monitoring role over the Government's administrative and financial affairs and so impaired its ability for holding it accountable by giving a vote of confidence or no confidence, interrogating it or investigating the blatant contraventions and violations of human rights which were committed during 2010. These violations include the violation of the right to life and physical safety, subjection to torture and ill-treatment, political arbitrary detention, prosecuting civilians before military courts, dismissal from public service, deprivation of occupying public positions, infringement on press freedoms, restriction of basic rights such as the right to establish associations and the right of movement and peaceful assembly. Due to the ongoing divide and disruption of the work of the PLC, President Abbas issued 9 "laws by order" during 2010¹⁵ based on Article 43 of the Palestinian Basic Law which states that

"The President of the National Authority shall have the right in exceptional cases, which cannot be delayed, and while the Legislative Council is not in session to issue decisions and decrees that have the power of law. However, the decisions issued shall be presented to the Legislative Council in the first session convened after their issuance; otherwise they will cease to have the power of law. If these decisions were presented as mentioned above, but were not approved, then they shall cease to have the power of law".

Concerning the Gaza Strip, the MPs of the Reform and Change Bloc continued to hold PLC's sessions in the Gaza Strip based on the approach of a "proxy" which

¹⁵ Decree (1) concerning the appointment of the Head of the Anti-Corruption Committee.

Decree no (2), 2010 concerning the salary and financial rights of the Head of the Administrative and Financial Control Bureau.

Decree no (3), 2010 concerning the public budget for the fiscal year of 2010.

Decree no (4) of 2010 concerning prohibition of settlements products.

Decree number (5) of 2010 concerning amendment of the law of regular lawyers.

Decree (6) of 2010 concerning banks.

Decree (7) of 2010 concerning amendment of the law of illegal earning.

Decree (8) of 2010 concerning endorsement of appointing the Head of the Public Personnel Council

Decree (9) of 2010 concerning the Lands' Authority.

has no legal grounds. They acknowledged five laws during the year, including the so called “Law of the Independent Commission for Human Rights”.

Chapter Two

The Impact of Israeli Violations on PNA Performance and Ability to Protect Human Rights¹⁶

The year 2010 has seen a sharp, systematic escalation in Israeli human rights violations in Palestine, particularly in the occupied city of Jerusalem. This has led to the continuing consequences of the negative effects prompted by these violations and actions on the performance of the Palestinian National Authority (PNA) and undermining its role in protecting citizen's rights and freedoms in its respective regions. It also reflected negatively on the PNA as a result of the continued violations, assassinations and arrests, especially in areas classified as (A) areas, and the inability of the PNA to prevent or stop such violations. With the continued Israeli occupation and its arbitrary practices and measures against Palestinian civilians and the PNA's loss of effective control over land, borders and crossings, it does not leave an active role for the PNA in ensuring and respecting the basic rights for its citizens either in the West Bank or Gaza Strip. This is especially so in light of the continued daily violations and the systematic procedures targeting land and human beings.¹⁷

I. Israeli Aggression on the Gaza Strip and the Goldstone Report¹⁸

¹⁶ In this chapter, the ICHR is satisfied with listing the Israeli violations by relying on secondary sources, and analyzing their impact on the performance of the Palestinian Authority. ICHR does not claim that it covers the entirety of Israeli violations in the PNA areas.

¹⁷ For more information about the most prominent patterns of Israeli violations during the year 2010, review the annual reports on the situation of human rights issued by ICHR in previous years, especially the 2009 report, and the annual reports on Israeli violations of human rights issued by ICHR, which has not seen a change in the systematic Israeli policies within Palestine during 2010.

¹⁸ For more information about the Israeli aggression on the Gaza Strip, see ICHR's report on the "Israeli aggression on Gaza Strip: Unprecedented war crimes and collective punishment in the light of international and Arab silence. (Ramallah: Palestinian Independent Commission for Human Rights, January 2009).

During 2010, there had been a follow-up of the Goldstone Report on Israeli crimes in the Gaza Strip during the Israeli aggression in early 2009. The Report was discussed at the United Nations Human Rights Council (UNHRC). It forwarded to the Palestinians and Israelis a number of recommendations, including the formation of two independent inquiry commissions to follow up its recommendations. However, Israel refused to form a commission of inquiry, and formed an internal committee, acquitting the army of committing serious abuses in the war on Gaza, hoping to thwart the UN Report which strongly criticized Israel's behavior during the war. Israeli Defense Minister affirmed: "that Israel assigned the army fighters to carry out the mission, and they deserve full support by Israel." He added that Israel intends to contest the legitimacy of Goldstone Report, and also intends to work on amending the laws of war to suit the situations of war against "terrorists" exercising their activity among civilians."¹⁹

The UN General Assembly adopted a resolution on 05/11/2009, to follow up on the report of the United Nations Fact-Finding Mission on the Gaza Conflict. It stated:

"Recalling further its relevant resolutions, including resolution ES-10/18 of 16 January 2009, adopted at its tenth emergency special session. Recalling also the relevant resolutions of the Human Rights Council, including resolution of 16 October 2009; Convinced that achieving a just, lasting and comprehensive settlement of the Palestinian question, the core of the Arab-Israeli conflict, is imperative for the attainment of a comprehensive, just and lasting peace and stability in the Middle East; endorses the report of the Human Rights Council on its twelfth special session, held on 15 and 16 October 2009; Requests the Secretary-General to refer the report of the United Nations Fact-Finding Mission on the Gaza Conflict to the Security Council; Calls upon the Government of Israel to take all appropriate steps, within a period of three months, to undertake investigations that are independent, credible and in conformity with international standards into the serious violations of International Humanitarian Law and International Human Rights Law reported by the Fact-Finding Mission, with the aim of ensuring accountability and justice; Urges, in line with the recommendation of the Fact-Finding Mission, the undertaking by the Palestinian side, within a period of

¹⁹ <http://www.alwasatnews.com/2608/news/read/325794/1.html>

three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of International Humanitarian Law and International Human Rights Law reported by the Fact-Finding Mission, with the aim of ensuring accountability and justice; Recommends the Government of Switzerland, in its capacity as depositary of the Geneva Convention related to the Protection of Civilians in Time of War, to undertake the necessary steps as soon as possible to reconvene a Conference of the High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with common Article (1); Requests the Secretary-General to report to the General Assembly, within a period of three months, on the implementation of the present resolution, with a view to considering further action,²⁰ if necessary, by the relevant United Nations organs and bodies, including the Security Council.”

The UN Human Rights Council decided to postpone examining the Goldstone Report for its session in March 2011. Within the framework of following up the recommendations of the Goldstone Report at the local level, the Report suggested to the Palestinians and Israelis a number of recommendations, including the formation of two independent commissions of inquiry, Israeli and Palestinian, to follow up on recommendations and investigate human rights violations in Palestine which were mentioned in the Report. However, Israel rejected the formation of a commission of inquiry, and formed an internal committee, acquitting the army of committing serious abuses during the war waged on Gaza Strip, hoping to thwart the United Nations report, which strongly criticized Israel’s behavior in the war. The Israeli Defense Minister affirmed “Israel commissioned the army fighters to carry out the mission, and they deserve full support by Israel.” He added that Israel intends to contest the legitimacy of the Goldstone Report, and will also work on amending the laws of war to suit the situations of war against terrorists who exercise their activity among civilians.²¹ However, the PNA did announce the formation of an independent inquiry commission according to what is stated in the Report, and

²⁰ Text of the UN General Assembly’s resolution on 05 November 2009, Fourth session, item 64 of the agenda, 39th session, 05 November 2009.

²¹ For the statements of Israeli military leaders, visit:

<http://www.alwasatnews.com/2608/news/read/325794/1.html>

the Government in the Gaza Strip also formed a committee. The committee formed by the PNA completed its report and handed it over to the United Nations, and the committee formed by the Government in the Gaza Strip delivered its report as well.

II. Impact of Israeli Violations on the Performance of Vital PNA Institutions

ICHR notes that the arbitrary procedures and policies of the Israeli authorities impacted on the performance of the Palestinian National Authority in many aspects. It also negatively impacted on the status of human rights and public freedoms in the Palestine and these consequences will continue as long as the Israeli occupation of Palestine is in place.

1- Impact of Israeli Violations on the Legislative Authority

During 2010, Israeli occupation forces continued pursuing and arresting members of the Palestinian Legislative Council (PLC). During 2010, (6) PLC members were arrested. Israeli occupation forces also stepped up their campaign against PLC members from Jerusalem, where they arrested MP Mohammad Abu Tir. They also took a decision to expel three PLC members: Ahmad 'Atoun, Mohammad Totah, and Mohammad Abu Tir, under the pretext of their participation in the recent parliamentary elections as representatives of (Hamas) Movement.

Israel's ongoing arrest of PLC members has contributed to weakening the PLC's supervisory role. And the continued Palestinian political division taking place between the West Bank and Gaza Strip since 14/06/2007 has contributed to undermining the Palestinian Parliament and the absence of its role in political life. In particular, this also includes weakening its overseeing role of the Executive Authority, as well as the absence of its legislative role.

Throughout and until the end of 2010, while the Israeli occupation forces continued to arrest a number of PLC members, thus leading to the disruption of the PLC's functions, disabling it and preventing it from performing its legislative and supervisory duties, (10) of these PLC members were still in detention. Of these 10, (7) are from the Reform and Change Block, (2) are from Fatah Parliamentary Block, and (1) from the Popular Front for the Liberation of Palestine, namely the martyr Abu Ali Mutafa, Secretary General of the Popular Front for the Liberation of Palestine, who was placed in solitary confinement and has been deprived of family visits for more than a year. The detained PLC

members are: Marwan Barghouti, Ahmad Sa'dat, Hasan Yousef, Abed Al-Jaber Mustafa Fuqaha, Jamal Al-Tirawi, Hatem Rabah Qafisheh, Mahmoud Al-Ramahi, Nayef Al-Rajoub, Mohammad Al-Tal, and Khalil Al-Rab'i.²²

All appeals and interventions by local, regional Arab and international human rights organizations, including an international campaign, demanding the immediate release of detained PLC members and the need for compliance with international laws and norms that guarantee human freedom and dignity, did not result in any substantive response from the Israeli Government. At that time PLC member Mahmoud Al-Ramahi was released, but then was arrested once again. PLC member Mohammad Abu Teir was also released, but exiled to the city of Ramallah in accordance with a decision by the Israeli court. In an attempt to exert pressure on the occupying power to release all political prisoners, including PLC members, the Palestinian Ministry of Detainees & Ex-Detainees Affairs is discussing their cases. Issa Qaraqe', Minister of Detainees & Ex-Detainees Affairs, confirmed that the Ministry is discussing the detainees' cases in order to procure an advisory opinion from the International Court of Justice (ICJ). He stated "the 187 resolutions issued by the United Nations and its institutions relating to the Palestinian prisoners since 1967 have not been adhered to by the Israeli occupation. All these resolutions call on the occupation to cease its practices and violations of the rights of prisoners, confirm the applicability of the Fourth Geneva Convention on Palestinian prisoners and the importance of adhering to the Convention."²³

2- Impact of Israeli Violations on the Performance of the Judiciary

The policy of the Israeli occupation has also influenced the performance of the judiciary. Over the past several years, Israel's policy of closure and siege, and the Israeli checkpoints, cast negative consequences on the work of the judiciary and its effectiveness. The Israeli measures still constitute a major obstacle to the implementation of judicial decisions, including the arrest of fugitives (particularly outside the designated co-called areas), delivery of judicial notifications, and the police performing their work. These often require prior coordination outside the

²² According to the Information Department at the Ministry of Detainees & Ex-Detainees (Ramallah) on 12/01/2011.

²³ <http://www.safa.ps/ara/index.php/action=showdetail&seid=26638>

areas (a), particularly in the movement of witnesses, litigants, judges and prosecutors. This is in addition to the fact that the transfer of the accused also requires, in most cases, prior coordination to move the accused from one place to another when required by the necessities of a trial.

The weakness in the performance of the Palestinian judicial system is also ascribed to the lack of Palestinian sovereignty within the entire area of the West Bank while still under the control of Israeli Military Occupation. The Israeli military checkpoints have also affected the irregularity of the working hours for judges and other supporting staff, as they also restricted the movement of not only judges, clerks, and other judicial officers to courts and public prosecution offices, but also that of litigants, their representatives and witnesses. The Israelis' frequent closures and encroachments weakened the ability of the police to execute court decisions and judicial notifications, which entailed the absence of an effective Palestinian civil police force capable of accessing all areas it needs to reach in order to support the judicial system.

The annual report of the Higher Judicial Council noted that despite significant progress in the work of the Judiciary Inspection Department, the Department still faces many obstacles, most notably the existence of military checkpoints which impede the arrival of the inspection judges to the courts in a timely manner.²⁴

A report issued by the Council of Ministers in the West Bank noted that among the difficulties and challenges faced by the Government in the justice sector, they include: 1) dishonoring the dignity of the judge; 2) subjecting the judge to inspection; 3) stopping the judge at military checkpoints; as well as 4) the inability of bailiffs and aides to the judiciary to perform their role in completing the reporting processes for claims or others procedures due to the closures, preventions, and other practices of the Israeli occupation which affect the daily work of the justice sector institutions.²⁵

3- Impact of Israeli Violations on the PA Executive Institutions

Israeli policies during the year 2010 reflected on the Palestinian people and on the performance of the Palestinian National Authority (PNA) as well. The Palestinian Government in the West Bank was forced to provide assistance to the

²⁴ [http://www.courts.gov.ps/pdf/HJC Annual Report 2009 Arabic.pdf](http://www.courts.gov.ps/pdf/HJC%20Annual%20Report%202009%20Arabic.pdf).

²⁵ Secretariat of the Council of Ministers – see the first quarterly report for the second year of the Government/13th West Bank (2010).

families of martyrs and the wounded, and those affected by the various measures of the Israeli occupation, and to provide some services for those whose houses were completely or partially destroyed in the West Bank and Jerusalem. The Israeli violations of killing civilians, detentions, house demolitions, land leveling, land confiscation, military checkpoints, and the siege imposed on the Gaza Strip influenced the ability of the (PNA) to perform its role in fighting poverty and unemployment and in providing basic necessities. The number of people eligible for help increased because of the arbitrary Israeli measures; this resulted in high rates of poverty, unemployment and marginalization, as well as the continued internal political division between the West Bank and Gaza Strip.²⁶

Furthermore, the blockade and the Israeli measures imposed on the Gaza Strip have influenced the ability of the Palestinian Government in the Gaza Strip to carry out a number of measures related to the reconstruction of the Gaza Strip. There are still thousands of buildings yet in need of reconstruction or some level of rehabilitation, and this includes some schools, religious structures and even streets, all of them reminders of Israeli aggression. What hinders the reconstruction process in the Gaza Strip is the refusal by the Israeli occupation authorities to allow the entry of basic construction materials, including cement and sand²⁷. The Israeli occupation authorities have allowed the entry of (114) varieties of goods. They also had previously allowed entry of (9,000) types of goods in mid-June 2006.²⁸

4- Impact of Israeli Violations on Prisoners and the Ministry of Detainees & Ex-Detainees Affairs

During 2010, the state of Israel arrested approximately (4,000) Palestinians,²⁹ an average of (11) cases every day, the vast majority from the West Bank and Jerusalem. Two of the prisoners were martyred during the year as a result of medical negligence by the Prison Administration.³⁰ The total number of prisoners in the Israeli jails is around (6,000) prisoners, distributed in (22) detention and investigation centers, under extremely harsh living conditions. Among the

²⁶ Ibid..

²⁷ For more information on the consequences of the Israeli aggression on the Gaza Strip and the reconstruction, see the report, "The right to housing and reconstruction in Gaza Strip," Independent Commission for Human Rights, Ramallah, 2010.

²⁸ Palestinian Centre for Human Rights, a position paper on easing the blockade imposed on the Gaza Strip, 01 July 2010.

²⁹ According to a report issued by the PLO National and International Relations Department in 2010.

³⁰ Ibid.

prisoners, (796) prisoners are condemned to life imprisonment once or several times. There are (39) female prisoners and (255) child prisoners. There are (205) administrative detainees who are so detained without trial or charge. Among the prisoners, (4,857) prisoners are from the West Bank, (686) are from the Gaza Strip, (198) from East Jerusalem, (191) from Palestine occupied in 1948, (45) prisoners of patrols, and (3) prisoners from Gaza Strip who are classified by the Israeli occupation forces as “illegal combatants”. There are also (229) prisoners in solitary confinement, (5) of whom have spent more than 5 years in isolation. There are (1,500) sick cases among the prisoners who suffer from chronic diseases and for whom the occupation authorities refuse to provide with medical treatment.

The data provided by the Ministry of Detainees & Ex-Detainees Affairs in the West Bank noted that more than (760,000) Palestinian and Arab citizens have been arrested since 1967, of whom nearly (13,000) are female, and around (25,000) children between the ages of 12-18 years. Furthermore, (203) prisoners were martyred after arrest and in Israeli prisons, due to medical negligence, or torture, or deliberate killing, as a result of severe beatings or the use of live bullets against prisoners³¹, and this is also since 1967. Prisoners live in exceptionally harsh conditions, where they are subjected to torture, beatings and humiliation, all in clear violation of international laws and conventions, all of which protect the rights of prisoners of war, including the Fourth Geneva Convention. As mentioned above, some of them are suffering as a result of medical negligence and the deliberate failure to provide them with medicine or health care.

5 -Impact of Israeli Violations on the Palestinian Economy

The sector most affected by the Israeli policies is the Palestinian economic sector, as a result of its dependence on the Israeli economy, Israel’s control over the Palestinian land, borders, water, other natural resources, and absence of Palestinian control over the airspace, sea, and land, as well as the movement of both people and goods. Israel’s continued placing of obstacles in the path of the movement of persons and goods within Palestine, and to and from Palestine to neighboring countries may also be seen to impact negatively on the economic situation. The absence of Palestinian control over the border crossings, the division of areas into (A,B,C) and Israel’s failure to implement the agreements

³¹ Researcher’s interview with Osama Ghoul, Director of Information Department at the Ministry of Detainees & Ex-Detainees, Ramallah 21/01/2010.

signed between the two sides clearly have implications on the climate of the Palestinian economy, which is affected negatively in terms of the free movement of goods and people, and also has prevented the implementation of some planned programs and projects.³²

A UN report noted that the amount of direct and indirect losses the Palestinian economy will suffer as a result of the Israeli policy is estimated at about (3.9) billion US dollars during the period between 2008 and 2011. Israel's policy of closures and siege imposed on Palestine will lead to a loss of about (2.6) billion US dollars. The amount of material losses suffered by Palestinians due to the recent war in Gaza is estimated at (1.3) billion US dollars. The report issued by the United Nations Conference for Trade and Development (UNCTAD) on the status of the Palestinian economy drew attention to the fact that the Palestinian economy is losing (60 - 80) thousand jobs a year. The total losses in employment opportunities will reach up to (260,000) jobs during the years between 2008 and 2011.

The report also pointed to the absence of food security for Palestinians, including (61%) of the total population of Gaza Strip, and (25%) of the total population of the West Bank, due to the decline in agricultural production over the past decade by approximately (60%). There is, in addition, the marginalization of the economic benefits of international grants and aid due to the Israeli-imposed siege on the Gaza Strip, Israel's construction of the Annexation Wall, and the closure policy in the West Bank.

6 - Israeli Violations of the Right to Health

The embargo imposed on the Gaza Strip caused damage to the health sector, and remained an obstacle to the further development of the health sector and the plans laid down for its advancement. During 2010, the Israeli-imposed siege on the Gaza Strip continued and the Israeli occupation authorities continued to prevent the movement of patients from the Gaza Strip for medical treatment in the West Bank and Gaza Strip hospitals and within Palestine as occupied in 1948 unless they procure an Israeli-issued permit. During the year 2010, the number of martyrs of the siege increased to (368) and the number of patients to whom the

³² Secretariat of the Council of Ministers, Government / 13th West Bank, the Annual Report (May 2009 - May 2011).

occupation authorities refused to grant exit permits from Gaza reached about (664), causing the death of a number of them.³³

Travel permit applications for many of the patients were refused or delayed by the Israeli authorities, which resulted in missing treatment sessions for the majority of them. For example, chemotherapy and radiation is not available in the Gaza Strip because it was prevented by the occupation authorities and the strict siege imposed on Gaza. This is in addition to the deteriorating conditions of health facilities, especially after being targeted by the Israeli occupation forces in the recent aggression, with the complete or partial destruction of many of them. Furthermore, the security ban also prevents Palestinian patients from the possibility of receiving medical treatment in Israeli hospitals, or allowing them to travel for treatment elsewhere, all under the pretext of security reasons.

The health situation in the Gaza Strip also suffers from shortages of medicine and medical equipment. The General Administration of Pharmacy at the Palestinian Ministry of Health announced it was completely running out of (110) types of drugs from its warehouses, adding that (76) more types will run out within three months. This coincides with the deterioration of health services for (1.5) million civilian residents, especially in the wake of the massive destruction wrought by the Israeli occupation forces to the health facilities during its recent aggression on the Gaza Strip and the continued siege. This has continuously impeded the safe passage of construction materials needed for the reconstruction of those facilities, or the continuous flow of shipments of drugs to hospitals and health centers and facilities in Gaza.

Doctors Without Borders (*Medicins Sans Frontieres*) noted that (200) specialized medical supplies remain permanently unavailable at inventory, such as certain children's medicines or specific treatments for anemia or hemophilia. There are approximately (1,200) people with amputated limbs waiting for their turn to be fitted for a prosthesis or additional aid.³⁴

The frequent power outages and the shortage of fuel needed to run power generators in the hospitals have impeded the functioning of the intensive care units, operating theaters and emergency rooms. And the shortage of energy in

³³ <http://www.moh.ps/?lang=0&page=3&id=352>

³⁴ For more information, see MSF's website: <http://www.msf-me.org/ar/mission/in-the-field/voice-from-the-field/mission-13.html>

the central pharmacy disrupted the perishable drug supply's cooling devices, and this included damage to vaccines. It also has led to running the generators for long periods which experience frequent breakdowns leading to severe health problems. The depletion of natural gas has resulted in a shortage of appropriate kitchens and poor quality of food provided to patients, and this in addition to the breaking down of central laundries (which are responsible for laundering bedding, towels and medical clothing), leading to the spread of infection among patients.³⁵ In addition, according to the World Health Organization (WHO), between (20,000 and 50,000) of the total population of the Gaza Strip suffers from serious psychological disorders.³⁶

Amnesty International warned of the deteriorating health situation in the Gaza Strip, stating "there is a shortage of medical equipment and supplies during the siege." And as mentioned above, following Israel's closure of the crossing borders, persons suffering from a range of medical problems and diseases which cannot be treated in Gaza have to apply for permits to obtain exit permits to receive medical treatment, either in foreign hospitals or in West Bank hospitals, even if waiting for the permit will cause deterioration in health. And often the Israeli authorities delay or refuse granting such permits. Some Gazans have died while waiting for permits to leave Gaza for medical treatment in other places. And often the Israeli border officials have refused the entry of trucks loaded with medical supplies going to the hospitals in Gaza, sending them back to where they came from, without providing any explanation.³⁷

7 - Impact of Israeli Violations on the Right to Education

During the Israeli aggression on the Gaza Strip, the education sector was also exposed to damage. A total of (158) schools and educational facilities were damaged from being targeted by the Israeli occupation forces, resulting in the complete destruction of (8) schools and (5) schools suffered severe damage and became unusable. In addition, (35) UNRWA schools, (11) private schools and (30) kindergartens also suffered damage as a result of the Israeli aggression. Many universities in Gaza were attacked deliberately, including the Islamic University,

³⁵ See Certificate of the Independent Commission for Human Rights before the United Nations Special Committee to Investigate Israeli Violations in the Occupied Arab Territories, in Amman on 14/6/2010. The certificate dealt with the Israeli violations of the right to health.

³⁶ <http://www.msf-me.org/ar/mission/in-the-field/voice-from-the-field/mission-13.html>.

³⁷ <http://www.amnesty.org/ar/news-and-updates/suffocating-gaza-israeli-blockades-effects-palestinians>, 01/06/2010

Al-Azhar University, Al-Aqsa University, the University College of Applied Sciences, and the Faculty of Science and Technology.³⁸

The Israeli aggression affected the infrastructure of the education sector in the Gaza Strip and undermined all efforts and attempts to reconstruct and restore the destruction and damage suffered by schools and universities, a result of the continued Israeli blockade on Gaza and the refusal of the Israel occupation authorities to allow entry of building materials required for restoration or new construction. School administrations were forced to gather students of two or three classes in one semester. The number of students per class reached up to about (120) for an extended time because of the entire destruction of their schools, which resulted in the absence of a school environment suitable for learning. This consequently affected the students' ability to concentrate and absorb. The education sector is still suffering from a severe shortage of educational tools and laboratory equipment, most of which was lost during the Israeli aggression. The Israeli occupation forces have also prevented alternative options for these schools from entering Gaza and the West Bank.³⁹

The United Nations Relief and Works Agency for Palestinian Refugees (UNRWA) still needs to build (100) more schools to accommodate the steady increase in the number of students in the Gaza Strip, although the construction or establishment of new schools has been stopped since mid-2007 due to the imposition of total ban on the entry of construction materials into Gaza Strip. UNRWA has been forced to use (186) “ready rooms” (containers) for many of its schools in the Strip to meet the severe shortage of classrooms, and to cover its urgent need for rooms for teachers in those schools. Additionally, UNRWA was unable to absorb about (40,000) refugee male and female students in the Gaza Strip, thus forcing them to search for public or private schools due to the impossibility of finding desks for them in their existing schools.

The Israeli aggression has also left a shadow on the Palestinian universities in the Gaza Strip. Students who enrolled in science faculties at the Islamic University are still deprived of any practical application, as a result of the destruction of laboratories and the inability to reconstruct them. Students of the Faculty of Agriculture at Al-Azhar University also continue to suffer as a result of the mass

³⁸ Ibid. The aforementioned reference.

³⁹ “

destruction of laboratories, thus preventing students from carrying out any teaching activity inside the faculty.⁴⁰

Israel's construction of the Annexation Wall has affected the right of Palestinians to education in the West Bank, especially in the areas inside the Wall, where the Wall separates them from their schools, as is the case in the Jordan Valley and the region (H2) in Hebron. Furthermore, the Israeli checkpoints influenced the movement of students between the cities and their universities. Additionally, the Israeli occupation authorities continue to refuse to grant permits for students from Gaza to come to the West Bank in order to study, as well as the movement of students from the West Bank and Gaza to the outside world to complete their studies.

8- Impact of Israeli Violations on Providing Security for Palestinians

Israeli occupation policies and procedures intensified the fragmentation and isolation of the Palestinian communities from each other, a result of the military and economic blockade, impeding movement, military checkpoints, continued construction of the Annexation Wall, incursions into Palestinian cities, assassinations and arrests, and the invasion of areas labeled "A", which lie under the Palestinian security control; all of these have had a negative impact on the safety and security of Palestinian citizens. During 2010, it has been a daily occurrence to see or have reported the storming of a city, village, or camp by the Israeli occupation forces, thus making the environment in which the Palestinian security forces operate complicated. This caused embarrassment to the PNA and the Security Services and accusations of security coordination with Israel, especially after popular anger following each assassination or arrest in the West Bank.⁴¹ The Palestinian security forces remain unable to prevent the Israeli occupation forces from carrying out its aggressive activities within the Palestinian areas. The PNA and some Palestinian factions also exchanged accusations concerning security coordination. Hamas stated "The Israeli arrests in the West Bank are the result of serious security coordination between the PNA and Israel", following the arrest of one of its members in the West Bank.⁴² The Interior Minister in the West Bank, Dr. Said Abu Ali, confirmed that "the security coordination between the PNA and Israel is coordination between the occupier and the occupying power in order to facilitate the affairs of everyday life and not

⁴⁰ "

⁴¹ http://www.thejordantoday.com/index.php?option=com_content&view=Article&id=1603

⁴² http://www.thejordantoday.com/index.php?option=com_content&view=Article&id=160

for the exchange of information. Israel set up around (460) military checkpoints in the West Bank, dividing it into regions (a) under Palestinian administrative and security control, and (b) under Palestinian administrative control but Israeli security control, and (c) under the occupation, where movement of the Palestinians in these areas requires prior coordination with Israel".⁴³

The PNA holds Israel and its policies responsible for impeding the work of Security Services in performing its functions and duties, with the aim of ⁽¹⁾ strengthening allegations of the weakness of the PNA and its Security Services, and its inability to control security, ⁽²⁾ and interfering with imposing order and respect for the law. Israeli occupation will remain the primary threat for the process of reforming the Palestinian security sector.

The PNA launched several regional campaigns to enforce its security plans, aiming at the eradication of crime and enforcing public order in the Palestinian cities and towns of the West Bank where the security agencies returned to enforce some control. Hence, stricter practical measures were applied to address the state of widespread lawlessness and vigilantism particularly throughout the last years. However, Israel continued to hamper these efforts with its counterproductive policies of incursions, assassination of Palestinian activists, arbitrary arrests, and closure of charitable societies and public institutions inside the Palestinian cities and towns.

9 - Judaization of Jerusalem City

During 2010, Israeli occupation forces stepped up their repressive procedures within the occupied city of Jerusalem, and accelerated the pace of Judaizing the city through house demolitions, land confiscation and deportation of Palestinians from the country. Israeli violations of freedom of worship continued. Israel continued to deprive the residents of the West Bank from reaching the Al-Aqsa Mosque and the Church of Holy Sepulcher in the Old City of Jerusalem. Israeli practices and policies aim to undermine the Arab presence in Jerusalem, and convert its Arab population into a minority. An Israeli ministerial committee ratified a law considering the city of Jerusalem an area of national priority, and placing it within the area's designated development zones (a) in the fields of housing, employment and education.⁴⁴

⁴³ <http://www.alquds.com/node/306800>

⁴⁴ A report issued by the PLO National and International Relations Department, 2010.

Furthermore, the judaization policy in Jerusalem resulted in the demolition of (63) houses and the displacement of (116) of its owners, and (260) others were affected. Israeli occupation forces demanded owners of (10) houses to demolish their own houses under the pretext of unlicensed construction.⁴⁵ Demolition warnings were sent to demolish (1,334) houses, especially in Silwan neighborhood. Additionally, Jewish settlers occupied dozens of Palestinian homes in Jerusalem, after forcing their owners to evacuate after being threatened at gunpoint and with the help of police. During the year, the so-called Organization and Local Construction Committee of the Jerusalem Municipality ratified a structural scheme which included the courtyard of the Wailing Wall. It includes: 1) expanding the courtyard to accommodate (400,000) visitors a year; 2) digging tunnels under the Al-Buraq Wall; 3) building Jewish religious centers and police stations under ground; 4) digging new tunnels connecting the Wailing Wall with the town of Silwan; and 5) building public parking for buses and cars. About (125,000) Palestinian Jerusalemites are threatened with the loss of their residency rights in Jerusalem because of the Apartheid Wall. They now live in areas outside the Wall. Israel also approved the construction of (16,479) housing units, mostly in and around East Jerusalem and has already started the construction of (1,300) housing units.⁴⁶

Palestinian houses in the neighborhood of Silwan are at a high risk of complete demolition, where the majority of the population are Palestinians. Many Palestinian houses have been demolished by the Israeli occupation authorities, and some citizens have become homeless. Hundreds of citizens received demolition notifications from the Israeli Jerusalem Municipality informing them of the demolition of the houses, not to mention the Israeli settlers' seizure of dozens of homes by force and the expulsion of Palestinian citizens from their homes.

Israeli occupation forces continued to prevent any manifestation of the existence of the (PNA) in Jerusalem. They continued the closure of Orient House, the Arab Studies Society, the Jerusalem Civil Society "ELAF" to support the right of education in Jerusalem, and a number of health, cultural and youth centers.⁴⁷ On

⁴⁵ Protection of Civilians, 22 - 28 December 2010, Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territories.

⁴⁶ A report issued by the PLO National and International Relations Department, 2010.

⁴⁷ Ibid.

25/07/2010, Israeli occupation forces renewed orders which extended the closure of these institutions.⁴⁸

10 - Attacks on Journalists

In 2010, Israeli occupation authorities stepped up their prosecution of Palestinian journalists and Palestinian news organizations while engaged in their work, including calling attention to Israeli violations against Palestinian citizens and making public the suffering and persecution to which Palestinians were and still are being exposed. This is an attempt by Israel to ensure the policy of gagging, and preventing the dissemination of an image which reveals the reality about what is taking place in Palestine, and this includes serious violations of the rights of the Palestinian people and their continued suffering at the hands of the occupation forces and the settlers. The year has seen the arrest of more than (30) journalists who have been investigated and their equipment confiscated. Some (53) journalists were injured while covering clashes and peaceful marches. During 2010, Israel maintained the closure of the doors of Al-Aqsa Mosque and its premises before Jerusalemite journalists and prevented them from entering it and taking photos.⁴⁹

11 -Settlements and House Demolition

The cessation of settlement constituted a Palestinian demand for the continuation of the Israeli-Palestinian peace negotiations. Palestine Liberation Organization (PLO) has rejected the continuation of negotiations without a complete cessation of settlements. Through international pressure headed up by the United States of America, the Israeli Government agreed to a moratorium on settlement for three months, but the announced cessation of settlement was a formality only. Israel continued with building settlements and the expansion of settlements using unconvincing arguments, exemplified in terms of completing construction or due to a natural increase of population. With Israel reneging on its pledges to halt settlement activity, the (PLO) had no choice but to halt negotiations. The PLO called on the international community to extract a resolution from the Security Council underlining the need to stop settlements. The PLO President announced that no negotiations would be possible without first temporarily calling a halt to the settlements.⁵⁰

⁴⁸ <http://www.wafa.ps/arabic/index.php?action=detail&id=96677>

⁴⁹ <http://www.irtvu.com/ar/?c=content&id=7192>

⁵⁰ http://arabic.cnn.com/2010/middle_east/12/9/abbas.mubarak/index.html

12- Impact of Israeli Violations on the Provision of Basic Public Services (Water, Wastewater Services)

Israel continues to control and exploit water resources and thus deprive the Palestinian population from their right to access water. An indication of this abuse is the Annexation Wall path, which is identical to that of groundwater reservoirs and the long standing policies such as well water confiscation and the prohibition of drilling of artisan wells, among others. The expansion of the Annexation Wall has isolated many artisan wells and springs, resulting in the deterioration of the situation in the West Bank, and restricting the PNA's ability in its implementation of inclusive growth programs, and in the provision of sufficient water for its citizens.

Depriving the Palestinian people from water is an evident indication of the Israeli violations of one of the most fundamental human rights. The Israeli's full control over water resources and depriving the Palestinians of their right to access it makes the Israeli per capita consumption of water equivalent to four times the Palestinian per capita.

A report issued by the United Nations Children's Fund (UNICEF) points out that Israeli aggression on the Gaza Strip caused severe damage to the water sector, which affected the right of Palestinian citizens to have access to water supply. The aggression affected more than (30) km of water networks, along with (11) water wells used by residents for drinking, (6,000) tanks on the roofs of residential buildings, and (840) links connecting the houses with the water networks to enable them to supply water.⁵¹

The continued Israeli blockade on the Gaza Strip and the prevention of access to many other goods has led to a shortage of industrial fuel supplies, cements, and pipes for repair work and maintenance of water and wastewater networks affected by the aggression. This makes water and wastewater discharge services unreliable and risky in the Gaza Strip. The failure to repair networks has resulted in the loss of approximately (47%) of water due to leakage. Supplies suffer frequent interruptions, as half of the population have access to water three days a week at the most or do not have access to it at all. As for drinking water, (98%) of the total population, estimated at (1.5) million, are connected with water

⁵¹ http://www.malaf.info/?page=show_details&Id=16185&table=pa_documents&CatId=34

networks. But most people (82.7%) depend on water vendors for drinking water, as households spend an average of (36) shekels a month on water, and some spend up to (67) shekels per month. Also, (86.9%) of the people rely on desalinated water for drinking, which means they consume water from which some of the vital nutrients such as calcium and magnesium were extracted.⁵²

13 - Israeli Violations against Human Rights Defenders

Israeli occupation authorities in 2010 stepped up their arbitrary and repressive measures against human rights defenders in Palestine, doing so through acts of murder, detention, travel bans, and preventing them from entering Palestine. On 31/05/2010, Israeli occupation authorities attacked a small fleet of ships (Gaza Freedom Flotilla) sailing towards Gaza and in solidarity with civilians trapped in the Gaza Strip, killing (9) defenders and injuring a number of international solidarity activists, and arresting all the defenders who were on board. They were taken for questioning at the Israeli investigation and detention centers, and were abused and treated in an inhumane and degrading manner, in violation of all international standards, which stipulate their protection.⁵³

During the same year Israeli occupation authorities arrested several more human rights defenders. On 07/02/2010, Israeli occupation authorities arrested (2) people, Australian activist Bridget Chappell, and Spanish citizen Ariadna Khobe Marty - volunteers in the International Solidarity Movement (ISM) - and were taken to Ofer Detention Center, and released later on bail.⁵⁴ Activist Eva Novkova from the Czech Republic was also arrested in Ramallah and deported from Palestine.⁵⁵ Issa 'Amro, a human rights activist from the popular resistance, was arrested and released in accordance with a decision from the Military Court in the Ofer Detention Center on bail in the amount of (10,000) shekels. Israeli occupation authorities also arrested Advocate Shirin al-Issawi from the Global Movement for the Defense of Children, which is active in defending Palestinian children prisoners. Abdullah Abu Rahma, Coordinator of the Popular Campaign against the Wall, was sentenced for a year by the Military Court in Ofer on 10/11/2010.⁵⁶

⁵² http://www.malaf.info/?page=show_details&Id=16185&table=pa_documents&CatId=34

⁵³ For more information, ICHR's statement is published on its website: www.ichr.ps

⁵⁴ <http://gamalat.com/forum/showthread.php=138350>

⁵⁵ <http://gamalat.com/forum/showthread.php=138350>

⁵⁶ <http://www.maannews.net/arb/ViewDetails.aspx?ID=350212>

Even the harassments to which human rights defenders are being subjected have taken a systematic and official form. Israeli Prime Minister Benjamin Netanyahu denounced what he called the “maliciousness” of organizations concerned with defending human rights that criticize Israel and turn a blind eye to repressive regimes, and that they must shed light on the maliciousness of organizations defending human rights but which turn a blind eye to the most repressive regimes in the world – those which stone women and hang homosexuals - and prefer to attack the only liberal democracy in the Middle East.⁵⁷

14 - Illegal Deportation of Palestinians from Palestine (*Israeli Decision No. 1650*)

There has been an escalation in the pace of the Israeli Government in regard to the deportation of Palestinians in an illegal manner from the West Bank. The pace has intensified with the onset of Israeli Military Order No. (1650) pertaining to the prevention of infiltration, and coming into force on 13/04/2010. Its application contributes to the strangulation of Palestinian citizens and the reduction of their freedom of movement within and outside the West Bank, to avoid possible deportation. The number of Palestinians deported to Gaza since the issuance of the military order by the Israeli occupation authorities increased to (7) deportees.

Order 1650 threatens the stability of hundreds of Palestinian families and tens of thousands of Palestinians. It allows the Israeli Army to pursue Palestinians who do not hold a residency permit in the territory of the West Bank and occupied Jerusalem, and to arrest and deport them, or who might be carrying an identity card (ID) issued from the Gaza Strip. The decision is racist and constitutes a serious violation of the principles and commitments contained in international law and International Humanitarian Law, and agreements signed with the Palestinian side, including the Oslo Agreement, signed with the PLO, which Article (IV) stated “that the West Bank and Gaza Strip (WBGS) are a single geographic unit.”

The Israeli decision violates the right of the Palestinian people to self-determination, and affects the sovereignty of the PNA on its own territory and on the geopolitical and political unity of Palestine in the West Bank, occupied Jerusalem and the Gaza Strip. It also violates the right of the Palestinian people

⁵⁷ <http://www.alquds.com/node/312870>

to movement and to live in freedom and dignity. It deprives hundreds of Palestinians of their right to education, housing and health. It can also lead to emptying the West Bank of its population. And in addition, it contributes to the reduction of investment opportunities in the West Bank and the reduction of chances of developing the Palestinian economy.

The escalation in the pace of the Israeli occupation measures in regard to the deportation of Palestinians illegally from Palestine is represented in the racist decision to deport four PLC members: Mohammad Abu Teir, Ahmad 'Atwan, Mohammad Totah, and Khaled Abu 'Arafah. They were deported from Occupied East Jerusalem to the West Bank as a form of escalation and persistence in the policy of judaizing Jerusalem, and empty the city of its Palestinian population and its leaders and national and religious figures through their displacement. The implementation of the decision will be followed by taking further measures by the Israeli occupation authorities to achieve this goal through systematic Israeli policy. Israel implemented the decision to deport PLC member Mohammad Abu Teir to Ramallah, in addition to its decision to expel other PLC members and former Minister of Jerusalem, Abu Arafah, who continue their sit-in at the headquarters of the Red Cross.

Moreover, the deportation of protected persons under International Humanitarian Law is considered among actions prohibited under Article (49) of the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War. The deportation of a population or forcible transfer according to the Rome Statute of the International Criminal Tribunal from the year 1998 is classified as a crime against humanity. The illegal deportations above are war crimes. The deportation of the population is one form of forcible displacement pursued by the Israeli occupation authorities.

Recommendations

After discussing the impact of Israeli violations on the performance of the PNA and its ability to safeguard human rights in the areas under its jurisdiction, the ICHR forwards the following recommendations:

1. The PNA should continue pressing the international community to seriously work to end the Israeli occupation of Palestine, this being the major cause of human rights violations in terms of war crimes committed, systematic collective punishment against the Gaza Strip and the rest of the OPT, denial of the Palestinian people's right to statehood and self-determination, which is guaranteed under international conventions of human rights; stop its aggression against and raids into this territory, and to lift the siege imposed on Palestine, especially on the Gaza Strip.
2. The PNA should coordinate with all parties to follow up on the resolutions of the UN General Assembly, Security Council and other UN agencies to guarantee Palestinian citizens their right to self-determination.
3. The PNA should seriously and effectively follow up on the Goldstone Report to complete and distribute it to the different United Nations' agencies, and to encourage the ICC to bring the perpetrators of war crimes to justice.
4. The PNA should work to activate immediate intervention mechanisms of the UN and its organizations, and pressure Israel to respect international agreements and abide by international legitimacy resolutions and urge the High Contracting Parties to the Fourth Geneva Convention to implement the General Assembly's resolution number (A/RES/ES-10/15) dated 20/7/2004, relating to the International Court of Justice advisory opinion in relation to the annexation and expansion wall.
5. The PNA should continue demanding the immediate release of all the Palestinian detainees languishing in the Israeli jails and follow up with encouraging the international agencies to do likewise, the UN having top priority in this regard.
6. The PNA should invite the high contracting parties to the Fourth Geneva Convention to fulfill their obligations provided in Article (1) of the Convention, which is to undertake and ensure respect for the Convention

under any conditions. The parties should also fulfill their legal obligations provided for in Article (146) as well, which is to hold accountable those who seriously act in breach of the Convention.

7. The PNA should fulfill its responsibility for safeguarding Palestinian citizens' security and their rights and freedoms, including the freedom of choosing their place of residence and movement. It should also exert maximum effort to push the UNSC to issue a draft resolution demanding the state of occupation to repeal its decisions for deporting Jerusalemite legislators, based on the UNSC's resolution number (799) from 1992, which condemned the deportation of civilian Palestinians from Palestine, including Jerusalem, and called for their return.

Part II

Human Rights and Public Freedoms in the Palestinian-Controlled Areas in 2010

Chapter One

The Right to Life and Physical Safety

All international covenants of human rights guarantee the right to life, physical safety and protection from forced disappearance. These rights are also enshrined in the national legislation in force in Palestine. The most relevant articles from these documents are briefly reviewed here. For example, Article (3) of the Universal Declaration of Human Rights states "Everyone has the right to life, liberty and security of person", and Article (6.1) of the International Covenant on Civil and Political Rights affirms "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life... 6. Nothing in this article shall be invoked to delay or prevent the abolition of capital punishment by any State Party to the present Covenant"

Moreover, Article (5) of the Universal Declaration of Human Rights states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.". Article (7) of the International Covenant on Civil and Political Rights declares "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

At the domestic level, Article (10) of the Palestinian Basic Law of 2003 maintains "1- Basic human rights and freedoms shall be binding and respected. 2 - The Palestinian National Authority shall work without delay to join regional and international declarations and covenants which protect human rights." Article (13) of the Amended Basic Law of 2003 affirms: "1- No person shall be subject to any duress or torture. All accused persons and persons deprived of their freedom shall receive proper treatment. 2. All statements or confessions obtained through violation of paragraph (1) of this Article shall be considered null and void". The Palestinian National Authority has concurred with the international trend in the prohibition of torture and ill-treatment in Article 37 of the Penitentiaries and Correction Centers Law of 1998, which stipulates "2- It is prohibited to torture inmates or treat them with severity .3- It is prohibited to call inmates with obscene or degrading names."

I. - The Right to Life

ICHR recorded the killing of (126) citizens in Palestine areas during 2010.⁵⁸ The killings were distributed as (76) cases in the Gaza Strip, (including 33 deaths in the tunnels) and (50) cases in the West Bank. Among these cases there were (21) children (11 children in the West Bank, and 10 children in the Gaza Strip), and (15) women (7 women in the West Bank, and 8 women in the Gaza Strip).⁵⁹ This year has seen a significant decrease in murder cases in general, compared with the number of cases registered by ICHR in 2009. The number of murder cases recorded by ICHR in 2009 reached (236) cases.

1 - Background to Murders Recorded by ICHR

Some (50) murder cases occurred in the West Bank in 2010. The primary backgrounds on which the killings were based varied. A total of (20) murder cases were based on family quarrels and disputes, constituting 16% of the total number of deaths registered. A total of (25) murder cases were registered with the same background, constituting 11% of the total number of deaths in that year. This indicates the continued occurrence of murders sharing the background of quarrels, revenge and other family matters, and also at relatively high rates.

Also one murder case was recorded in the West Bank as a result of the misuse of weapons by law enforcement officials this year. ICHR had monitored two murder cases with the same background in 2009, and recorded one murder case as a result of the misuse of weapons by citizens in the West Bank. This can be compared to three murder cases with the same background in 2009.

The number of murder cases whose circumstances remained vague increased to (14) cases in 2010 (11% of the registered cases), compared with (10) cases in 2009 (4% of the registered cases). Despite the high number of deaths taking place with the reasons remaining unknown in this year, public prosecutors and judicial services did not disclose any proceedings or investigations taken in these incidents with the aim of revealing the reasons for emitting them, and holding

⁵⁸ For more details on cases of murder, including geographical distribution, background to the killing, and demographic information, see Annex 1 & 2.

⁵⁹ It should be noted that three cases of death were female children, two in the West Bank and one in the Gaza Strip.

those responsible accountable. When criminal purposes behind the killings are proven, doubts will be raised about the backgrounds of these cases.⁶⁰

During 2010, ICHR did not record any murder case with a background of the so-called "family honor" reasoning either in the West Bank or Gaza Strip,⁶¹ compared with (4) deaths with that background in 2009. Also ICHR did not record any murder case with a background of internal fighting this year, and this is a qualitative development of the situation that prevailed in previous years, where (8) citizens had been killed with this background in 2009.

ICHR recorded the occurrence of (12) deaths in the West Bank as a result of negligence and lack of precaution imposed on the official parties as a form of supervision or inspection, and, therefore were being held partly responsible for these cases.⁶² Some (8) citizens died in the workplace, (2) citizens died drowning due to lack of sufficient security means in the pool, (1) citizen died as a result of falling from a school wall which is not fenced (located next to the playground of Al-Khader in Bethlehem), and another (1) died as a result of falling into a hole inside the camp where he lives.⁶³

⁶⁰ ICHR already noted in more than one report the importance of the declaration of the Public Prosecution for the actions and measures taken on each issue. In particular, this applies to general and sensitive issues, while maintaining any confidentiality imposed by the law due to the importance of achieving general deterrence among the public not to commit such crimes on the one hand, and the importance, on the other hand, of providing an atmosphere of security and tranquility among citizens.

⁶¹ ICHR has recorded in its monthly reports one case of murder with a background of so-called family honor in 2010. It became clear later during the investigation of the Public Prosecution that the girl had been killed on a criminal basis after being raped by a family member (incest) in order to hide the effects of the crime under the pretext of so-called "family honor."

⁶² What is meant by *deaths based on a background of neglect and failure to take safety precautions* is that it is due to a lack of security measures in public places or in the workplace, which imposes on public authorities the duty to ensure the availability of these means. A clear example of this is the need for a lifeguard in a swimming pool during the times when there are people in the pool; the presence of a lifeguard in every swimming pool is one of the general conditions necessary for licensing any swimming pool.

⁶³ Within the annual audit it conducts for the list of deaths as a result of the weakness of the rule of law and which appears in its annual report, ICHR excluded from this list (30) cases classified as cases of death resulting from negligence and lack of consideration through means of public safety, because these cases impose responsibility on the citizens themselves more than the responsibility imposed on the official authorities. It should be noted that ICHR formerly mentioned these cases in the past, both in the lists presented in its previous annual reports or in the monthly violations reports issued at the end of each month.

In the Gaza Strip, the number of deaths resulting from the weakness of the rule of law decreased this year. ICHR reported the occurrence of (76) deaths during the year 2010, including deaths due to tunneling, compared with the deaths of (168) citizens in 2009. According to the backgrounds for the killings in the Gaza Strip in 2010, ICHR did not record any murder case arising from armed clashes, compared with (28) cases in 2009 with the same background. ICHR also recorded the death of (11) citizens with backgrounds of family quarrels and disputes in the Gaza Strip, compared with the death of (15) citizens in 2009. It also recorded the killing of (8) citizens with backgrounds of misusing of weapons among citizens, compared with the killing of (11) citizens in 2009. As for the killing resulting from the misuse of weapons by the Security Services in the Gaza Strip, ICHR did not record any case with such a background in 2010, compared with (1) case in 2009.

Although in 2010 ICHR did not record any murder case with a background identified as so-called “family honor” in the Gaza Strip, it did record the deaths of (7) females as a result of mysterious circumstances, or misuse of weapons among citizens. This raises doubts and the likelihood that some murder cases nevertheless may be due to a background of “family honor”, as (19%) of the deaths recorded this year in the Gaza Strip with a background of mysterious circumstances involved females, if the murder cases in the tunnels are excluded. This is compared to the occurrence of (5) killings in 2009, and (2) in 2008, with backgrounds involving family honor. Among the females who were killed in mysterious circumstances or as a result of the misuse of weapons among citizens is the case of (F.SH) who was shot dead in her house under unknown circumstances; the case was recorded as a killing with mysterious circumstances. Also (Z K) was shot dead by her husband’s weapon when he was cleaning it, and citizen (J A) was shot dead from a car while she was standing in front of her house.

ICHR recorded the occurrence of (13) deaths that remained as mysterious circumstances, and were unable to determine the reasons behind them, constituting (17%) of the total number of killings recorded by ICHR in the Gaza Strip in 2010, compared with (23) murder cases in 2009. Despite the high number of deaths that occurred without knowing the reasons behind them, the Public Prosecution and the Security Services in the Gaza Strip did not disclose any investigations or measures taken in these incidents with the aim of disclosing the reasons and holding those responsible accountable. When criminal purposes

behind the killings are proven, doubts will be raised about the background of these cases.⁶⁴

During 2010, ICHR also recorded the death of (6) people as a result of negligence and lack of precautions imposed on the official parties as a form of supervision or inspection, and, therefore, being held somewhat responsible for these cases, compared with (11) cases in 2009 with the same background. Four citizens died as a result of negligence in the workplace. Mahmoud Abu-'Raq, 13, died, as a result of the collapse of the dirt on him while he was collecting gravel. Mansour Salameh Abu Sweis, 45, was killed by electric shock during maintenance of power lines. Khaled Amer, 25, was killed by drowning in the sea near the town of Khan Younis. Also a 33-year-old citizen was killed by the collapse of tunnels connecting the Gaza Strip with the Arab Republic of Egypt.

During recent times, the Government in the Gaza Strip did not take any measures to reduce the phenomenon of death as a result of the work tunnels, which has reached up to (158) deaths since 2006. There is a need for government intervention to take procedures and decisions to reduce the number of deaths among citizens as a result of the work tunnels, and take action commensurate with the exceptional case on which it is turning a blind eye to prevent or criminalize. There is no doubt that the proliferation of tunnels in the Strip rebounded by the Israeli military blockade imposed on the Gaza Strip since 2006. However, ICHR holds the Government in the Gaza Strip responsible for its failure to provide public safety measures for citizens who work in the tunnels, particularly as the Government is well aware of them, supervises them and receive fees for them, which imposes a responsibility to provide the greatest possible public safety measures for citizens.

2 - Deaths in Detention Centers in the Palestinian-Controlled Areas

ICHR recorded only one death in the West Bank which was classified as a prison death. On 07/11/2010, Ayman Jibril Al-Rajabi, 24, was shot dead by unknown assailants while being transferred from prison to court, where he was suspended and was being tried regarding an old fight. Security personnel who escorted him

⁶⁴ Ibid.

were unable to provide him with security. No death cases were recorded with this background in 2010 in the Gaza Strip.⁶⁵

3 – The Death Penalty in the PNA Areas

There has been no positive development mentioned regarding the death penalty in Palestine in 2010. Laws still impose the death penalty for many offenses, and courts continue to apply the death penalty. This is particularly so in the Gaza Strip, whose courts monopolized all death penalties issued during this year. The worst occurred at the level of this punishment this year when the Government in the Gaza Strip implemented five death sentences, even though they were not ratified by the Palestinian President.

A- The Legal Aspect of the Death Penalty

On the national political level, due to the disruption of the Palestinian Legislative Council (PLC), the PNA did not adopt any legislation aimed at reducing the offenses which are punishable by death within its punitive legal system. However, the Government in the West Bank began in 2010 and in cooperation with ICHR and the Palestinian civil society organizations to prepare a modern draft penal code in accordance with modern criminal policy to abolish the death penalty and hard labor, and replace them with penalties forbidding liberty. ICHR considers this initiative a positive step in the right direction towards abolishing death penalty, although it has not yet reached the level of legislation.

In the Gaza Strip, the Government expanded the scope of criminal acts of death. In 2009, it ratified the decision to abolish the Israeli military provisions, which criminalize acts of drug trafficking with simple sentences, and adopted in lieu the Egyptian legal provisions in this regard contained in the Egyptian law no. (19) of 1962, which imposes severe penalties on drug trafficking up to a maximum of death penalty.

ICHR intensified its efforts during 2010 towards the abolition of the death penalty, and sought to suspend it by asking the Palestinian President to issue an official decree to suspend the death penalty until the relevant Palestinian

⁶⁵ ICHR recorded (3) deaths in prisons and detention centers in the West Bank in 2009, while it recorded (9) cases in the Gaza Strip during the same year. For more information, see the fifteenth annual report of ICHR for the year 2009.

legislative changes took place. During this year, ICHR conducted a thorough legal review of the death penalty within the Palestinian legal system, during which it discussed the extent to which the national law complies with international standards of human rights on the prevention of imposing the death penalty in national laws. It also excluded crimes punishable by death in the most serious crimes only, and in the narrowest possible framework, as a rapid interim measure, until the death penalty is entirely abolished from the Palestinian legal system.⁶⁶

B- The Death Penalty on the Practical Level

The PNA courts in the West Bank, whether civil or military, did not issue any death sentences in 2010. In contrast, the judiciary in the Gaza Strip did not at all stop issuing death penalties. In 2010, (15) death sentences were issued,⁶⁷ of which (6) were issued by civil courts, and (9) by military courts.

⁶⁶ For more information see: Ma'an Shehda Adeis, *Legal Review of the Provisions of the Death Penalty in the Palestinian Legal System*, (Ramallah: Palestinian Independent Commission for Human Rights), 2010.

⁶⁷ Death sentences included the following:

- (1) Osama Zedan al-Ghoul, 30, Gaza City, Gaza Court of Beginning, on charges of intentional murder, and sentenced on 22/02/2010.
- (2) Mohammad E'layan, Gaza City, military court, accused of public treason, and sentenced on 07/02/2010.
- (3) Basil Kamel Zoghrob, 27, Khan Yunis, military court, accused of treason, and sentenced on 24/02/2010.
- (4) Naim Mustafa 'Ashour, 45, Rafah, on charges of treason, military court, sentenced on 03/03/2010.
- (5) Mohammed Ahmad Baraka, 49, Deir al-Balah, accused of murder, Khan Younis Court of Beginning, sentenced on 30/05/2010.
- (6) Atiyah Abd al-Khaliq Farajallah, 23, Nusseirat City, on charges of intentional murder, Court of First Instance of Deir al-Balah, sentenced on 06/07/2010.
- (7) Omar Humedan Kaware, 28, Khan Younis, on charges of collaborating with the enemy, the military court, sentenced on 22/09/2010
- (8) Zahi Abdul Rahman al-Masri, 32, Beit Lahiya, on charges of intentional murder, the Court of First Instance of Khan Younis, sentenced on 02/11/2010.
- (9) Mohammad Jamil Abdeen, 20, Khan Younis, on charges of intentional murder, the Court of First Instance of Khan Younis, sentenced on 24/11/2010.
- (10) Ismail Khalil Nijem, 45, Gaza City, on charges of intentional murder, the military court, sentenced on 01/12/2010.
- (11) Mamdouh Mohammed Attar, 34, Gaza City, on charges of collaborating with the enemy, the military court, sentenced on 06/12/2010.
- (12) Jamil Zakaria Juha, 28, Gaza City, on charges of kidnapping and participation in the murder, the military court, sentenced on 06/12/2010.
- (13) Jihad Jihad Mohammad Mansour, Gaza City, on charges of kidnapping and participation in a murder, the military court, sentenced on 06/12/2010.

However, the most serious development that has occurred regarding the death penalty issue in 2010 is the carrying out of (5) death sentences, including (5) citizens, in violation of the provisions of the Palestinian Basic Law, which requires the ratification of the Palestinian President of the death sentences issued by civil or military courts prior to their execution.

On 15/04/2010, the Government in the Gaza Strip implemented (2) death sentences: one issued against Nasser Salameh Abu Freih, 33, from Abed Rabbo neighborhood in Gaza, accused of treason, and the other against Mohammad Ibrahim Ismail Al-Sabe', 37, from Rafah, on charges of treason, and sentenced on 03/11/2010.

On 18/05/2010, the Government in the Gaza Strip also carried out (3) death sentences against Amer Jundiye, 45, from Gaza City, on charges of murder, Rami Mohammad Juha, 24, from Gaza City, on charges of rape and murder, and Matar Al-Shobaki, from Gaza City, on charges of murder and theft, through the Civil Criminal Court. The latter was sentenced on 20/03/1996 and the sentence was not executed until (14) years after its issuance.

The execution of these sentences was accompanied by many law violations addressed by ICHR on several occasions.⁶⁸ The most serious legal offense

(14) Ayman Awad Hussein al-Massar'a, 29, Gaza City, on charges of kidnapping and participation in a murder, the military court, sentenced on 06/12/2010.

(15) Fayez Talab Nassar Wahidi, 55, Gaza City, was charged with murder, the Court of First Instance of Gaza, sentenced on 29/12/2010.

⁶⁸ For more details on death sentences which have been carried out, see: Yasser Ghazi 'Alawneh, *Extrajudicial Execution*, (Ramallah: Palestinian Independent Commission for Human Rights, July 2010). Among the legal violations referred to by this study, the following offenses:

1. Executed rulings were issued by the Military Justice on the basis of the provisions of the PLO Revolutionary Penal Code of 1979, despite the description of this law as unconstitutional and not belonging to the PNA legal system. It has not been presented to the Legislative Council, as well as many of its provisions contradict with international standards of human rights and with the rules that stipulate bringing civilians before civilian courts and their "natural" judge.
2. Death sentences executed by the President of the Palestinian National Authority have not been ratified according to the powers set forth in the Basic Law in this regard.
3. Fair trial guarantees were absent in the trials that took place for those death sentences which had been executed, particularly a person's right to trial before a competent, independent impartial court, where all guarantees that allow defendants to exhaust all means of self-defense are available.
4. Violation of a guarantee to provide the highest degree of justice for those convicted to death by depriving them of consideration of the cassation ruling issued against them to a death defense and not an audit, in order to provide a higher degree of justice for people sentenced to death. The execution of the death penalty without the President's ratification of those provisions buried

committed by the Government in the Gaza Strip in this regard was the execution of these sentences without the ratification of the Palestinian President, in violation of Article (109) of the Palestinian Basic Law. This law stipulates “The death sentence issued by any court shall not be implemented unless after the ratification by the President of the PNA.”

ICHR finds that issuing death penalties in Palestine, particularly by the military courts, constitute a violation of a human’s right to life, and the principle of the right to a fair trial. Although the death penalty is not prohibited under International Human Rights Law, it is an extreme exception to the fundamental right to life. It is a deterrent penalty that the international community seeks to repeal and replace with other penalties, in line with the criminal philosophy based on the principle of reform.⁶⁹

Despite the low number of death sentences issued this year (15) compared with those of the previous year (17), it is remarkable that the death sentences issued this year were issued only by the Gaza courts, and none were issued by the West Bank courts. Military courts applied some legal reasoning, and so reduced death sentences that were imposed on the act under the law to imprisonment penalties for several years, which ICHR considers to be a positive development.

II - The Right to Physical Safety in 2010

Different forms of ill-treatment and torture are all prohibited practices which should be banned and investigated, and which should also allow for the prosecution and punishment of perpetrators as criminal acts, with no time restrictions. Perpetrators can be prosecuted even after leaving their official jobs.

Since the beginning of 2010, ICHR received (381) complaints including allegations of citizens being subjected to torture or cruel, or ill-treatment, of which (161)

guarantees of the highest degree of the justice that must be provided to those sentenced to the death penalty. This constituted a clear violation of the provisions of the law.

⁶⁹ In 2007, the General Assembly of the United Nations issued a resolution regarding "a moratorium on the use of the death penalty", endorsed by (104) countries. It was opposed by only (54) countries, and (29) states took a position of neutrality of this resolution by abstention from voting.

were complaints regarding the Palestinian Security Services in the West Bank, and (220) similar complaints in the Gaza Strip.⁷⁰

These complaints were categorized in terms of the party against which the complaint was lodged: (71) complaints against the police; (30) against the General Intelligence Service; (54) against the Preventive Security Service; (1) against the National Security Service; (1) against the Joint Force; (6) against the Intelligence Service; and (220) against the Internal Security Service and Police in the Gaza Strip.

As for the responses to ICHR's complaints, there were no responses to the complaints filed to the Internal Security Service, affiliated with the Interior Ministry in the Gaza Strip since the beginning of 2010. There are some responses to the complaints submitted to the police apparatus in the Gaza Government. Also, ICHR received a number of responses to the complaints received in the West Bank against the police and the various Security Services. But the responses of the General Intelligence Service and the Preventive Security Service only manage to repeat the same phrases, such as "detainee/detainees receive the best treatment." Another common response would be that the mentioned people "were arrested with backgrounds of breaching security and public order, and were not arrested for political background as they claim." And the "mentioned" were never subjected to any kind of torture or ill-treatment, whether verbal or physical, and the respondents were "...always keen to apply the law, strengthen the state of institutions and maintain the dignity and security of Palestinian citizens". They did not recognize the occurrence of any abuse against anyone who filed the mentioned complaints.⁷¹

However, ICHR received a number of responses to the complaints submitted to the police apparatus in the West Bank. Although the police did not recognize the occurrence of violations against physical safety of citizens in the largest number of complaints, it admitted violations against physical integrity in some of the complaints. Some measures were taken against violators. For example, the police in the West Bank took the necessary legal measures against one of its officers, who struck a citizen on his face and took him to the police room in Beit Jala Hospital.⁷² The police took a number of disciplinary measures against a

⁷⁰ The numbers above are based on the numbers mentioned in ICHR's reports on human rights violations in Palestine from January to December 2010.

⁷¹ See response received by ICHR from the Security Services in 2010.

⁷² Police letter addressed to ICHR on 23/05/2010.

number of officers who beat a citizen⁷³ and referred a number of its officers to the military prosecutor for investigation. It held a number of its officers for periods of time, ranging from one week to ten days, as a disciplinary penalty because of their attacks on citizens. Warnings were given for some of them, and others were referred to the military justice or to the military prosecution.⁷⁴

As reported by the Interior Ministry in its response to the Commission's letter regarding Rami Said Al-'Absi, a Palestinian resident of Hebron, who was shot dead by the security forces inadvertently during an armed robbery, and in light of the investigations conducted by the commission of inquiry formed by the Interior Minister, a number of military personnel accused in the incident were referred to the military justice. The mentioned was considered a martyr of the PNA. The amount of (20,000) Jordanian Dinars was paid to his family as financial compensation.⁷⁵

The police apparatus affiliated with the Government in the Gaza Strip reported that a commission of inquiry was formed to investigate a citizen's complaint, who claimed that he was subjected to abuse and torture. The inspector was condemned in this complaint and a disciplinary measure was taken against him, including deductions made from his salary, and a warning issued that he would be transferred if the event was to be repeated.⁷⁶ Additionally, a police officer was placed in custody for three days as a result of his inappropriate behavior in dealing with a citizen. He was warned not to repeat such acts.⁷⁷ Members of the police patrols were also placed in custody for 72 hours after being questioned about the beating of a citizen during his detention.⁷⁸

Conversely, ICHR's researchers reported some worrying findings as well. In their field visits to the detention places affiliated with the Palestinian Security Services and the Police Apparatus in the West Bank in 2010 affidavits of some detainees, reported their detention quite negatively. Several said "they were exposed and others to acts of torture and ill-treatment, such as being placed in a painful position on a chair, severely beaten, deprived of sleep for hours long, or putting a

⁷³ Police letter on the response to a number of complaints submitted by ICHR no. A 15/1629, dated 05/08/2010.

⁷⁴ Police letter on the response to a number of complaints submitted by ICHR no. A 15/2286.

⁷⁵ See ICHR's statement on the killing of Rami Al-Absi on 02/05/2010, and the Security Aid to the Interior Ministry no. (250) dated 29/06/2010.

⁷⁶ See police response dated 26/04/2010.

⁷⁷ See police response no. 16/43/2173 dated 27/05/2010.

⁷⁸ See police response no. 85/47/1590 dated 22/04/2010.

bag over the head, or prevented from going to the bathroom, and being beaten by hands.”⁷⁹

Until the end of this year, ICHR was consistently prevented from visiting detention places of the Internal Security Service in the Gaza Strip since the Israeli war on Gaza in December 2008. This may indicate the existence of serious violations against those being held by these services. The inability of ICHR to exercise any control over the detention centers prevents it from seeing the conditions inside the detention centers of the internal security services in the Gaza Strip, leading to a total reliance on the statements received from the relatives of detainees, or detainees themselves after their release. For that reason, ICHR will not be able to take the necessary preventive measures to protect detainees.

ICHR recorded different methods of torture according to testimonies provided. In the West Bank, the images of Shabah, beating on various parts of the body, punching, and psychological torture were repeated. In the Gaza Strip, the following acts were reported: Shabah, beatings with sticks, kicking with legs, beating with hands on different parts of the body, restricting the body to the back and lifting it in a high place, blindfolded for long hours, use of electric shocks by connecting electrified shackles to the toes, in addition to threats and obscene language.⁸⁰

III - Women’s Right to Protection from Violence

Article (9) of the Palestinian Basic Law of 2002 states that: “Palestinians before the law and judiciary, without discrimination because of race, sex, color, religion, political opinion or disability”. In 2009, the PNA ratified the Convention on the Elimination of All Forms of Discrimination against Women “CEDAW”,⁸¹ which obliged State Parties to take all necessary measures to fulfill in all economic, social and cultural fields.⁸² This is in addition to the many legal bases to protect

⁷⁹ For further details, see the reports of visits to places of detention during 2010.

⁸⁰ With regard to criminal and judiciary prosecution for the perpetrators of crimes of torture, see Chapter Two, Part III of this report on the mechanisms and procedures for accountability for human rights violations.

⁸¹ Presidential Decree No. (0) for the year 2009.

⁸² Article (2) of the said Convention provides that: “States Parties condemn all forms of discrimination against women and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to, undertake the following: (a) to embody the principle of equality

women from violence, which have been incorporated into the draft of the penal code that is being worked on by the Ministry of Justice, although the need still exists for a separate law to protect women from violence.

On the policy level, the Government's plan in the West Bank for the year 2010 dealt with the “date with freedom” reference to the protection of women from violence, which states: “The Government pays special attention to the status of women in Palestine, and reaffirms its resolve to ⁽¹⁾ develop special mechanisms to ensure the empowerment of women, ⁽²⁾ strengthen their social role, ⁽³⁾ ensure their enjoyment of full equality in all areas, ⁽⁴⁾ to support and strengthen civil society concerned with women’s rights and issues.” The Ministry of Social Affairs’ role in the plan itself was to address many issues in the service of battered women through a conversion system for battered women, connecting the emergency centers and protection centers for battered women, which is being developed. In addition, protection centers for battered women and a national system for child protection networks are being ratified.

In the Gaza Strip, it was not clear in 2010 what the Government's or the Ministry of Social Affairs plans might be. There was no announcement regarding the distinctive orientations needed in order to provide protection for battered women.

The National Committee on Violence against Women was preparing in 2010 a strategic plan to combat violence against women for the period from 2011 to 2019. The general approach to their work aimed to: 1) institutionalize the work on violence against women in various governmental institutions; 2) adopt a goal for each ministry within this strategy; and 3) build practical plans and appropriate indicators within this framework. The monitoring and evaluation process is a

between men and women in their national constitutions or other appropriate legislation if not incorporated therein so far, and to ensure the practical realization of this principle through legislation and other appropriate means; (b) to adopt appropriate measures, legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) to establish legal protection of women's rights on an equal footing with men and to ensure effective protection of women, through the competent national tribunals and other public institutions in the country, from any act of discrimination; (d) to refrain from engaging in any act or practice of discrimination against women and to ensure the disposal of public authorities and institutions in conformity with this obligation; (e) take all appropriate measures to eliminate discrimination against women by any person, organization or institution, (f) take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (j) To repeal all national penal provisions which constitute discrimination against women.”

major focus in the plan, and the Women's National Committee is required to form a committee in partnership with women's organizations, academics and the Independent Commission for Human Rights to monitor the strategic plan against violence, to follow up its implementation, and measure its success in reducing violence against women.

At the level of practical measures taken by the Executive Authority in the West Bank, the Police apparatus continued this year to establish departments for family protection in police branches in different governorates, and disseminate the experiment initiated by the apparatus in the city of Bethlehem on seven governorates until the end of 2010. The governorates include: Bethlehem, Hebron, Nablus, Jenin, Ramallah, Tubas, and Tulkarem.

The statistics of the Police in the West Bank for the year 2010 indicate that (785) cases of battered women were received, ranging from physical abuse, attempted murder, threats, rape, attempted rape, and attempted suicide. In the Family Protection Unit in Bethlehem Police Department, (126) cases from girls running away as a result of being exposed to domestic violence were received.⁸³

In the Gaza Strip, there were no clear statistics available by the Police during 2010 on the number of battered women who were received in police stations, or on the forms of violence against them. The police do not provide information on the mechanisms being adopted to deal with women victims of violence.

Safe houses (2) were sponsored and supervised by the Ministry of Social Affairs in the West Bank, in addition to (1) home supervised by the Women's Center for Legal Aid and Counseling (WCLAC), which continued its work during 2010 within limited abilities. One house which belongs to the Ministry of Social Affairs was closed in 2007 but was re-opened in November 2010. The Emergency Centers affiliated with the Women's Center for Legal Aid and Counseling received in 2010 (49) battered women, accompanied by (7) children. These cases were from women who experienced all forms of violence, and their lives threatened with danger or killing, or who ran away from home for reasons related to violence practiced against them as direct or indirect threats. According to the statistics available at Mihwar Center in Bethlehem, the Center received (12) children with their mothers in 2010.

⁸³ See *Strategic Plan to Combat Violence Against Women for Years (2011 – 2019)*, the Palestinian Ministry of Women's Affairs, the National Committee for Combating Violence against Women.

In the Gaza Strip, there are no safe houses for women to resort to in case of exposure to violence so far. Efforts are being conducted by Amal Coalition for the Elimination of Violence against Women to establish a safe house run by the Center for Research and Legal Advice for Women.

However, a major problem in this regard lies with the sharp decline in the number of official houses which provide protection for battered women and the weak protection available by these houses. For that reason, many battered women are placed in official PNA prisons. However, they are then exposed to a dual rebuke: from their families and from the official parties. Although they are detained in the prisons mainly designed for the perpetrators of crimes and law violators, the actual purpose is to provide protection for them.

IV - Medical Errors⁸⁴

The concept of the medical profession is expanded to include the various professions related to the treatment of patients. The Public Health Law No. (20) of 2004 defined medical professions as: “Professions of human medicine or dentistry or pharmacy”. It defined the auxiliary health professions as: “professions of nursing, diagnostic X-ray, medical laboratories, vision test, procession of glasses and lenses, hearing checkup, processing methods to improve hearing, midwifery, anesthesia, physiotherapy, dental laboratories and any other profession approved by the Ministry.”

In recent years, medical negligence cases emerged in Palestine, some of which resulted in serious harm to patients and in some cases the death of the patient. Medical negligence cases were not limited to a particular category. It affected children and adults, both men and women. Also medical negligence cases were not limited to a specific professional sector. It affected hospitals and clinics, the private sector and public sector equally.

In 2010, ICHR received (25) cases of medical errors in Palestine, of which (8) complaints were from the Gaza Strip, and (17) complaints in the West Bank. One of these complaints concerned with the death of a child in Alia Government

⁸⁴ ICHR notes that it is preparing a special report on medical errors and responsibility in the coming period. Therefore, this section was a brief overview.

Hospital in Hebron. The child was admitted to the hospital as a result of a scorpion bite. His family claimed that the hospital delayed in giving him the antidote needed in such a case until he died. The Ministry of Health stated in its response: "The child reached the hospital in poor condition, suffering from convulsions and asphyxia. Upon his arrival, all necessary treatment was given to him. He was given the antidote immediately after entering the hospital. But the delay in reaching the hospital is what led to worsening his condition and thus his death." It is also noted that (11) complaints of the total complaints received by ICHR in 2010 were related to medical errors during delivery, such as the death of the mother or the fetus or causing harm to the mother or the fetus.

Medical complaints were varied in 2010 in terms of the nature of negligence. Examples include: occurrence of medical error during an operation of removing blue water from the eye; cutting the baby's head during delivery; error during bladder surgery; death and errors during normal delivery or cesarean; errors during splinting of broken bones; medical negligence during dialysis and providing the patient with blood infected with hepatitis (C); death after chiropractic treatment; and other cases of medical negligence that led to severe risks and dangers.

Despite ICHR's correspondence with the Ministry of Health regarding the complaints mentioned above, it received (10) responses only. The Ministry of Health admitted only (2) by condemning the doctors' behaviors. The inquiry commission recommended that the doctors be referred to the Council of Ethics/Medical Association to take the appropriate punishment in one case, and tolerance for the patients' rights in the other case.

The following are affidavits from some of the cases:

Affidavit by Adham Kamel Tabanja, 58, a resident of Qattanah Village, Jerusalem

The citizen's father in question reported that "His son, Adham, 24, is accused of a criminal charge. On 12/06/2010, he was arrested with his brother Thaer in front of the shop in Biddo village. They were taken to the headquarters of the General Intelligence Service in Ramallah, an hour and a half after the shooting of a shopkeeper and injuring the shop owner in the leg.

On 28/06/2010 at 12:00am, a member of the police who was in the hospital called him and told him that his son Adham "is in Ramallah Hospital, he is in a

coma” and they were able to take the phone number from him. The father noted that he went to the hospital and was able to see his son who was in a very difficult situation. He could not speak properly and there was a feeding needle in his hand and traces of torture were obvious. He told me that he was tortured at the hands of the General Intelligence Service.

He said “I saw traces of torture on the wrists of his hands and chest. His face was blue and swollen, and on the back as well.” His son told him that he was handcuffed on his neck and tied up with the ropes from the ceiling and then lowered to the ground. And then he was abraded with a stone all over his body and was placed in a “bathtub” full of cold water and an electric wire was inserted in the water, and then there was urinating on his head by more than one member of the Intelligence and they put a human feces in his mouth. At the end of the investigation, he was beaten at the bottom back of his head, after which he was not able to remember anything. Later, he woke up in the hospital, where he entered in a coma for five days, and did not remember how long he had been in a coma...”

Affidavit by Ibrahim Mousa Makhamerh

The citizen in question stated, “On 06/01/2010, I was in the Hebron Court and was arrested by the police, and was sent to the Investigation Center in the city of Hebron. I was kept in custody for 15 days in Al-thahiriyeh Prison. Then the investigators came and took me from there. I was investigated and was accused of burning the car of a group from Yatta. On the first day of investigation, I was exposed to different forms of torture, such as beating on my face, beating with an iron stick. And then they took me to a cell and took off my clothes, and they directed a cold fan in front of me for a long time, because the weather was too cold. Every time one of them entered they cursed at me and asked me if I had not changed my position and I admitted to that. The next day, they took me back to Al-thahiriyeh Prison.

Affidavit by Mohammad 'Akef Abu Shalbi, 19, a resident of Al-Shate Refugee Camp/Gaza City

He stated in his testimony that "At about 10:30 pm on Thursday evening, 31/12/2009, while I was at the family home, my uncle came and told me that the police were asking about me and they wanted me ... I went out and they put me in a car and members of the General Investigations were in the car... Once I got to the police station, members of the General Investigations blindfolded my eyes with a flag of Fatah movement. One of them hit me on my head so I lifted the blindfold from my eyes, and punched him on his face. Then the members of the General Investigations assaulted me with sticks and cigarette butts all over my body. I did not feel myself as I lost consciousness due to the severity of the beating. Afterwards I woke up by having cold water poured on my body, and my clothes were wet and the weather was very cold. Members of the General Investigations took me to the interrogation room and forced me to sit on a bed in the room and to take off my clothes. I remained naked except for my shorts, which fortunately I was wearing under my pants ... They forced me to lie on my back, and two people tied up my feet with a stick tied with a rope and lifted my feet up after putting them in the rope. Two people beat me with thick sticks on my feet and my back and during the beating they were saying to me to admit to whom the flags are and who is with you! It lasted for half an hour. Then they hit me again and due to severity of the beating, I told them that the flags are for me. They stood me against the office door in the cold and put a blindfold on my eyes. They poured cold water on my body so as it wouldn't swell although the weather was very cold. They forced me to stand with my face to the wall ... A person came and beat me and hit me on my face. I lifted the blindfold from my eyes and hit him with my hand on his face. A number of police officers beat me all over my body, and then they tied up my feet and beat me in an open area in the police station overlooking the houses. A woman who was standing at the window of her house on the second floor saw me and started screaming. They took me to a room and started beating me with sticks while I was blindfolded, pouring cold water on my body, and I was naked and stripped of my clothes except the shorts I was wearing. And whenever one of them passed, they beat me. On Saturday night at 23:00, they called me again to the investigation room. A detective, called Abu Jafar, took me to the interrogation room and he sat me

on a chair and I was stripped of my clothes...”

Affidavit by Amir Haron Yehya Sheikh, a resident of Qalqilia City

He stated in his testimony that “On 24/03/2010, he was detained by the Preventive Security Service in Qalqilia. During his detention, he was exposed to Shabah and severe beating by the investigators. His hands were tied behind his back and then they hanged him by a pulley until he was standing on his toes. He was beaten on the upper parts of his body. When he was beaten, he was blindfolded, and was beaten with hands and they uttered abusive and filthy words...”

Complaint by Munir ‘Ayesh Abu Amra

I am citizen Mounir Ayesh Abu Amra, 29, from Rafah. On 13/07/2010 at about 01:40 in the morning, three military jeep belonging to the Internal Security Service came to my house, and they arrested me without a warrant, and searched my room without a search warrant. They confiscated my phone and my wife’s phone. I was transferred to the Internal Security Service location in Tel Al-Sultan. After 15 minutes, I was transferred to the building of the Internal Security near the satellite building in Gaza. Once I arrived, I was blindfolded, and four people assaulted me with their fists. And after nearly three days of severe beating, my hands were tied to the door of one of the underground rooms, which is a refrigerator under the ground. We hoped there were clothes or blankets to cover our bodies during the month of July. I was kept hanged on the door for a day and a half. After that, one of the individuals came and untied me from the door, during which I was severely beaten. Every time the door opened, my face slammed against the wall, and all the individuals assaulted me. Then I was taken to the interrogation room, and there took my testimony and the investigator told me: “We do not want this statement from you.” After that, he took me to the refrigerator again and I was kept standing for a week where I was allowed to sit only when I was having food. Then they took me to the

investigation room, and there the investigator said to me “there are about 70 stories in the region where you live. We want you to take 30 or 40 of them.” I was beaten during the investigation. Then I was taken to the refrigerator again, and was exposed to “Shabah” (a form of torture in which the person is being forced to hold stress positions for prolonged periods) for three days. Then the interrogator came and said “I want you to call your wife and your father and tell them about your will and your debts, because we will execute you.” He brought me a white paper and told me to write down my credit and he left. Later, I collapsed as a result of the pressure. And then the investigator came and I told him “I will sign for you all what you want and tell you the stories you want.” He said to me “no I want you to write the stories and sign.” I implemented this directly. Later, the investigator came and asked me about two martyrs from Rafah and I said to him “God, even if heaven is applied on earth I would not admit to killing or the bombing of houses.” Nearly 15 days after the confession, one of the officers came, accompanied by an officer from Rafah whom I was able to identify. They assaulted me and beat me with 100 sticks on my feet and 50 on my hands and kicked my face with their feet. The next day, the doctor came and found my face swollen, and I had tumors or swellings in the feet and hands, and he promised me they would not beat me. Then they took me to Ansar building, and then to the Military Prosecutor. I am still detained in Gaza Central Prison “Battalion”. During the investigation, I admitted issues and stories I have not heard of before in order to stop the beating and torture. For this reason, I file a complaint to the Independent Commission (ICHR) against the Internal Security Service for arresting me, beating me, torturing me, and detaining me in an unknown location, and for my continued detention for almost 18 days without being brought before the prosecution, and for being forced to write my confession under torture and with my own handwriting.

Chapter Two

Integrity of Legal Procedures in Arrest and Detention

The Palestinian Penal Procedural Code was ratified in 2001 to ensure commitment to the standards of fair trial as stipulated in the Basic Law. However, security agencies of the PNA and the de-facto authority in the Gaza Strip still commit multiple violations.

During field visits to prisons and detention centers in the West Bank and the Gaza Strip, which in 2010 exceeded a total of 961 visits, ICHR registered hundreds of violations to due process committed at the time of arrest and detention, and during detention. In addition, ICHR received a number of complaints and affidavits depicting a serious surge in lack of commitment on the part of the Palestinian security agencies to the legal procedures guaranteed by the Palestinian Penal Procedural Code.

Many detainees stated that their arrest had not followed from criminal conduct per se, but rather were made against the background of exercising their legally guaranteed rights, such as the right to the expression of opinions, the right to political affiliation and other rights. According to some complaints received by ICHR, detainees had not been informed of the nature of the charges against them, while in other cases detainees had not been able to exercise their right to legal representation by an attorney or the right to obtain legal assistance. Furthermore, a number of detainees were held for a long period before being brought before the judiciary, while detention at security agencies was extended for the majority of those detained due to their political affiliations, and this was due a decision by the Chief of the Military Judicial Commission (MJC).

The violations to the rights of the detainees and defendants in Palestine, as observed by ICHR throughout 2010, have clearly affected the criminal justice system, as they lacked the basic principles of the rule of law and due process⁸⁵,

⁸⁵ The violations of a right to fair legal procedures, according to the matrix of violations monitored by ICHR, include: (A) arbitrary detention: 1- without a warrant; 2- without indictment; 3- false or non-serious accusation; 4- without presentation before a public prosecutor or judge of a magistrate court. 5 - without a trial.); (B) No compensation for arbitrary detention; (C) Detention due to political affiliation; (D) Violation to the right to representation by an attorney or a public lawyer appointed by the court; (E) Violation to the right to visitation by family or lawyer; (F) Violation to the right to medical care at

fair legal procedures, and the standards affirmed by several international covenants on human rights. They are discussed below.

I - Arbitrary Detention

ICHR noted the continued arbitrary detention cases without due process of law in arrest and detention. During 2010, it received (1,880) complaints, of which (1,559) complaints were from the West Bank and (321) complaints were from the Gaza Strip. It is important first to clarify what arbitrary detention actually is, according to international human rights standards and national legislation

Arrest entails the deprivation of an individual of the right to liberty⁸⁶, even for a short⁸⁷ period of time, as a prelude to taking some action against this individual, provided that detention is confined to premises defined by the law for that purpose. The purpose of the provisions pertinent to arrest in the International Bill of Human Rights is the protection of personal liberty and the prohibition of arbitrary detention. Article (9) of the Universal Declaration of Human Rights stipulates that "No one shall be subjected to arbitrary arrest, detention or exile" while Article (9) of the International Covenant on Civil and Political Rights states "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law".

For an arrest to be legal there must be sufficient evidence to prove that the suspect had perpetrated criminal acts⁸⁸. According to the UN Working Group on Arbitrary Detention, detention is seen as "arbitrary" when detention results from exercising rights or freedoms protected by the law, such as religious liberty and freedom of opinion, and the authorities have no legal documents to justify

detention centers or prisons and the right to living conditions inside detention centers; (G) Violations to the right to treatment on the basis of innocence until proven guilty; (H) Separation of prisoners; (I) Search without a warrant. It should be noted that encroachment on any of those rights is an encroachment on personal freedoms for all as guaranteed by the Basic Law, according to which it is prohibited to restrict the freedoms of any person without legal justification and due process.

⁸⁶ It should be here noted that international instruments do not always use the same terminology to refer to the deprivation of liberty, which may be referred to by the terms "arrest", "detention", "suspension", "imprisonment" or "custody", among others.

⁸⁷ See UN Working Group on Arbitrary Detention, Fact Sheet No. 26.

⁸⁸ See *UN Human Rights in Judicial Systems: A Guidebook on Human Rights, Directions to Judges, Prosecutors, and Lawyers*, (New York and Geneva, UN, 2002), Chapter 5, "Human Rights and Detention: Pre-Trial and Administrative Detention", p.155

detention, or when there is total or partial non-observance of international norms in regard to a right to a fair trial.⁸⁹

The Amended Palestinian Basic Law of the year 2003⁹⁰ guarantees the right to personal liberty, and prohibits encroachment on any grounds or pretexts. The Law has also set forth the controls and conditions that must be followed for the exercise of any restriction to this freedom, and assigned this responsibility to the judiciary. First, the Law stipulates that arrest, detention, or restriction of freedom is prohibited unless carried out under a court order in accordance with the provisions of the Law. Secondly, it also prohibits the arrest or suspension⁹¹ of any person in a premises other than those legally designated for arrest and detention⁹² and requires the authority to inform the persons of the reasons for their arrest or suspension, charges against them, and their right to a lawyer to defend them. The Law also obligates the decent treatment of suspects in a manner respectful of their human dignity.

Moreover, the Penal Procedural Code No. (3) of the year 2001⁹³ regulates the process of arrest, detention and inspection, and entrusts solely to the Civil Public Prosecution the authority to establish criminal proceedings. The Law identifies both the roles and powers of the Civil Public Prosecution related to the functions of the Judicial Police, the supervision of Judicial Police officers, and issuance of orders for arrest, search, and extension of detention. It also specifies, for example, the persons⁹⁴ enjoying the status of Judicial Police and places them

⁸⁹ <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf> , 31/10/2008, p.4.

⁹⁰ See Articles (11-14) and (112) of the Amended Basic Law for the year 2003.

⁹¹ The Palestinian Penal Procedural Code No. (3) for the year 2001 utilizes the term "arrest and suspension" in reference to those detained by the security apparatus, while the Basic Law uses the term "detention" to refer to persons detained within the duration of a state of emergency state pronounced by the President of the PNA in accordance with this law.

⁹² See Articles (2, 3, 4, 6, 7) of the Law on Penitentiaries and Detention Centers No. (6) for the year 1998.

⁹³ See Articles (2, 19, 20, 21, 23, 29, 34, 39, 41, 54, 55, 94, 95, 105, 107, 108, 115, 116, 117, 118, 119, 120, 123, 125) of the Penal Procedural Code No (3) for the year 2001.

⁹⁴Article (21) of the Palestinian Penal Procedural Code No. (3) for the year 2001, specifies the categories of Judicial Police Officers as:

- The chiefs of the police, and their deputies and aides, in additions to Directors of District Police and General Directorates.
- Police officers and non-commissioned officers, each in their respective areas of competence.
- Heads of naval and air vessels who are delegated judicial policing powers in accordance with the law.
- Members of the Palestinian General Intelligence, in accordance with Article (12) of the Palestinian General Intelligence Law which stipulates that the Intelligence shall have the jurisdiction of the judicial police in accordance with the jurisdictions stipulated by this law.

under the authority of the Civil Public Prosecution for the supervision and control of their functions and operations.

Most Prominent Violations of the Right to Proper Legal Procedures (*Arbitrary Detention*)

ICHR believes that the continued detention of a number of citizens in an arbitrary manner by the security agencies is a stark violation of the right to due process, in addition to safeguards guaranteed by the Palestinian Basic Law and the Penal Procedural Code for the protection of the right to personal liberty. Perhaps the most noticeable of these violations is the failure to follow any of the legal procedures that the law enforcement agencies are obligated to abide by in the execution of detention, arrest and search operations, which represents a deprivation of personal liberty without legal justification.

The diversity of violations observed by ICHR throughout 2010 mostly pertained to the right to due process in the West Bank and the Gaza Strip, as observed in the following measures: arbitrary detention of citizens on political grounds; the presentation of civilians before the military judiciary commission; arrest without a warrant from a competent authority; detention without indictment or with invalid or non-serious charges; non-presentation of detainees before judicial

-
- Officers and non-commissioned officers the Preventive Security agencies in accordance with Article (7) of the Decision of Law on Preventive Security for the year 2007, which bestows on the officers and non-commissioned officers of the Preventive Security agencies the status of judicial police in order to facilitate the direct execution of the approved jurisdictions of the Preventive Security as established by the provisions of the law.
 - Health inspectors, in accordance with Article (78) of the Palestinian Public Health Law No. (20) of the year 2004, which stipulates that: inspectors of the Ministry of Health whose appointment was issued by a ministerial decision shall have the status of judicial police officers during the conduct of their tasks, and thereby have the power to identify crimes committed in violation of the provisions of this law and document them in personally signed records.
 - Environmental inspectors, as stated in Article (51) of the Environment Law No. 7 for the year 1999, which states that: the Ministry's inspectors and other inspectors assigned by other Ministries and parties shall have the status of judicial officers in accordance with the law and thereby have the power to identify environmental violations and crimes committed in violation to this law.
 - Childhood Protection Advisors, in accordance with Paragraph 1 of Article (51) of the Palestinian Child Law No. (7) for the year 2004, which states that: Childhood Protection Advisors shall have judicial policing capacity in the application of the provisions of this law.

authorities within the time specified by the law; and prolonged detention without trial.

I - Violations of the Right to Personal Liberty, and the Integrity of Legal Proceedings in the West Bank

Through their visits to arrest and detention centers during 2010, ICHR monitored hundreds of cases of arbitrary detentions. It received (1,559) complaints against the Security Services, in which complainants claimed the invalidity of procedures followed by the Security Services. In this context, ICHR received (501) complains in the West Bank during 2010 regarding arrest without a warrant. It also received (127) complaints about searches conducted by the Security Services without a warrant. The most prominent violations are as follows:

1- Prosecution of Civilians Before Military Courts

ICHR has noticed that the overwhelming majority of detainees arrested arbitrarily on political grounds in both the West Bank and the Gaza Strip were brought before military judicial authorities. The Palestinian Military Judiciary is an extension of the so-called Revolutionary Judicial System of the Palestinian revolutionary forces and PLO factions. Following the issuance of the legislative resolution No.5 on 11/7/1979⁹⁵ by the late Palestinian President Yasser Arafat, and in his capacity as the Chairman of the Executive Committee of the PLO, the resolution came into operation in the Diaspora as well as in places where Palestinian revolutionary forces existed. Its provisions were enforced first with the Palestinian military, and later to civilians who had committed crimes against the Palestinian revolution.

⁹⁵ In 1979, the late Palestinian President, Yasser Arafat, in his capacity as Chairman of the Executive Committee of the PLO, issued a decree entitled “ Legislative Resolution No.5”, through which four bodies of law came into force:

- a- The Palestinian Revolutionary Penal Code
- b- The Revolutionary Criminal Code
- c- The Law of Prisons (Reform and Rehabilitation Centers)
- d- The System of Revolutionary Court Fees

Following the signing of the Oslo Accords in 1993, the Military Judicial System became valid when military courts were established and Military Public Prosecutors were appointed in all districts of the West Bank and the Gaza Strip⁹⁶.

The enforcement of the Palestinian Revolutionary Penal Code of 1979 Palestine is unconstitutional, as it does not constitute a part of the PNA legal system and has not been debated or ratified by the PLC. In addition, as this Code has never been in operation in Palestine, it contradicts Presidential Decree No.5 of 1995, issued by the late President Yasser Arafat, which stipulates the validity of all laws, decrees, and regulations that had been in operation prior to 5/6/1967 until they are reunified. Paragraph 2 of Article (101) of the 2003 Amended Basic Law also stipulates: "Military courts shall be established by special laws. Such courts may not have any jurisdiction beyond military affairs." This article has recently been supported by numerous resolutions issued by the Supreme Court of Justice, which highlight the invalidity of arrest and detention orders issued by military judicial authorities⁹⁷.

Moreover, the procedures followed in military prosecution in accordance with the provisions of the Palestinian Revolutionary Penal Code of 1979 breach relevant international standards included in the international Declaration for Human Rights, and the International Covenant on Civil and Political Rights, which

⁹⁶ Professor of Constitutional Law at Al-Quds University in Abu Dis , Ibrahim Sha'ban, declares that the Palestinian Revolutionary Penal Code of 1979 is unconstitutional since Resolution No.5 of 1995 – the first Presidential Resolution - stipulates the validity of the current laws enforced within the West Bank and the Gaza Strip prior to 1967 , rather than the PLO laws. Accordingly, Sh'ban concludes that the basis of rule in Palestine is the principle of the rule of the law, with which the Executive, Legislative and Judicial Authorities, as well as the Security Services, institutions and individuals shall comply. Sha'ban also confirms that in accordance with the 2003 Amended Basic Law "Basic human rights and liberties shall be protected and respected" (Article 10), and "Personal freedom is a natural right for all. It is unlawful to arrest, search, imprison, or restrict movement except by judicial order in accordance with the provisions of the law." (Article 11) <http://www.amin.org/look/amin/en-section.php> retrieved on 11/6/2008.

⁹⁷ In this regard, ICHR sent a letter to the Chief of the Military Judicial Authority on 23/11/2008, demanding the convening of a meeting to discuss the legal basis for arresting civilians by the Military Judicial Authority. In his response, however, the Chief denied the detention of any civilian by the Military Judicial Authority, claiming that those persons had been arrested due to their affiliation with a banned faction or an armed militia which endangers security and public order. He also alleged that all legal procedures adopted in such situations are no more than preventive measures to prohibit the frequent occurrence of a *coup d'état* against the legitimate authority similar to the one that had previously occurred in the Gaza Strip

ensure the right to access justice, and the right to a fair trial. These procedures also contradict the provisions provided by Article (10) of the 2003 Amended Basic Law, which stipulates:

1. *Basic human rights and liberties shall be protected and respected;*
2. *The Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights”.*

Provisions of the Palestinian Revolutionary Penal Code of 1979, particularly those relating to the arrest of civilians by the Military Judicial Commission, the term of detention, the competent court in charge of prosecution, the legal proceedings, and the ratification of resolutions on the type of crimes or the persons to be prosecuted form a stark violation to the provisions of the Palestinian Penal Procedural Code of 2001, which are applicable to every crime and all persons without exception or discrimination.

These provisions also contradict the above mentioned paragraph 2 of Article (101) of the 2003 Amended Basic Law, which stipulates: “Military courts shall be established by special laws. Such courts may not have any jurisdiction beyond military affairs.” Accordingly, the jurisdiction of the Military Judiciary shall be restricted to the military, since the inclusion of civilians within its jurisdiction is an infringement on the jurisdiction of the civil judiciary, and a blatant violation of the principles of justice and equality ensured by Article (9) of the 2003 Amended Basic Law which stipulates: “Palestinians shall be equal before the law and the judiciary, without discrimination based upon race, sex, color, religion, political views or disability.”

2- Non-Implementation of Court Rulings

The failure to implement court decisions constitutes a clear encroachment on the dignity of the Palestinian judiciary, and undermines citizens’ confidence in the judiciary, and more importantly it is a clear and flagrant violation of Palestinian national legislation, especially the Palestinian Basic Law.

From here came the philosophy of the Palestinian legislator when he laid down sanctions on those who refrain from implementing those decisions and rulings, based on the need to respect the Executive Authority of the judiciary in application of the principle of separation between them, as stipulated in Article

(30) of the Palestinian Basic Law. Non-implementation of court rulings constitutes more than one violation, including 1) the failure to respect the judge's will; 2) the failure to respect a citizen's right to his personal liberty; and 3) non-compliance with the national legislation.

By reviewing the complaints received by ICHR and its monthly reports, it turned out that there is a clear and systematic policy in regard to the non-implementation of the court decisions by the Security Services and the Civil Police Service in some cases, as well as the non-implementation of a number of court decisions by a number of ministries, the General Personnel Council, and by some conservatives.

It was beyond that, where some citizens obtained more than one decision by the Supreme Court of Justice which were not implemented, or were implemented for a few minutes after which the citizen was arrested. One example was reported by Bader Ahmad Abu Ayyash, who was detained by the Preventive Security Service. On 24/10/2010, he obtained a decision from the Supreme Court of Justice releasing him, and after several minutes of release, he was arrested again, forcing him to appeal to the Supreme Court of Justice and obtained another court decision on 23/11/2010 releasing him. What had happened to him previously was repeated, where he was released and then arrested after several minutes. This also applies to Saleh Shawki Qawasmi, who obtained two resolutions, one on 21/10/2010 and the other on 25/11/2010. In these two cases, he was arrested a few minutes after his release.

Court rulings which were not implemented ranged between rulings issued by the Supreme Court of Justice, whether in civil aspects or aspects related to arrests, or rulings issued by lower courts, such as decisions issued by the Magistrate Courts, related to release on bail or decisions issued by the Court of First Instance.

By reviewing the last report on violations in 2010, it indicates the non-implementation of court rulings. During the reporting period as in previous months, it was observed there was a continuous phenomenon of non-implementation of court decisions, or delay in their implementation, mainly in the West Bank. The failure to implement decisions of the Palestinian courts regardless of their degree is a clear violation of the provisions of the Palestinian Basic Law, particularly Article (106) thereof. The article stipulated that "judicial decisions are enforceable and to refrain from implementing in any way is a crime punishable by imprisonment or dismissal from employment."

With regard to the Supreme Court of Justice and Court of First Instance, ICHR has documented a number of complaints about decisions issued by the Supreme Court. And the PNA, both its security and civil branches, did not implement those decisions upon writing this report. In addition to these decisions, a number of administrative decisions were issued during the previous months of 2010, but the Executive Authority has not implemented them.

3- Multiple Arrests or Referring to Different Judicial Bodies

Bringing the citizen before a number of judicial bodies is a violation of fundamental human rights, where it is not permissible to present the person or prosecute him on the same charge more than once. One example is Sulieman Ahmad Ayoub, who reported that the General Intelligence Service arrested him after he was detained by the Preventive Security Service for 28 consecutive days. The same applies to Sami Awad Abed Al-Muti Awad, who was arrested by the General Intelligence, despite his arrest by the General Intelligence Service several times. Asad Bashir Badran's mother reported that the Preventive Security Service placed her son in custody, although he was previously detained by the same Service for the same charge.

4- Inspecting and Entering Houses without Legal Warrants

Through a number of complaints received during 2010, ICHR noticed that there were a number of cases of illegal searches due to not showing search warrants, ransacking the contents, and confiscation of property and funds without officially registering those confiscated items. Citizen Mu'tasim Rayeq Zayed reported that the Preventive Security Service confiscated a laptop and his computer from his house, and special books, checks, scarf and hat. It was not written down in any official minutes in accordance with Article (50) of the Criminal Procedure Code, and this was after searching the house completely during the night, including the surroundings, and his car. Another case is Yehya Ali Turkman who reported that the Preventive Security Service entered the house at night without a search warrant, in clear violation of Article (41) of the Criminal Procedure Code. The amount of (2,900) Jordanian Dinars, computer, official books and papers were confiscated from the house. Hathifeh Abed Al-Jabbar Jarar noted that the General Intelligence Service entered the bedroom and confiscated a laptop without presenting any legal documentation.

5- Detention in Locations Remote from Detainees' Place of Residence

Many of the detainees held by the Security Services suffered from the great distances between the detention locations and their places of residence, causing parents to suffer. And in a number of cases, the families were not able to visit their relatives because of the distance. When a detainee requested a transfer to a more proximate place, the argument was that because of the difficulty of security coordination, the transfer process required time. Citizen Rafat Mohammad Shawabkeh from Hebron, held by the Preventive Security Service in the city of Jericho, reported that it was a burden for his family to visit him because of the great distance and heavy financial costs.

6- The Right to a Lawyer

ICHR faced the problem of its delegates not being allowed to visit detainees who had been in detention for 14 days, which constitutes a clear violation of Article (103) of the Criminal Procedure Code. The article stipulates that “it is permissible for the prosecutor in criminal cases and for the interest of the investigation to decide to prevent contact with the accused detained for a period not exceed ten days, renewable for one time.” This prohibition does not apply to lawyers who may contact their detainee at any time, without restriction or censorship. Islam Abu Aoun’s father reported, for example, that his lawyer was prevented by the Military Intelligence Service from seeing his son.

7- Family Visits to Detainees

Many families were prevented from visiting their sons, especially in the initial days of detention. This was justified under the pretext of maintaining investigative procedures, not influencing the course of proceedings, and placing the detainee in difficult conditions by recognizing that not allowing the visit would give the detainee a push towards a purpose or objective in the investigation stage. Bashir Abdel-Karim Omari’s father reported that the Preventive Security Service had prevented him from visiting his son held in its custody. Yahia Awad’s brother reported that he was prevented by the General Intelligence Service from visiting his son held in its custody. Also, Mohammad Rashid Zayoud’s brother reported that the Military Intelligence Service prevented him from visiting his brother held in their custody.

8- Detention Without Indictment

Charges against complainants were ambiguous, changeable and unclear. Mohammad Radwan reported that the police arrested him without following legal procedures, or without any charge and without bringing him before the competent judicial authorities. The same experience was reported in Jaber Radwan's complaint, who is detained without charge. Most of the charges against the detainees are against the public policy of the PNA. The majority of incidents of being charged with a crime can be characterized as stated above, ie ambiguous, changeable and unclear.

9- Arrest without Warrants

The majority of complaints received by ICHR were without arrest warrants or search warrants, which constitutes an approach adopted by the Security Services. Yehia Ali Turkman reported that members of the Preventive Security Service arrested him at night without any arrest warrant or a memorandum of entry or inspection.

10- Summoning by Phone or Other Means

Cases of summoning people over the phone were repeated. After being detained upon their arrival or waiting for hours, then they are asked to come again. Sa'ed Mohammad Al-Sal'ous reported that an officer from the Preventive Security Service arrived on 14/11/2010 and asked Al-Sal'ous to accompany him to so that he might make some inquiries to Al Sal'ous. He was arrested without legal documentation and was not brought before the competent judicial authorities. Sami Abdel Muti Awad reported that he went to the Intelligence Service upon a request sent to him to meet them. He was held the moment he arrived. The same thing was reported by Mohammad Haroun Mokadi, who went to the General Intelligence Service upon a request sent to him to be interviewed. He was detained the moment of his arrival. Tamam Abu Saoud reported that the General Intelligence Service summoned him and she was arrested on arrival without following legal procedures or presenting any legal documentation.

11- Non-Compliance with Legal Time Limitations Upon Arrest

Security Services did not comply with the detention dates set at 24 hours, but far exceeded detentions for long periods of up to several days without being brought before the competent judicial authorities or the prosecution and military justice.

12- University Students

Security Services arrested many students during the exam period as a means of exercising pressure. The General Intelligence Service and the Preventive Security Service arrested students during the exam period, causing great harm to these students as a result of the loss of multiple classes and a delay in their graduation.

ICHR notes that the Public Prosecution did not play its mandated role, exemplified in overseeing of the detention centers affiliated with the Security Services. This was left to the Military Prosecution, in clear violation of the law and human rights, despite the Public Prosecution's legal mandate to ensure that there were no detainees being held illegally. In order to activate the role of Civil Prosecution in the process of supervision and inspection of detention centers, ICHR offered a number of notifications to the Attorney General in order to move and present the issue. However, ICHR did not receive any response to these notifications until the end of the year. It should also be noted that the continued detention of civilians in illegal detention places is a violation of the law and human rights. Detention centers affiliated with the Security Services have now turned into permanent detention centers.

II - Violations of the Right to Personal Liberty, and Integrity of Legal Proceedings in the Gaza Strip

During 2010, ICHR received (634) complaints against the Security Services of the Government in the Gaza Strip, including (617) violations clearly abusing the criminal justice system, and lacking fair legal action, which is a tool to measure the availability of personal freedom in the legal system in accordance with human rights standards highlighted by international human rights. This year has seen a decline, compared with 2009, as the number of violations recorded by ICHR then was about (953) violations.

Violations of the right to personal liberty in the Gaza Strip was varied, but focused on arbitrary detention, including 1) detention of citizens on political grounds, 2) searches without warrants issued by the Public Prosecution, 3) presenting civilians before military courts without a warrant from a competent authority, or without indictment or with invalid or non-serious charges, 4) non-presentation of detainees before judicial authorities within the time specified by law, and 5) prolonged detention without trial.

In addressing these violations, ICHR sent written correspondence to all the competent authorities in the Government in Gaza (Director General of Police, Director General of the Internal Security Service, Moderator of the Interior Ministry, and the Interior Minister). It also held several meetings to investigate these cases and take necessary actions and measures to hold accountable those found responsible for committing any of those abuses, and to ensure no recurrence. As for the responses, there were no responses to the complaints filed with the Internal Security Service since the beginning of the year 2010. There have been some responses to the complaints submitted to the Police, most of them typical, and without achieving any satisfactory result.

The most significant violations received by ICHR as citizens' complaints during 2010 include violation of citizen's right to personal liberty through arbitrary detention with the absence of the proper legal procedures in the arrest and detention process, including arbitrary detention on political grounds. The number of violations recorded by ICHR in this regard was (326) violations.⁹⁸

ICHR monitored, through field visits to prisons and detention centers, and exceeded (193) visits in the Gaza Strip, the presence of (34) detainees arrested arbitrarily on political grounds to the end of the year 2010. The number of violations recorded by ICHR as arbitrary detentions due to political affiliation amounted to (60) violations, carried out by the Police and the Internal Security Service of the Interior Ministry in the Deposed Government in Gaza. Violations targeted Fatah Movement activists and former employees in the Palestinian Security Services. Citizens claimed in their complaints that the Security Services (Internal Security or Police) detained or arrested them on political grounds, and political activists were often detained in the Gaza Strip, with claims that they had committed criminal offenses, or transferred information "to Ramallah Government".

⁹⁸ Of the complaints received by ICHR, among them is a complaint by Yousef Samir Aweis, 21, from Jabalya, demanding the Director General of the Internal Security Service investigate his arrest on the background of his political affiliation with Fatah Movement on 02/01/2010 at the Internal Security Service, and being attacked while in detention. On 18/01/2010, he was referred to the military prosecution and was investigated on the background of being part of a revolutionary unit. Another complaint submitted by the family of Mohammed Omar, 30, from Nusseirat, demanding the Director General of the Police investigate his detention on 25/08/2010 by the General Intelligence Service for distributing political leaflets of Hizb el-Tahrir "The Liberation Party", concerning the negotiations between the PNA and Israel.

In terms of arbitrary detention without a warrant, ICHR recorded (244) violations during the year 2010, with the Security Services' detention without a warrant arrest issued by the Public Prosecutor. It also reported (68) violations of the Security Services conducting inspections without a warrant issued by the Public Prosecution.⁹⁹

1- Guarantees Regarding Interrogation and Legal Accusations

The Palestinian legislature has developed interrogation and indictment procedures with a number of safeguards to ensure the defendants of their rights throughout the process. These guarantees are originally derived from the Palestinian Basic Law¹⁰⁰, which stipulates that interrogation should not be undertaken unless all freedoms of the defendant were guaranteed during the process and enabled a discussion and refutation of the evidence. Interrogation is both a primary procedure of investigation as well as a means for defense. ICHR recorded (26) violations in the Gaza Strip on the non-indictment of detainees, and about (36) violations stating that detainees were not brought before the Public Prosecutor or the judiciary.

On 21/09/2010, ICHR received a complaint from Kamel Massad Abu Samhadana, 35, from Deir al-Balah, calling for the police to investigate his detention since 05/07/2010 without charge, or without being brought before any competent judicial authority. Also on 23/09/2010, ICHR received a complaint from Mohammad Nayef Abu al-Jidyana, 26, from Beit Lahia, demanding the Internal Security Service to investigate his detention on 16/09/2010 without an arrest warrant issued by the Public Prosecution and without any charge or without being brought before any competent judicial authority.

⁹⁹ Among the complaints received by ICHR in this context, there was a complaint from Ahmad Ibrahim al-Najjar, 24, from Khan Younis, demanding the Internal Security Service investigate his detention on 23/01/2010 near Abu 'Aqlin bakery in Khan Younis, without showing an arrest warrant issued by the Attorney General. Another complaint by Mahmoud Abdullah Al-Halabi, 22, from Gaza, demanded the police investigate his detention on 31/01/2010 by the General Intelligence Service without an arrest warrant issued by the Public Prosecutor. A complaint by Nofouth 'Atiyeh el-Bakri, 35, from Khan Younis, demanded the Interior Ministry investigate entering her apartment in Gaza City on 07/03/2010 by a group of people from the Interior Ministry without presenting a search warrant issued by the Attorney General.

¹⁰⁰ Article (14) of the Amended Palestinian Basic Law for the year (2003) states that the accused is innocent until proven guilty in a legal trial that safeguards the guarantees for self defense, and that every person accused of a felony must have a lawyer to defend him. Article (12) of the Amended Basic Law of the year 2003 stipulates that each person arrested or suspended shall be informed of the reasons for their arrest and must be promptly informed in a language they understand of the charges pressed against them, allowed access to a lawyer, and brought to trial without delay.

2- Family Visits and Communication with the Outside World

The Standard Minimum Rules for the Treatment of Prisoners requires allowing the accused to immediately inform their families of their detention, and to be granted all reasonable facilitation to communicate with, and receive visits¹⁰¹ from family and friends. The Principles for the Protection of All Persons under Any Form of Detention or Imprisonment affirms the right of the detained person to receive visits by his family, and to have adequate opportunity to communicate with the outside world¹⁰².

The Palestinian Penal Procedural Code has acknowledged the right of the person held in custody to contact¹⁰³ family and to have access to family visits. Prevention from family visits can only be issued by the Public Prosecutor and interrogators.

In this context, ICHR recorded (64) violations which were made by the relatives of detainees held by the Internal Security Service in the Gaza Strip.

To offer one example, ICHR received a complaint on 27/04/2010 from Zeid Abdul Baset al-Ghol, 24, from Gaza, demanding the Internal Security Service to investigate his detention due to his political affiliation on 30/03/2010 without an arrest warrant issued by the Public Prosecution, and allowing his family to visit him.

3- Presentation of Civilians Before Military Courts in the Gaza Strip

Arrest of civil and military citizens, especially members of Fatah Movement (due to their political affiliation) in the Gaza Strip by a decision of the military justice, is done through the Military Public Prosecution Office, and according to certain charges. Arrest is carried out in accordance with the Military Trials Code, which gives validity to the Prosecution to arrest for 15 days, and after that they are arrested through the Central Court for a period of 45 days, and then through the Permanent Court of up to six months, and then a release of them if the

¹⁰¹ Article (92) of the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955.

¹⁰² Article (19) of the Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly of the United Nations in 1988.

¹⁰³ Article (123) of the Palestinian Penal Procedural Law.

Prosecution did not submit a bill of indictment against them. Although the Government in Gaza does not admit that it has political prisoners, it makes charges against them under the law, such as disturbing the relationship between the factions. When reading the charge against the accused, it shall be noted in the bill of indictment that the defendant contacted Ramallah (Government in Ramallah), or that he divulged information about people of this Government, or other charges. Despite these charges, ICHR regards these persons as political detainees. On the other hand, since they are civilians, the arrest procedures are illegal and arbitrary, and what applies to civilians also applies to military personnel who are referred to these courts for committing, according to the Military Prosecution, crimes against the law. These charges are not crimes punishable by any Palestinian law, but are for the coverage of political arrests and their justification.

One example is a complaint by Hani Ismail Mahmoud Mousa, 42, from Gaza, demanding a retrial before a competent regular court, for being a civilian tried before the military court and sentenced on 04/01/2008 on charges of involvement with killing. Another complaint was submitted by the family of Mohammad Abdul Rasoul Hamid, 24, from Gaza, demanding the Interior Ministry investigate his detention by the Internal Security Service due to political background, and terminate his trial before the military justice for being a civilian.

In addition to the lack of judicial overseeing by the Higher Judicial Council or instructions from the Government to prevent the arrest of civilians or military personnel on political or criminal charges by a decision of the military court, and due to the illegality of presenting civilians before the military judiciary, it was indispensable to have an overseeing commission which enables defendants to refute these proceedings in order to curb any abuse of power by the military courts. The Government in the Gaza Strip has not issued any instructions demanding the military courts to not bring political civilians or militaries before the military judiciary, but it went beyond that. It considered these detainees were not politicians, but were accused with criminal charges, in addition to the lack of judicial overseeing by the judicial authority in the Gaza Strip. This court did not accept cases submitted to it demanding the release of detainees being held by the military justice, especially of civilians. It considered them as detainees being held by a competent authority through refutation by some lawyers in the detention decisions issued by the Military Judicial Commission. Therefore, this is a negative indicator showing that there are no real guarantees ensuring the right of citizens to litigation and freedom from infringements.

Chapter Three

The Right to Litigation and Guarantee of a Fair Trial

International conventions on human rights guarantee the right of access to justice as the foundation of the rule of justice and the protection of rights. Article (8) of the Universal Declaration of Human Rights of 1948 states "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law." Article (10) of the same declaration also affirms "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." Furthermore, Article (11) maintains "Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense."

Domestically, the provisions of the Palestinian Basic Law are consistent with the Universal Declaration of Human Rights. Paragraph (1) of Article (30) of the Basic Law states that "Access to justice is a protected right that is guaranteed to all individuals. Every Palestinian shall have the right to find sanctuary in the legal system. Litigation procedures shall be organized by law to guarantee prompt settlement of cases." Paragraph (2) of the same article also declares that "Laws shall not make any decision or administrative work immune against judicial control." Paragraph (3) of the same article states that "Judicial mistakes shall result in compensation by the Palestinian National Authority and that conditions and methods of such compensation shall be regulated by law."

Moreover, Article (14) of the Basic Law stresses that "The accused is innocent until proven guilty in a court of law that guarantees the right to defend himself. Any person accused in a criminal case shall be represented by a lawyer" while Article (2) of the Law on the Formation of Regular Courts No. (5) for the year 2001 states that "Regular Courts in Palestine adjudicate all disputes and crimes, except those excluded by a special legal text, and that the Judicial authority shall exercise its jurisdiction over all persons."

The Status of the Right to Litigation in Palestine

Numerous challenges, constraints and policies have hampered the judicial system's ability to perform its duties in 2010, which have negatively impacted on the Palestinian citizens' right to litigation.

I - Challenges and Obstacles in Guaranteeing the Right to Litigation

1- Israeli Occupation Policies

The occupation policies of closure, blockade and military checkpoints have constituted a key obstacle which has hampered the enforcement of judicial rulings and the capture of fugitive offenders, debilitated the ability of the Palestinian civil police service to perform its duties, and restricted the movement of witnesses and litigants, judges and prosecutors¹⁰⁴.

2- Political Divisions between the West Bank and the Gaza Strip

The political divide between the West Bank and the Gaza Strip has hampered the development of the judiciary in both parts of the country on an equal footing. The resolution issued by the Deposed Government in the Gaza Strip on the establishment of the Supreme Council of Justice has dictated the appointment of new judges and a new Public Prosecutor, thus leaving the previous cadre unable to exercise their usual duties. Being independent of the Supreme Judicial system in the West Bank, established in accordance with Article (100)¹⁰⁵ of the Palestinian Basic Law, the new Council of Justice was a stark violation of the provisions of the Palestinian Basic Law, most notably Articles (97) and (98)¹⁰⁶, and a vigorous blow that shook the judiciary system and endangered its independence.

¹⁰⁴ See Chapter 2 of Part 1 in this report on The Impact of the Israeli Violations on PNA performance

¹⁰⁵ Article (100) of the Palestinian Basic Law states: "A High Court shall be created. The Law shall specify the way it is constituted, its responsibility and its operating rules. The High Judicial Council shall be consulted about draft laws relating to the Judicial Authority, including the Public Prosecution."

¹⁰⁶ Article (97) of the Palestinian Basic Law states "The judicial authority shall be independent and shall be exercised by the courts at different types and levels. The Law shall determine the way they are constituted and their jurisdiction. They shall issue their rulings in accordance with the law. Judicial rulings shall be announced and executed in the name of the Palestinian Arab people." Article (98) states "Judges shall be independent and shall not be subject to any authority other than the authority of the law while exercising their duties. No other authority may interfere in the judiciary or in judicial affairs."

This rift in the judiciary led to the development of the judiciary in the West Bank which was not parallel to the developments taking place in the Gaza Strip.¹⁰⁷

The political divide has also disrupted the Legislative Council's activities, particularly with regard to the amendment of laws and regulations for meeting the urgent need for judicial promotion. This is especially so as pragmatic application proved to be necessary for the amendment of some judicial texts due to their inconformity with the status quo in the West Bank, as some of these texts have also impeded the promotion of the judicial system, and the right to have access to justice.

The Civil and Commercial Procedure Law, particularly the texts on judicial notifications, where implementation was still limited and slow due to shortage in technological means as well as in the number of summons servers, required urgent amendment.

3- Encroachment of Military Jurisdiction on Civil Jurisdiction

Paragraph (2) of Article (101) of the Palestinian Basic Law states that "Military courts shall be established by special laws. Such courts may not have any jurisdiction beyond military affairs".

However, on the ground the situation is completely different. ICHR documented the investigation and arrest of civilians by Security Services at the request of the Military Judiciary, and in violation of the above-mentioned provisions, thus depriving civilians from their right to be presented before a natural judge (i.e., regular judiciary).

As the detention of civilians has been discussed in detail in Chapter 2 of this part, what concerns us here is the impact of such measures on fair and legal procedures, particularly with regard to the right to access justice and a fair trial, and particularly since such measures are an encroachment on the jurisdiction of the civil judiciary. They are also an obstacle which impedes the efforts of the regular judiciary to enforce the rule of law.

¹⁰⁷ For more about the formation of the Higher Judicial Council (the Supreme Council of Justice) in the Gaza Strip and ICHR's position towards its formation, please see previous annual reports.

II - Most Important Problems Violating the Right to Litigation and Guarantees of Fair Trial in Palestine

1- Delay and Procrastination in the Implementation of Court Decisions

It was noted during 2010 that the non-enforcement of the rulings and decisions¹⁰⁸ made by the Supreme Court of Justice, particularly by PSS and GIS, for the release of a number of citizens detained on grounds of “political affiliation” as well as for the reopening of some closed associations, still continued, and did so in forthright violation of Palestinian Basic Law. ICHR has documented more than (179) violations on the issuance of court decisions. The Executive Authority, with its Security and Civil branches, did not implement those decisions in a timely manner. Most notable were violations of Article (106) which states:

“Judicial decisions are enforceable and any form of defaulting of their implementation is a crime punishable by imprisonment or dismissal from office if the accused individual is a public official or assigned to public service. The aggrieved party may file a case directly to the competent court and the National Authority shall guarantee a fair remedy for him.”

What is interesting is the reply of the Secretary-General of the Council of Ministers to the request of the Supreme Court of Justice, which decided during its consideration of the administrative proceedings (no. 2008/436), held by a public employee, to mandate the Council of Ministers to provide the court with a copy of the minutes of one of the Council's weekly sessions, session no. (18) held on 03/09/2007. It is this session, which is referred to in the Secretary-General of the Council of Ministers' letter, that the Council of Ministers took a decision regarding the security check as part of the recruitment process, without publishing this resolution, or it being seen by anyone. Accordingly, the High Court of Justice issued a decision, according to which the Secretary-General provides it with a copy of the minutes of the session. The response of the Secretary-General of the Council of Ministers to the High Court of Justice's decision, which was received by the Chairman of the Higher Judicial Council, stated literally: “We deeply regret to inform you that we are not able to provide the esteemed Court - Supreme Court of Justice – with a copy of the entire session in question, due to the secrecy of the discussions and minutes of the Council of Ministers in

¹⁰⁸ The Supreme Court of Justice settled (658) out of (897) legal proceedings submitted to the court in 2009.

accordance with the bylaw of the Council.” ICHR sees in this response an indication of the unwillingness of the Executive Authority to cooperate with the judiciary to achieve justice, especially that the goal of the Court from this resolution is to learn about the content of the Cabinet’s decision on making security safety a condition of appointment. This resolution caused the dismissal of hundreds of employees. ICHR considers the decision a violation of the Palestinian Basic Law amended in 2003, which confirmed in Article (2/30) a ban on the provision of the law on the immunity of any decision or administrative action from judicial control. ICHR also considers that refraining the Council of Ministers from disseminating the decision on security safety to be a violation of a citizen’s right to obtain information.

There is no doubt that the unannounced decision of the Council of Ministers, which considered security safety a condition of appointment in public jobs, is a public resolution and not an individual decision, especially as the standard separation or difference between public decisions and individual decisions is their content. If the decision is addressed to individuals by their respective, and not by themselves, it is a public decision, and if it is directed to them by their names and themselves, it is an individual decision. The result is that we are facing a public resolution of the Council of Ministers affecting the rights of hundreds of employees, and which has introduced a new condition to the conditions of appointment contained in the Civil Service Law No. 4 of 1998. The decision of the Council of Ministers is of inferior legal rank of common law. Thus it may not add new provisions to it, and may not contain provisions that limit the scope of its application. These provisions are dictated by a pyramid of legal rules. The minimum rules shall not contravene the higher rules, not to mention their violation of the provisions of Palestinian Basic Law.

2- Absence of Fair Trial Guarantees

Article (12) of the Palestinian Basic Law states: “Every arrested or detained person shall be informed of the reason for their arrest or detention. They shall be promptly informed, in a language they understand, of the nature of the charges brought against them. They shall have the right to contact a lawyer and to be tried before a court without delay.” Article (14) also stipulates “Any accused person is considered innocent until proven guilty in a court of law that guarantees the accused the right to a defense. Any person accused in a criminal case shall be represented by a lawyer.”

In this context, it is noted that during 2010 ICHR received hundreds of complaints concerning violations of the right to a fair trial, guaranteed by international conventions and Palestinian Basic Law. The complaints have dealt with the following:

- A. Lack of due process upon arrest, contrary to the provisions of Article (29) of the Criminal Procedure Law;
- B. The failure to bring arrested inmates before competent judicial authorities, in violation of the provisions of Article (34) of the Criminal Procedure Law;
- C. Entering and searching homes without warrants in violation of Article (39) of the Criminal Procedure Law;
- D. Detention without charge, or the slow process of litigation, and testimonies concerning the prevention of contact with the family or a lawyer, contrary to the provisions of Article (123) of the Criminal Procedure Law;
- E. Exposure of detainees to torture and ill-treatment in detention centers, in violation of the provisions of Article (29) of the Criminal Procedure Law.¹⁰⁹

3- Continued Interference of the Executive Authority in Judicial Affairs

The non-enforcement of the courts' rulings and decisions, particularly those issued by the Supreme Court of Justice, as well as the encroachment of the military judiciary into the jurisdiction of the civil judiciary, are features of the interference of the military judiciary into civil judicial affairs.

In this context it should be noted, as shown by the results of the survey of the judicial system in Palestine, that a comparison between the two surveys - tribal 2009 and dimensional 2010 - from the perspective of the Palestinian public and the judges, issued in July 2010 by the Higher Judicial Council. The results showed an increase in the proportion of judges who believe that they are subjected to pressure from the Security Services by (35%) in the previous poll (2009), compared to (54%) in the subsequent poll 2010. More than half of the judges

¹⁰⁹ For more details, see ICHR's monthly reports published in 2010 on its website: www.ichr.ps

polled, an increase of (19%) from the year 2009, felt they were exposed to pressure by the Security Services. This in itself constitutes a serious indication of the independence of the judge, and neutrality in facing adversaries.

III - The Right to Litigation and Public Service (Decisions of the Supreme Court of Justice on the Dismissal of Staff)

On 17/03/2010, the Supreme Court of Justice issued its decision by a majority on refuting the case of the dismissed teachers because the Security Services refused to appoint them - under the pretext of the non jurisdiction of the court. Two judges on the panel had a dissenting opinion and have confirmed the jurisdiction of the court and the illegality of dismissing teachers in accordance with the Palestinian Civil Servants Law.¹¹⁰

The facts of these cases focused on the issue of the dismissed employees who had been appointed in accordance with decisions issued by the Minister of Education from the date of commencing their work. On 03/09/2007, the Palestinian Cabinet decided in its session No. (18), held on 03/09/2007 to consider security checks as part of the recruitment process, and the General Personnel Council is responsible for the recruitment process, and has to make contact with the Security Services in this regard.¹¹¹ Accordingly, the Preventive Security Service and the Intelligence Service began to send letters containing lists of a number of staff to the Ministry of Education. The letters recommend the appointment of some and the non-appointment of others without specifying the reasons. On that basis, the Minister of Education and Higher Education decided to suspend staff from work due to lack of approval of the concerned security authorities on their appointments.

¹¹⁰ Within ICHR's follow-up of the files of laid-off teachers, ICHR submitted (54) of these files to the Supreme Court of Justice. On 15/12/2009, ICHR submitted (22) cases, and then referred a group of cases in sequence monthly from January to May. The number of files being pursued by ICHR in this area is about (54) files. It should be noted here that ICHR received a preliminary decision on 11/01/2009. On 25/02/2009, the Public Prosecution provided the regulation of response and requested a time limit to provide evidence. On 08/04/2009, the Public Prosecution submitted its evidence and on 08/07/2009 ICHR provided its final defense. In response to that procedure, the Public Prosecution provided its final defense 14/10/2009. And therefore, the session was adjourned for a decision on 23/11/2009. The hearing session of the final decision was postponed more than three times with no explanation of the reasons for postponement. On 17/03/2010, the Supreme Court of Justice issued its decision by majority by rejecting the petitioner's case due to lack of jurisdiction.

¹¹¹ Secretary-General of the Council of Ministers' book no. (am/2007 & 2115), dated 09/09/2007, addressed to the Chairman of the General Personnel Council.

The following points to the environment in which the decision to turn down the teachers' cases under the pretext of lack of specialty was issued: 1) through a review of the resolutions of the Supreme Court of Justice; 2) the circumstances surrounding its issuance in terms of the length of time taken by the trial; 3) frequent alternating of the head of the Court and its membership; 4) postponement of a verdict more than three times; 5) issuing this provision by a quintet committee formed at a later time; 6) and the closure of the proceedings. What confirms this is the results of the survey, which shows an increase in the percentage of judges who believe that they are subjected to pressure from members of the Higher Judicial Council by (41%) in the survey of 2010, compared to (31%) in the survey of 2009, and an increase in the percentage of judges who believe that judges react to these pressures by (86%) in a poll conducted in 2010, compared to (79%) in a poll conducted in 2009.

In ICHR's comment on the decision of the Supreme Court of Justice, we find that the Court did not discuss in its decision the reasons for the contested decision (decisions to dismiss the teachers under the pretext of non-approval of the security authorities). It decided to reject the case due to lack of jurisdiction. But the decision given in this case confronted the legality of the reasons for this decision revealed by the administration explicitly, which is the non-approval of the security authorities to appoint the petitioner. The decision ended by stating the illegitimacy of the case. In this resolution, the following expressions were stated "The Civil Service Act No. (4) of 1998 came in line with what is stated in the Basic Law when it stated in Articles (24 & 25) which contained that a person to be appointed in any public office, without any mention of the security approval, but required in this area that the appointed in the job shall enjoy his civil rights not doomed from a Palestinian court of crime or misdemeanor involving moral turpitude or dishonesty unless he has been considered." In these two laws (the General Intelligence Law of 2005 and the Preventive Security Law of 2007), nothing was mentioned which requires the approval of the General Intelligence or the Preventive Security on the appointment of staff in public office.

Based on the above, the Cabinet's decision was issued on 03/09/2007, which stipulated security approval for the appointment shall be considered non-existent because it affected fundamental rights guaranteed by the Basic Law and violated the Civil Service Law, the General Intelligence Law and the Preventive Security Act.

ICHR and most commentators on the decisions of the Supreme Court of Justice agreed with the opposing view, which stated the illegality of the dismissal of teachers.¹¹² The decision taken by a majority was considered a decision that limits the role of the High Court of Justice in confronting administrative decisions characterized by abuse and delinquency of using power. However, the High Court of Justice's decision which left hundreds of Palestinian teachers without justice is a dangerous precedent, as the judiciary represents the available, easy, neutral, independent means capable of protecting them.

¹¹² To review the High Court of Justice's decision in this regard, and the comment of Prof. Dr. Ali Shantawi, visit ICHR's website: www.ichr.ps

Chapter Four

The Right to Freedom of Opinion and Expression, and Peaceful Assembly in Palestine

The right to freedom of opinion and expression is considered one of the most fundamental human rights. It is characteristic of a free society and a democratic political regime, and therefore, it is protected by international conventions and national laws due to its great significance. The year 2010 has seen, as a result of the continued internal division in the Palestinian political regime between the West Bank and Gaza Strip, a significant decline in regard to the exercise by Palestinian citizens of these rights. In this chapter, we will be discussing the reality of media freedoms, freedom of opinion and expression, the right to freedom of belief, the right to peaceful assembly, and violations against human rights defenders in Palestine during 2010.

I. Media Freedoms

The year 2010 marked a significant and unprecedented increase in the number of attacks against the personal freedom of Palestinian journalists. These violations took place despite the fact that the Basic Law guarantees personal freedom and considers any attacks against it as a crime punishable by law. The Basic Law even guarantees fair compensation for any individual whose personal freedom has been violated or had any of his/her basic rights attacked.

ICHR has monitored a series of types of violations which caused harm not only to journalists, but also to journalism as a whole, exemplified by the suppression and restriction of freedom of the press and the blockade of the press through a policy pursued by the police and security agencies of the two Governments. The most conspicuous violations afflicting and affecting journalists included arrest and questioning, physical attacks, the accusation of some media of bias and non-professionalism, as well as threats. Furthermore, journalists were forbidden to convene press conferences or cover field events. The printing and distribution of some daily and weekly newspapers was banned, media institutions and centers were stormed, and shots were fired on some media institutions. It was also noticed that journalists were prohibited from participating in training sessions or travel abroad. In sum, the deterioration of media freedoms was a reflection of the continuing tension between Fatah and Hamas.

These actions constitute grave violations of the media freedoms which are guaranteed in Articles 19 and 27 of the Palestinian Basic Law, as well as by the Universal Declaration of Human Rights and other international covenants and UN resolutions dedicated to this issue. That said, the violations took the forms so described in the following discussion.

1- Arrest and Interrogation of Journalists

ICHR traced the arrests of (31) journalists in the West Bank and the Gaza Strip. These arrests cast a negative impression on individuals working in this field and formed a source of concern for many amongst them, preventing them from covering events according to professional standards out of fear of arrest or pursuit. The majority of the arrests of journalists in the West Bank failed to follow proper legal procedures, and were marked by a complete absence of guarantees for a fair trial, not to mention the fact that many journalists were subjected to torture and inhumane treatment. The interrogation of journalists focused on their work, their media and professional activities of covering events, or photographing, writing or preparing audio or visual media reports, or contacting stations banned from working in the West Bank, such as Al Aqsa satellite channel or radio station broadcasting from the Gaza Strip. It also included corresponding with or writing for newspapers such as Al Risala and Falasteen, newspapers both issued in the Gaza Strip.

In the West Bank, ICHR received many complaints about the arrest and detention of several journalists. The General Intelligence Service in Hebron detained Samir Anwar Rushdi Rashid, a Palestinian journalist from the city of Hebron. He works as a correspondent for the Voice of Al-Aqsa, which broadcasts from the Gaza Strip. According to ICHR's documentation, "the journalist was detained on 06/05/2010, without being brought before any competent judicial authority regarding the background of his work as a journalist. His detention constitutes a violation of the freedom of press and freedom of media within the PNA territories."¹¹³ On 08/12/2010, the General Intelligence Service re-arrested him and confiscated his computer and another from his sister, knowing that he was working for 'Alam Radio affiliated with Hebron University.¹¹⁴ On 10/11/2010, the General Intelligence Service in the city of Hebron arrested Amer Abdul Halim Mohammad Abu 'Arafa, a Palestinian journalist and a reporter for Shahab News, headquartered in the Gaza Strip. He claimed to have been exposed to Shabah by

¹¹³ See ICHR's report for the month of May published on its website www.ichr.ps

¹¹⁴ According to the complaint submitted by the mentioned person to ICHR.

being placed on a plastic chair, blindfolded. One member of the Intelligence Service created a loud noise by hitting the iron bars inside the solitary cell in order to deprive him of sleep. As a result of being exposed to Shaba and sleep deprivation, he suffered from a nervous breakdown.”¹¹⁵

Many journalists in the West Bank have been summoned by telephone for interrogation by the Security Services in the West Bank. As one example, on 21/07/2010, the General Intelligence Service in Nablus city summoned Nawaf Ibrahim al-Amer, a Palestinian journalist and a program coordinator in Al-Quds Satellite TV. He was repeatedly summoned by the Service.¹¹⁶ Another example, on 30/09/2010, the General Intelligence Service in Bethlehem Governorate summoned Abdullah Adawi, a correspondent at Al-Quds Satellite TV and was interrogated about his work, although he was detained by the same Service earlier. On 11/09/2010, the General Intelligence Service in the city of Qalqilya, summoned Qais Abu Samra, a Palestinian journalist and a reporter with a Jordanian international newspaper. On 30/11/2010, the General Intelligence Service summoned Al-Quds Satellite TV Correspondent, Samer Khweirah, from Nablus.

The harassment of journalists by the Palestinian Security Services did not stop, and they were brought before the military justice for trial. On 16/02/2010, Tareq Abu Zeid, TV correspondent at Al-Aqsa Satellite TV, was sentenced to actual imprisonment by a military court in Nablus for one and a half years, despite the fact that he released by the Supreme Court of Justice on 12/01/2010. But the court decision was not implemented. ICHR requested the relevant authorities several times to release him due to violating the provisions of the law.¹¹⁷

In this context, ICHR received many complaints from journalists who were arbitrarily detained by the Security Services without following the proper legal procedures. They had been brought before the military justice or were kept for long periods without being brought before the civil or military prosecution.¹¹⁸ According to ICHR's data, several journalists and staff working with medical institutions were detained during the year 2010.

¹¹⁵ As reported during his interview with ICHR in an exceptional visit to the place of detention on 20/11/2010.

¹¹⁶ According to his affidavit to ICHR.

¹¹⁷ According to complaints received by ICHR in this regard.

¹¹⁸ According to the complaints submitted by the above-mentioned and their relatives to ICHR.

ICHR sent many letters about the complaints it received, demanding from the Security Services (Intelligence Services and Preventive Security Services) the release of the detained journalists. But the majority of the responses received were typical, stating that the arrests were based on charges of breaches of security and public order. Nevertheless, affidavits received by ICHR state that investigation with the journalists was due to the background of their media work.

In the Gaza Strip, the Security Services of the Interior Ministry arrested and detained journalists and people working in the mass media for reasons attributed to the fact that these journalists worked with prohibited mass media, such as Palestine TV and the Voice of Palestine Radio. They had been accused of incitement against the Gaza Government. Hassan Abu Hashish, Head of the Government Media Office said some websites and media institutions are considered secure by the media office, including the “Palestine Press, Al-Ahed website, Amad website, Fatah Forum, Firas Press website, Al-Kofiye Press, Fatah Central Media website, Wafa Agency, and Palestine Television,”¹¹⁹ although there was no judicial decision prohibiting their work. According to the provisions of Palestinian Law and the data available by ICHR, the Security Services of the Interior Ministry detained several journalists and people working with media institutions during the year 2010. In this regard, ICHR received many complaints from journalists who were arbitrarily arrested by the Security Services and without due process, as well as from journalists who were subjected to attacks and were prevented from broadcasting certain events.

Some journalists, who have been questioned or arrested in the Gaza Strip, have also been investigated in a range of ways. Among them are questions about: 1) their work and their press activity in terms of coverage of events, photography, writing, or communication with the stations banned from working in Gaza Strip, such as Palestine Satellite, which broadcasts from Ramallah, or Wafa News Agency or Al-Ayyam and Al-Hayyat Newspapers issued in Ramallah; 2) their ways of working with these stations; 3) the relationship of those stations and satellite TV channels and journalists with Fatah Movement and the Government in Ramallah; 4) sending or suspicion of sending media materials for these stations or newspapers or agencies in the West Bank, especially if it comes to news and activities related to human rights violations committed by the Security Services of the Interior Ministry in the Gaza Strip; 5) coverage of news the Government does not want to be published in the media; 6) suspicion in writing news about the

¹¹⁹ http://www.fnpn.net/ar/news/41890_%D8%A3%D8%

Gaza Strip being published in the daily Palestinian newspapers or website. Journalists are being investigated regarding writing or transmitting news to the newspapers and satellite TV channels and news agencies. Journalists were prevented from entering or exiting the Gaza Strip. ICHR recorded, and through its documentation of statements, the exposure of a number of journalists who had been arrested by the Security Services of the Interior Ministry, to ill-treatment, beatings and threats.

As one example, on 14/01/2010, one member of the National Security Service of the Interior Ministry in the Gaza Strip forcibly entered the home of journalist Ammar Yasser Tallawy, a resident of Khan Younis and a cameraman and producer at Al-Aqsa Media Network. He was threatened after confiscation of his computer. The aim was to obtain materials related to his journalist work. According to the testimony of the above-mentioned, “the security aimed to obtain by force photographed press material relating to his work. The police refused to take his complaint about the incident that occurred with him when he tried to submit it to the police station in the city. The police detained him for an hour and five members of the police attacked and beat him all over his body with hands and sticks and forced him to sign a pledge not to disrupt order before he was released. He submitted a complaint to ICHR, attached with a medical report stating that he had been exposed to beating.”¹²⁰

ICHR received a complaint in this regard and sent a letter to the police on the content of the complaint. ICHR received a response stating that: “We inform you that a commission of inquiry was formed to investigate the complaint. The investigation inspector was convicted and punished by a disciplinary measure in the form of a written warning; one week was deducted from his salary and he was given a final warning in the event his violations are repeated.”¹²¹

On 25/07/2010, the Internal Security Service of the Interior Ministry in the Gaza Strip summoned Husam Al-Mghani, a Palestinian journalist, and interrogated with him about his journalist work in the Palestinian News Agency “Wafa”, as reported by Riyadh Al-Hasan, Head of the Agency.¹²² On 21/07/2010, the Internal Security Service summoned Naser Fouad Abu Foul, a Palestinian Reporter with Milad News Agency and the Palestinian Network for Press and Media. An investigation took place regarding his journalist work, Milad News Agency and its

¹²⁰ According to a complaint received by ICHR in this regard.

¹²¹ Text of the response of the Police Chief in Gaza to ICHR’s letter.

¹²² According to his affidavit to ICHR.

affiliation with Fatah, and about his contacts in Ramallah. Two computers, his press and personal cards and his mobile phone were confiscated.¹²³ On 11/11/2010, the same Security Service arrested Bassam Soud, Ahmed Zakut, and Ibrahim Abu Mustafa from Reuters Agency, and Mohammad Mabhouh from Al-Arabiya Satellite Channel, during their coverage of the ceremony commemorating the death of Palestinian President Yasser Arafat in the office of PLC member, Ashraf Jum'a in Rafah. Their cameras were confiscated and were released after an hour of questioning.

On 11/07/2010, the Police of the Interior Ministry in the Gaza Strip detained Dr. Ahmad Hammad, Dean of the Faculty of Media at Al-Aqsa University, and Bandalis Baba Bablous, a Greek Director, for three hours after shooting a wedding in Beit Hanoun in order to document the reality of life in Gaza. On 28/11/2010, the Internal Security Service summoned Fuad Jaradeh, Palestine TV Correspondent, and was questioned about the nature of his journalist work and his writings. His computer and mobile phone were confiscated.¹²⁴

2- Physical Assaults on Journalists

Numerous journalists were subjected to many forms of assault by the Security Services in the West Bank, including beating with batons and using abusive language while performing their work and covering news. On 29/03/2010, members of the National Security Forces in Bethlehem prevented journalists from covering the demonstration called for by the national forces in the governorate in protest against Israeli occupation crimes. A number of journalists were beaten and attacked, insulted and cursed at by the security forces. Mohammad Abu Ghaniyeh, a Palestinian journalist and a photographer for Reuters, Iyad Hamad, a Palestinian journalist and a photographer for the Associated Press (AP) Agency, and Loay Saban, a Palestinian journalist and a photographer for Ma'an News Agency, were all beaten with sticks and cursed by the security forces. In this regard, ICHR issued a press release dated 30/03/2010 regarding these measures as a serious violation of freedom of the press and media, and freedom of peaceful assembly within Palestine guaranteed by international human rights and national laws. It demanded the formation of a commission of inquiry into the incident.¹²⁵

¹²³ According to a complaint received by ICHR in this regard.

¹²⁴ According to a complaint received by ICHR in this regard.

¹²⁵ See ICHR report for the month of March published on its website www.ichr.ps

In the Gaza Strip, numerous journalists and media representatives were assaulted by the Security Service elements of the Ministry of the Interior while covering certain events. One example is Ahmad Mousa Ibrahim Abu Fayyad, a Palestinian journalist and correspondent for Al-Jazeera Net. He was beaten and insulted by members of the police during his reporting for the ceremony organized by Toyour al-Janeh Band on 04/08/2010 in the sports city playground in Qizan al-Najjar in Khan Younis. He was beaten and insulted and his camera was confiscated. Although he introduced himself and the nature of his journalist work, this did not excuse him. According to his complaint submitted to ICHR, "his photographs were displayed for the second time on them. Someone hit me with his left hand on my shoulder and on my neck. He hit me about five strokes and then another police came and hit me with sticks on my back in front of my children who started to shout. One of them confiscated the camera." Later, the incident was investigated by the police and the camera was returned to the journalist.¹²⁶

3- Continued Ban on Printing and Distribution of Daily and Weekly Newspapers

The Publication and Printing Law Number (9) of 1995 regulates the legal framework for the work of newspapers in Palestine. The Law also specifies the means for obtaining licenses and the competent parties in this regard. The Law stipulates the procedures which need to be followed when a violation of its provisions is committed, and identifies the means for initiating a case of public right in crimes related to periodic and non-periodic publications. Article 42 (1) of the Law stipulates: "The competent court of law takes up all actions committed in violation of the provisions of the law. The Public Prosecutor shall investigate these violations according to the powers and procedures stipulated by the effective penal laws." It is clear from this article that the Executive Authority has restricted powers and is not authorized to close or ban the printing or distribution of any periodic or non-periodic publication in Palestine except through a judicial order.

The security agencies in the West Bank have prohibited the printing and distribution of some newspapers, particularly "al-Risala", "Falastine" and "Minbar el-Islah" since the beginning of the internal conflict in the middle of 2007. It is worth mentioning that neither did the Government under Salam Fayyad issue a decision on the ban or prohibition of licensing, or withdrawal of the

¹²⁶ According to a complaint received by ICHR in this regard.

newspaper¹²⁷, nor was a judicial decision issued in this respect. The above-mentioned newspapers have obtained official licenses from the Ministry of Information as well as the relevant authorities.

In the Gaza Strip, in contrast, the Security Services of the Ministry of the Interior prohibited the distribution of certain newspapers on the pretext of bias towards one party over the other, including a lack of objectivity as well as non-professionalism.

The Security Services of the Interior Ministry in the Gaza Strip prevented the entry of the three daily newspapers (Al-quds, Al-Hayyat Al-Jadeedah and Al-Ayyam issued in the West Bank) to the Gaza Strip under the pretext of bias in favor of one party against the other party, and the lack of neutrality and professionalism in journalism. One example took place on 08/07/2010, the police stationed near Beit Hanoun crossing, stopping the distributors of the three local newspapers while they were going to receive the newspapers for distribution. They were told about the decision to prevent them from accessing the terminal to receive the newspapers, after the Israeli authorities informed the Director of Coordination and Liaison in Ramallah, allowing their entry on 06/07/2010. When the distributors of the newspapers reviewed the Interior Ministry in Gaza, they were told by the officials that the newspapers were banned from entering Gaza, due to the fact that the Government in the West Bank prevented (Al-Risalah and Palestine Newspapers) from printing and distribution in the West Bank.

II - Freedom of Opinion and Expression

The right to freedom of opinion and expression is one of the most fundamental human rights, one characteristic of democratic societies and political systems, and enshrined in all international conventions and national legislations because of its extreme importance. With the polarization of the Palestinian political system, the exercise of this right has seen a marked decline in 2010 in Palestine.

The Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas

¹²⁷ According to an interview convened by ICHR with Nimr Edwan , the Director of Press and Publications at the Ministry of Information

through any media and regardless of frontiers¹²⁸". The International Covenant of Civil and Political Rights declares "Everyone shall have the right to hold opinions without interference and everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice¹²⁹". Although the International Covenant of Civil and Political Rights provides for the exercise of these rights, it is subjected to certain restrictions in relation to respect of the rights or reputations of others and the protection of national security and public order, health or morals¹³⁰.

The provisions of the Palestinian Basic Law guarantees, in great detail, the right to freedom of opinion and expression, stating "Freedom of belief, worship and the performance of religious functions are guaranteed, provided public order or public morals are not violated¹³¹". And that "Freedom of opinion may not be prejudiced. Every person shall have the right to express his opinion and to circulate it orally, in writing or in any form of expression or art, with due consideration to the provisions of the law¹³²".

The Basic Law compels the state to ensure respect for fundamental rights and freedoms in emergencies because "It is not allowed to impose restrictions on fundamental rights and freedoms when declaring a state of emergency except to the extent necessary to fulfill the purpose stated in the decree declaring the state of emergency¹³³". Nevertheless, the law imposes some restrictions on the exercise of human rights in such cases in accordance with a special Presidential decree. The Amended Basic Law stipulates that "The President of the National Authority may declare a state of emergency by decree when there is a threat to national security caused by war, invasion, and armed insurrection or in times of natural disaster, for a period not to exceed thirty (30) days¹³⁴".

The same law asserts that assault on liberties is a crime in which criminal and civil cases shall not be subject to any statute of limitations. It did not stop there, but

¹²⁸ See Article (19) of the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly of the United Nations in its decision No 217A (D_3) dated December 10, 1948.

¹²⁹ See Article (19) of the International Covenant of Civil and Political Rights adopted and proclaimed by the General Assembly of the United Nations in its decision No 2200A (A) dated December 10, 1966.

¹³⁰ See Paragraph (3) or Article (19) of the International Covenant of Civil and Political Rights.

¹³¹ See Article (18) of the Amended Basic Law of the year 2003.

¹³² See Article (19) of the Amended Basic Law of the year 2003.

¹³³ See Article (111) of the Amended Basic Law of the year 2003.

¹³⁴ See Article (110) of the Amended Basic Law of the year 2003.

demanded fair compensation if the assault takes place against personal freedoms. It stipulates

“Each aggression committed against any personal freedom or against the private life of a human being or against any rights or public freedoms, which have been guaranteed by the Basic Law or the law, shall be considered a crime. Criminal and civil case resulting from such infringement shall not be subject to any status of limitation. The National Authority shall guarantee fair indemnity for those who suffered from such damages.”¹³⁵

The right to freedom of opinion and expression in the West Bank continued to face numerous violations by the Palestinian Security Services in the West Bank during the year 2010. The internal division that occurred in the Gaza Strip reflected its shadow and its negative impact on the reality of freedom of opinion and expression, and its actual practice. Many restrictions are being imposed on the exercise of this right. Many have been arrested or assaulted as a result of exercising this right. For example, the Palestinian General Intelligence Service in Hebron summoned Lama Khater and tried to restrict her, as a result of expressing her opinion and her writings in many websites, including *Palestine* and *Muslim Palestine*. She reported to ICHR that the Intelligence Service arrested her husband on 09/05/2010, and questioned him about the writings of his wife and her relationship with the media. They asked him to influence her in order to cut back her writings against the Palestinian Authority, and then asked her to stop writing in return for his release.¹³⁶ ICHR demanded that the Intelligence Service investigate the circumstances of the restrictions on exercising her right to freedom of opinion and expression.

On 28/04/2010, the Preventive Security Service in Ramallah arrested Walid Al-Hodali, a Palestinian writer. Members of the Preventive Security broke into his house at night and confiscated his computer and some of his books. He was released later without giving back his computer.¹³⁷

In the Gaza Strip, the Interior Ministry imposed numerous restrictions on exercising the right to freedom of opinion and expression. It followed a systematic policy to fully restrict the right to freedom of opinion and expression

¹³⁵ See Article (32) of the 2005 Amendment to the Palestinian Basic Law.

¹³⁶ According to the complaint submitted by the above-mentioned to ICHR.

¹³⁷ www.pchrgaza.org

in the Gaza Strip. Many writers and people who tried to express their opinion have been arrested or beaten or brought before trials.

On 10/11/2010, the Internal Security Service of the Interior Ministry in Gaza Strip summoned Dr. Ibrahim Abrash, a Palestinian writer and political analyst and a lecturer at Al-Azhar University in Gaza City. He was asked to sign a pledge that he would not criticize the Government and Hamas Movement, and not do anything to incite activities, whether in writing or statement. He was held for four hours and was then allowed to leave. Dr. Abrash was summoned three times during November 2010.¹³⁸ He filed a complaint to ICHR demanding it review the Internal Security Service for having been summoned and detained on the background of his writings and his essays, which constitutes a violation of the right to freedom of opinion and expression under the law.

III - The Right to Freedom of Religion and Religious Rights

The right to belief and religion is intrinsically linked to freedom of thought and conscience; the human conscience carries meanings, values, ideals, and private beliefs that determine its relationship with its surroundings. And therefore, this right is fundamental and essential and there should be no opportunity or reason to deprive the human being of it or restrict it. Therefore, it is protected by international conventions and national laws for its paramount importance. During 2010, ICHR has noted complaints received on the restriction of the right to freedom of belief.

The Universal Declaration of Human Rights (UDHR) states that “Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief, and freedom to manifest religion or belief in worship, observance, practice and education, individually or in community with others and in public or alone.” The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of thought, conscience and religion. Article (18) states

“Everyone has the right to freedom of thought, conscience and religion. This includes the freedom to have or adopt a religion, and freedom to profess any religion or belief of his choice, and freedom

¹³⁸ According to the complaint submitted by the above-mentioned to ICHR.

to manifest religion or belief in worship, observance, practice and education, individually or in community with, or in public or alone. No one shall be subject to coercion which would impair his freedom to condemn a religion, or his freedom to profess any religion or belief of his choice. Human freedom shall not be subject to manifest religion or belief, but the restrictions imposed by law which are necessary to protect public safety or public order or public health or morals or the rights of others and their fundamental freedoms. The States Parties to the present Covenant undertake to respect the liberty of parents or guardians when they are present, in securing the education of their children a religious and moral according to their own convictions."

Under Article (27) of the ICCPR it is stipulated that

"In those States in which there are ethnic minorities, any racial, religious or linguistic, persons belonging to such minorities shall enjoy the right to their own culture, to profess and practice their own rituals or to use their language, together with other members of their group."

This right also asserts the Palestinian Basic Law, as stated in Article (18) that "freedom of belief and worship and religious practice is guaranteed provided you do not disturb public order or public morals."

During the year 2010, ICHR recorded an unprecedented violation of the right to religion and belief in the West Bank when the Sharia Court broke up a couple under the pretext of apostasy. The case is summarized as follows: Mohammad Reda 'Alawneh from the city of Nablus, and his wife Samah Mahmoud Abdul Jalil, who had their marriage contract on 18/3/2010, duly and legally at the hands of the marriage official, registered with the Sharia Court in 'Atil and carries the number (0039215). He was surprised at the dissolution of the marriage contract of apostasy held against them by the Prosecutor of the Personal Status in northern West Bank, and in the name of a legitimate public right. The Sharia Court of 'Atil issued a decision to separate them from each other under the pretext that the community to which they belong, the group Al-Ahmadiya, is not well accepted, although they are a Muslim couple living in peace, and neither of them want to be separated from each other. The case of the Prosecutor of the Personal Status in the name of the legitimate public right came without legal

justification or reason permitted by the Palestinian Basic Law amended in 2003, but constituted an unprecedented violation and discrimination against them.

He called on ICHR to review those responsible because he has the full right to belief, conscience and religion under the Palestinian Basic Law, International Human Rights Law and that he underwent persecution because of his views and beliefs. And accordingly he calls for the return of his wife and an investigation into his complaint. On 15/06/2010, ICHR sent a letter to the Interior Minister, Dr. Said Abu Ali, to investigate his complaint, because the infringement of a citizen's freedom of religious doctrine is contrary to the provisions of Article (18) of the Palestinian Basic Law, which states "freedom of belief and worship and practice of religious rights is guaranteed provided that it does not disturb public order or public morals." The complainant and his wife filed a lawsuit at the Supreme Court as the Constitutional Court challenged the constitutionality of the Sharia Court's decision of their separation. The constitutional Court, however, turned down the case under the pretext of non-rivalry.

IV - The Right to Freedom of Peaceful Assembly¹³⁹

Paragraph (5) of Article (26) of the Palestinian Basic Law guarantees the right to peaceful assembly and allows for "holding private meetings without the presence of police members, and to conduct public meetings, gatherings and processions, within the limits of the law" whereas Article (2) of the Public Assemblies Law No (12) of 1998 states that "citizens have the right to freely hold public meetings, seminars, and demonstrations, which should not be affected or restricted unless in accordance with the controls stipulated by this law".

Article (4) of the Public Assembly Law provides for a number of foundations for the exercise of this right, stating

"A written notification should be signed and submitted by the organizers of the meeting, provided that they are no less than three individuals, indicating the purpose of the meeting and the time and place where the meeting shall be held but in the case a written notice is submitted by a legal person, the signature of the

¹³⁹ ICHR is satisfied with listing some examples of violations to the right to freedom of peaceful assembly. For further information, refer to monthly reports published on the website: www.ichr.ps

representative shall suffice for this purpose. The Governor or the Chief Police have the power, without prejudice to the right to assemble, to enforce controls on the duration or course of the meeting provided for in Article (3) in order to regulate traffic provided that the organizers are informed of these controls after 24 hours at most from the date of submission of the notice".

Article (3) of the same law defines the temporal limitation as follows: "Public assemblies are permitted provided that a written notification is sent to the Governor or Chief Police at least 48 hours in advance of the meeting". Article (4) sets forth the guarantees for assembly as "in case the organizing party has not received any written answers as stipulated in the previous paragraph, the organizing party has the right to convene the public meeting in the date specified in the notice". Another guarantee is provided for by Article (5) which states that "competent parties, upon request of the party organizing the meeting, shall take the required protection measures with no prejudice to the right of the participants in or process of the meeting".

Article (20) of the Universal Declaration of Human Rights affirms "everyone has the right to participate in peaceful assemblies and associations" while Article (21) of the International Covenant of Civil and Political Rights maintains the

"right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others".

In 2010, the right to peaceful assembly, both in the West Bank and Gaza Strip, has been exposed to numerous violations and abuses that led to the failure to exercise this right. Limitations and the violation of this right in light of the political division in Palestine came following the events that took place in the Gaza Strip in 2007. The organization of some peaceful assemblies, such as rallies and public meetings, continued to be prevented. Journalists were prevented from having coverage. Restrictions were also in place, such as a prohibition by the Ministry of Interior from organizing such events.

In the West Bank, the right to peaceful assembly had been exposed to numerous violations during 2010. Through complaints received by ICHR and its documentation of some aspects of peaceful assembly, including marches, some of them have been resolved by force by the Security Services. On 14/12/2010, ICHR documented the prevention of Hamas by the Security Services to celebrate the anniversary of its inception and to hold rallies and festivals. The Security Services set up security barriers on some of the entrances to cities, aimed to prevent the entry of Hamas supporters to the cities. The personal cards, including those of Hamas supporters, were checked, and people were denied access to the city centers, and some citizens were arrested on charges of participating in the anniversary event.¹⁴⁰ In the same context, ICHR received a complaint from Hawa Cultural Center in Nablus on 31/08/2010. The Center was prevented from holding a religious ceremony to distribute prizes for the Holy Quran recitals and the outstanding students in the national education system. The Director received a phone call from an official in the Preventive Security Service informing him that the celebration should be stopped.¹⁴¹

In the same context, ICHR documented in 2010 the prevention of the Liberation Party "Hizb al-Tahrir" in more than one governorate from holding peaceful rallies. On 12/03/2010, the Liberation Party in the town of Al-Ubaydi in Bethlehem was prevented from holding a seminar in the town hall of Ubaydi. The hall where the symposium was scheduled to be held was closed. The mayor told ICHR that "the orders to close the hall were handed to me by the Security Services. The people who came to the hall to attend the seminar were dispersed by the Security Services, the National Security Services, and some members of the police."

The Liberation Party was also banned from holding the succession conference in the city of Ramallah on 17/07/2010, after a prior announcement by the Party that they were to hold it in Ramallah Secondary Boys School, notifying the Ramallah Governorate, according to the law, of the time, place and nature of the activity. The security forces of the Interior Ministry prevented Hizb Al-Tahrir by force from holding the conference, closing down the school and arresting those who attended to participate in the conference. They erected checkpoints at the entrances to the city of Ramallah, arrested all of those suspected of participating in the conference and held them until late into the night. As stated by the representative of Hizb al-Tahrir to ICHR, "the security forces tore posters inviting people to the conference and published by the Party in the city of Ramallah,

¹⁴⁰ According to the documentation of ICHR's researchers in the field.

¹⁴¹ According to ICHR's documentation.

Hebron and Qalqilya. They also set up barriers at the exits of the towns in the West Bank, especially Jenin, Tulkarem, Qalqilia, Hebron, Salfit and Bethlehem and arrested the party supporters according to lists they have. On 15 & 16/07/2010, the security forces raided the homes of the party members in the West Bank cities and arrested dozens of the party supporters. They also turned the school yard where the conference was scheduled to be held into a military barracks and a detention place for those being held in the school.”¹⁴²

On 26/08/2010, a conference was held by a group of Palestinian parties and factions’ leaders, representatives of civil organizations, independent national leaders, and public figures. The conference called was against the Palestinian participation in the direct negotiations, which were scheduled to be held in early September 2010. During the conference, a group of individuals lowered the official banner for the conference and raised another banner with pro-PLC phrases. As a result of the state of chaos which prevailed in the conference hall, the organizers decided to get out of the hall and not to hold the conference and go out for a peaceful march in front of the hall. But dozens of people continued to disturb and raise banners, accompanied by the organizers who took to the street. Meanwhile, a number of participants were attacked and the peaceful march ended because of the disruption and confusion caused by the same group that was in the hall.

ICHR received a group of complaints from political parties’ representatives, including Abdel-Rahim Mallouh (member of the PLO Executive Committee); Qais Abdul-Karmim, Deputy Secretary-General of the Popular Front for the Liberation of Palestine; Haidar Awadallah, member of the Political Bureau of the Palestinian People's Party, Nasif al-Deek, (a leadership activist in the national Initiative and a member of the Follow-up Conference Committee); and a group of journalists and human rights defenders who had been attacked, as well as a group of participants. One hour before the conference, at about 11:00 am, it was noticed that groups of individuals reached Protestants Hall. When the conference began, the hall was full of dozens of people who were not invited to the conference. Some of them were known for their work in the General Intelligence Service, and were carrying banners and pictures of the Palestinian President Mahmoud Abbas.

It is noted from most of the complaints received by ICHR and from the notes of its researchers on the obstructions to holding the conference that the Palestinian

¹⁴² According to the affidavit of Hizb 2l-Tahrir of “The Liberation Party” to ICHR.

General Intelligence Service were directly or indirectly responsible for preventing the conference from taking place. A large number of individuals who caused the state of chaos which prevented the conference from taking place were members of the General Intelligence Service. Some of them introduced themselves in some cases, and others were known to some. There were complaints noted that the Director of the Intelligence of Ramallah and Al Bireh was seen in the hall. The presence of police officers and their failure to intervene and stop the attacks on the participants confirms that the party responsible for what happened is an official party, or otherwise the police officers would have intervened to protect the organizers and participants. Palestinian President Mahmoud Abbas decided to form a commission of inquiry to investigate the circumstances of what happened in the Protestants Club in Ramallah. He showed immediate interest in the state of chaos that prevailed at the conference.¹⁴³ But the commission has not announced its findings so far. Dr. Salam Fayyad apologized for the incident and said that “what happened is a clear and significant disturbance, and as President of the Government I bear the full responsibility towards what happened and I apologize for it. I say what I say out of a sense of regret and a sense of confidence that it won’t happen again.”¹⁴⁴

In the Gaza Strip, the right to peaceful assembly has been exposed to numerous violations during the year 2010. The state of political division sheds its shadow on exercising this right on the ground and restrictions were placed by the Interior Ministry on its practical application. ICHR documented many cases of violations of this right. On 10/01/2010, the police prevented the General Union of Palestinian Women from organizing a ceremony to commemorate the anniversary of the Israeli aggression on the Gaza Strip. According to information obtained by ICHR, members of the General Investigation in Jabalia summoned the managing director and the keeper of the Jabalia Services Club. They were forced to sign a pledge not to organize the ceremony and not to open the club hall where the conference was scheduled to take place, in spite of the police being notified of it.

On 01/03/2010, the police prevented the Palestinian Democratic Union “Fida” from holding a ceremony to mark the anniversary of its inception, which was scheduled to take place in a closed restaurant in Gaza. According to information obtained by ICHR, a unit of the General Investigation came to the restaurant “Sammak”, west of Gaza City, and notified the organizers it was not to take place.

¹⁴³ <http://www1.wafa.ps/arabic/index.php?action=detail&id=84147>

¹⁴⁴ http://www.pnn.ps/index.php?option=com_content&task=view&id=90151&Itemid=1

The unit removed all the posters for the celebration and detained the restaurant manager for about an hour on the grounds that they did not obtain a license for the ceremony.

On 23/05/2010, the police in Gaza prevented the General Union of Palestinian Women, in Beit Hanoun, from holding a rally which was scheduled to take place to commemorate the Nakba, "The Palestinian Catastrophe", organized by the National Committee, affiliated to the National Work Committee. According to the testimony of a member of the General Union of Palestinian Women, "the National Committee had earlier notified the police duly of all the events. But the organizers were surprised by the presence of the police ten minutes before the opening of the festival, and the presence of about 900 people, asking the organizers to cancel the festival. The police broke up the festival by force."

On 01/01/2010, Nazira Jadou' al-Sweirki, 56, from the neighborhood of al-tufah in Gaza City died when the police arrested her two sons. They were attacked, beaten and taken to the police station on the charge of lighting candles on the windows of their houses to commemorate the inception of Fatah Movement. Having lost consciousness while walking, when the police decided to take her to al-Shifa' Hospital in the city, she died on her way to the hospital. According to information obtained by ICHR, the incident came as part of the measures taken by the security authorities in the Gaza Strip against the cadres, members and supporters of Fatah Movement, to prevent them from carrying out any ceremonial manifestations on the occasion of the anniversary of the establishment of Fatah in the Gaza Strip.

On 10/08/2010, the police in Gaza prevented a mass sit-in organized by the Popular Front for the Liberation of Palestine from being held in the courtyard of the Unknown Soldier in central Gaza. According to information obtained by ICHR, "The Front organized the sit-in protest against the continued electricity crisis in the Gaza Strip. The police arrived at the scene and asked the protesters to leave the place under the pretext that they didn't have a license for the sit-in. When the protesters refused to obey the order, support forces were summoned, firing in the air. Participants were assaulted and beaten with batons and rifle butts, and a number of them were taken to hospitals for treatment."

On 07/09/2010, a force of the General Investigation Service prevented a cultural evening organized by the Film Forum from being held in the lounge restaurant "Sammak" on Gaza beach. According to information obtained by ICHR, "Two persons and the restaurant-owner were detained for one day. They were

attacked and beaten and the restaurant-owner was forced to sign a pledge not to hold evening events and concerts in violation of the law."¹⁴⁵

V - Human Rights Defenders

Many human rights defenders in the West Bank were subjected to harassment and threats when some of them were arrested during their field work. This is in addition to on the spot the confiscation of materials and documents while documenting violations to human rights, or attacks on some of them. Security Services have on many occasions tried to impede these people's work, whether directly or indirectly. Security Services in both the West Bank and the Gaza Strip have prevented those who advocate human rights from visiting detained individuals due to their political affiliation or because they had freely expressed their opinions. Human rights organizations and their personnel were also effected by such measures.

1- Violations against Human Rights Defenders and Human Rights Organizations in the West Bank

Some human rights defenders have been exposed to arbitrary deprivation of liberty. During the year 2010, the National Security Services in the West Bank arrested a number of human rights defenders, including that of Muhannad Salahat, representative of "Rased", The Palestinian Association for Human Rights in Jordan, by the General Intelligence Service in the Governorate of Jericho on 18/03/2010 after his return from Amman and was released on 19/04/2010. On 01/05/2010, he was arrested again and was released days after he was arrested. He was exposed to a range of violations, exemplified by 1) being arrested without following the legal procedures; 2) arbitrarily banned from traveling and without a judicial decision as required by law; 3) restricting movement; 4) being summoned to appear before the Intelligence Service investigators for several days and successive periods; and 5) illegal confiscation his personal computer and a video camera.¹⁴⁶ ICHR received a complaint about his arrest and followed up the case with the Intelligence Service. He was released, but was arrested again by the General Intelligence Service in Nablus.

¹⁴⁵ ICHR is satisfied with listing some examples of the violation of the right to peaceful assembly in the Gaza Strip. For further information about the violations, refer to the monthly reports published on its website: www.ichr.ps

¹⁴⁶ According to a complaint received by ICHR.

On 31/07/2010, the General Intelligence Service in Nablus arrested Ahmad Hamid Khudeir al-Betawi from the International Solidarity Foundation for Human Rights in Nablus city. He works in the media department therein. He was summoned by the Intelligence Service for an interview. According to the foundation, “the legal procedures and the legal extension were not observed in his arrest, and he was not brought before the Public Prosecution or the judiciary.”¹⁴⁷ It is worth-mentioning that al-Betawi was arrested in 2009 by the Preventive Security Service in Nablus.¹⁴⁸ On 08/08/2010, ICHR sent a letter to the Director of the General Intelligence Service demanding his release. On 18/08/2010, ICHR received a reply stating the release of the detainee in question. On 07/12/2010, the General Intelligence Service in Nablus arrested Jamal Mohammad Daghlas, supervisor of the Jenin branch in the Treatment and Rehabilitation Center for Victims of Torture (TRC), without charge or any statement on the background of the arrest.¹⁴⁹

The General Intelligence Service in Nablus continued to arrest Saed Basem Yassin, Director of Prisoners’ Supporters in the city. He was arrested without warrant and was brought before the military judiciary by the General Intelligence Service. His detention lasted from 17/11/2009 until 28/02/2010, during which he stayed in the headquarters of the Military Intelligence detention center, despite a decision by the High Court of Justice on 14/01/2010 demanding his release. But the Intelligence Service did not implement the decision. He was released on 28/2/2010 in accordance with a decision by the military court in Nablus. On 28/02/2010, ICHR sent a letter to the Director of the General Intelligence Service demanding his release and to implement the decision of the Supreme Court of Justice. ICHR received a reply from the General Intelligence Service saying, “The above-mentioned was referred to the military judiciary in preparation for his trial and the trial proceedings were done. And therefore, he is detained in accordance with a decision of the competent court to decide the case. As for the implementation of the Supreme Court of Justice’s decision, the Military Court is the decision-maker for being detained at its disposal, not the General Intelligence.”¹⁵⁰ On 03/04/2010, the Preventive Security Service in Nablus arrested the said individual without following legal procedures.¹⁵¹ ICHR sent a letter to the Director of the Preventive Security Service demanding his release. It

¹⁴⁷ Statement by the International Solidarity Foundation for Human Rights, dated 11/11/2009.

¹⁴⁸ According to a complaint received by ICHR.

¹⁴⁹ According to a letter sent by the Treatment and Rehabilitation Center for Victims of Torture (TRC).

¹⁵⁰ Text of the General Intelligence Service’s reply to ICHR.

¹⁵¹ According to a complaint received by ICHR.

received a reply stating “in implementation of the law and the realization of the system, it is our duty and eagerness to implement the law. Saed Basem Yassin was detained for committing acts that constitute criminal acts under the applicable Palestinian laws. The said enjoys all legal and human rights, as he was brought before the competent authorities that arrested him in accordance with legal procedures. The detainee, like the rest of the other detainees in detention centers, undergoes constant medical supervision and his health condition is good.”¹⁵² During 2010, Hassan al-Zagha, a human rights and prisoners activist, continued to remain under arrest. On 14/12/2010, he was arrested by the General Intelligence Service in Nablus. On 12/04/2010, a decision was issued by the High Court of Justice, canceling the decision of his detention and demanding his immediate release. However, he remained in detention in Juneid Prison and was not released and the decision of the Supreme Court of Justice was not implemented.¹⁵³

ICHR sent a letter to the Director of the Military Intelligence Service demanding his release through implementation of the decision of the Supreme Court of Justice. On 19/06/2010, it received a reply from the Intelligence Service stating, “In response to your letter regarding Hassan Mustafa al-Zagha, we notify you that the detainee in question has been sentenced by the Military Judiciary Commission for two years from 14/12/2009 until 14/12/2011. We inform you that Juneid Prison is a legal detention center and a judicial ruling implementation. We inform you that we implemented the ruling of the Military Judiciary Commission stating his imprisonment for two years only. His detention and his sentence were legal and the correct legal procedures were followed.”¹⁵⁴

On 13/01/2010, the General Intelligence Service in Nablus summoned Advocate Fares Abu al-Hassan, Director of the International Solidarity Foundation for Human Rights in Palestine. He was attacked and beaten by one of its members. He was asked to hand over all the files of the detainees held in Israeli prisons.¹⁵⁵

ICHR received numerous complaints from human rights defenders who were arbitrarily arrested by the security forces and without due process of law. They were brought before the military justice or were not brought before the civil or military prosecution for long periods.

¹⁵² Text of the Preventive Security Service’s reply to ICHR.

¹⁵³ According to a compliant received by ICHR.

¹⁵⁴ Text of the Military Intelligence Service’s reply to ICHR.

¹⁵⁵ According to the mentioned affidavit to ICHR.

Furthermore, a number of human rights defenders have been attacked or harassed while doing their jobs. On 26/08/2010, the program officer in Al-Haq Wisam Ahmed was beaten by a person wearing civilian clothing while on his way to document the meeting held by the Palestinian political forces and the Palestinian civil society organizations in the Protestant Church hall by a video camera. The camera was taken from him and was thrown on the ground. After restoring the camera and asking about the reason for being prevented from documenting the meeting, he was besieged by more than ten members of the General Intelligence Service. He was beaten on the head and neck, and they then took the camera and pushed him aside.¹⁵⁶ Sources from Al-Haq mentioned that the Director, Sha'wan Jabarin, approached some police officers who were at the scene by asking about the whereabouts of the camera, and was told by one officer that was in the possession of members of the General Intelligence.¹⁵⁷

During 2010, the Palestinian General Intelligence Service prevented ICHR's representatives from visiting their detention centers in the West Bank from October 2010, following ICHR's issuance of a legal report entitled "The Palestinian Intelligence Service in Accordance with the Provisions of the Law". The Service allowed the visit at a later time.

2- Violations against Human Rights Defenders and Human Rights Organizations in the Gaza Strip

During the year 2010, criticisms against human rights defenders continued. There was incitement against the work of human rights and women's organizations, as well as questioning their missions and objectives. Ihab al-Ghusein, the official spokesman of the Interior Ministry in the Government of Gaza, said in press statements published by Palestine Newspaper in its volume No. (1096), 10/06/2010 "Official figures in non-governmental organizations turned themselves in to the Security Services as part of their response to the time limit set by the Government within the efforts of the national campaign against collaborating with the occupation." He added, "The surprise has been that a

¹⁵⁶ See statement of the Palestinian Center for Human Rights published on its website: http://www.pchrgaza.org/PCHR/a/campaigns_clous.htm

¹⁵⁷ See statement of the Palestinian Center for Human Rights published on its website: http://www.pchrgaza.org/PCHR/a/campaigns_clous.htm

number of these figures assume leading and senior positions in the non-governmental and civil organizations.”¹⁵⁸

Human rights organizations demanded the Government in Gaza Strip clarify its position towards the official statements issued by the Interior Ministry and to apologize to the non-governmental and civil society organizations, due to the fact that these statements included unacceptable abuse, and suspicion about their role.”¹⁵⁹

On 24/05/2010, the Internal Security Service in the Gaza Strip prevented the Independent Commission for Human Rights “Grievances Council” from holding its workshop, which was scheduled to be held in Gaza City, in cooperation with a national campaign to defend freedoms. A number of members of the Internal Security Service arrived at exactly ten o'clock in the morning to the venue of the workshop and told the receptionist about the ban and their decision to not allow the workshop to be held, but without giving reasons.¹⁶⁰

During the month of August 2010, there emerged a clear attack on human rights defenders. The attack was exemplified by members of the Reform and Change Block in the Gaza Strip in discussing ICHR’s draft law and its passage and formally publishing it in the “Gazette” of the Gaza Strip in December 2010, in an attempt to prejudice ICHR and its work at the level of the Gaza Strip.¹⁶¹

On 26/08/2010, ICHR issued a statement clearly demanding “the retraction of the Reform and Change Bloc on its decision being referred to, and cessation of all measures that would prejudice ICHR and its work.” Additionally, ICHR held a press conference, during which the Commissioner General, Dr. Mamdouh Aker and the Executive Director, Ms. Randa Siniora, clarified ICHR’s clear and frank position of this step. On 12/08/2010, ICHR issued a statement on the eve the Reform and Change Block was to ratify ICHR’s draft law in the first reading, clearly demanding PLC members in Gaza to retract their decision.

¹⁵⁸ <http://pngoportal.org/arab/Article2272.html>

¹⁵⁹ For further information, see the statement of the Palestinian Center for Human Rights: <http://www.pchrgaza.org/portal/ar/index.php>

¹⁶⁰ For more information, see ICHR’s statement published on its website: www.ichr.ps

¹⁶¹ The Change and Reform Bloc (Hamis Bloc) is only one of the PLC parliamentary blocs, and the passage of the law was not in an ordinary session of the PLC. Although illegal, it entails that the Government in Gaza can take over the premises of ICHR in Gaza and formulate a new national institution in the Gaza Strip.

The Interior Ministry in the Government did not allow ICHR's representatives to visit detainees held at the Internal Security Service since 2009 and the ban continued during 2010.

Chapter Five

The Right to Form Associations

I - The Right to Form Associations in International Covenants and Palestinian Legislation

International human rights instruments stipulate the protection of the right to freedom of association. Paragraphs (1) and (2) of Article (22) of the International Covenant on Civil and Political Rights (ICCPR) state that “Everyone shall have the right to freedom of association with others” and that

“No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right”.

The International Bill of Human Rights guarantees the right to establish associations by virtue of Article (20) of the Universal Declaration of Human Rights which states that “Everyone has the right to freedom of peaceful assembly and association.”

Moreover, Palestinian legislation stipulates the rights of Palestinian citizens to participate in political life and to freedom of association. Paragraph (2) of Article (26) of the Basic Law provides that "Palestinians, as individuals and groups, have the right to participate in political life and the following rights in particular: the right to formation of trade unions, organizations, associations, clubs and popular institutions in accordance with the law". Similarly, Article (1) of the Charitable Organizations and Civil Society Organizations Law (No.1 for year 2000) states that “Palestinians have the right to freely pursue social, cultural, professional and scientific activities, including the formation and running of organizations and organizations in accordance with the law.”

Paragraph (1) of Article (2) of the Regulations of the Charitable Organizations and Community Organizations Law states that “Every Palestinian has the right to freely participate in the establishment and management of associations, and the right to affiliation to and withdrawal from such entities, in order to achieve goal(s) that are not for profit sharing.”

During 2010, charitable organizations continued to be subjected to various forms of violations which constituted an encroachment on the right to establish, join, and work for associations and civil society organizations. This contradicts international human rights conventions, the Palestinian Basic Law, and the Law on Charitable Associations and Community Based Organizations (No. 1) of the year 2000 and its implementation by law.

II - The Right to form Charitable Associations in the West Bank¹⁶²

The right to formation of charitable societies has not fared any better than the public freedoms. This right had in 2010 been subjected to various forms of violations as a result of the political push-pull resulting from the continued political division between the West Bank and the Gaza Strip. The most noted of these violations are discussed below.

1- Violations Related to the Registration of Associations

According to Article (18) of implementing regulation No (9) of 2003 of the Charitable Associations Law, the founding members of an association or society should submit to the NGO Registration Department at the Ministry of the Interior a request for foundation and all annexes specified in Articles (12) and (13) of the regulations. The request should be processed within a period of two months, during which the decision on the registration should be issued or the request denied on grounds of not fulfilling the requirements for registration. Alternatively, the two-month period could pass without furnishing the requesters with a reply on the acceptance or denial of a registration request. In such a case, and in accordance with Paragraph (3) of Article (4) of the Charitable Associations Law, the society in question is considered legally registered and therefore should be given the status of a legal entity and the rights associated with such a status¹⁶³.

Based on information obtained by ICHR, the number of associations registered in the West Bank is (2,319). During 2010, a total of (239) applications were submitted to the Non-governmental Registration Department at the Interior

¹⁶² ICHR is satisfied with listing some examples of violations of the right to freedom of association. For more information, see the reports published on its website: www.ichr.ps

¹⁶³ See Article (23) of the Regulations for the Implementation of the Charitable Associations Law No. (1) of 2003.

Ministry for the registration of new associations, of which (190) were approved, compared to (49) which are still undergoing review. During the year, (326) associations, including branches of foreign institutions, obtained the necessary registration.¹⁶⁴ The Non-governmental Registration Department continued to send a copy of the registration application to the Security Services (the Intelligence and the Preventive Security). This is done to undertake what is known as “security clearance” in accordance with the instructions of the Interior Minister,¹⁶⁵ in violation of the Association Law No. (1) of 2000, and its Executive Regulations No. (9) of 2003, neither of which mention the condition of safety security as a pre-requirement for registration. This practice may also interfere with the determination process in the registration applications within a period of two months, as stipulated in the aforementioned law. In an internal agreement between the Non-governmental Registration Department and the Security Services, the “security clearance” must be completed within a period of 21 days in order to complete the registration of the association in the time specified by law.¹⁶⁶ An amendment has been made during the year 2010 to the registration of associations, represented in the cancellation of the Ministry of Jurisdiction’s approval of the previous registration of the association. Its role was limited after an association obtained the necessary registration and practiced its actual activity.¹⁶⁷ It is worth-mentioning that the approval of the Ministry of Jurisdiction had to be obtained before an association can then obtain the necessary registration by the Ministry of the Interior. Additionally, some citizens applied for the registration of associations at the Ministry of the Interior, but their applications were not answered either positively or negatively, despite the passage of the legal period stipulated by the law for an association to obtain the necessary registration.

2- Attacks on Associations and their Work

Violations of the right to form associations and their work during the year 2010 took several forms, including 1) interference in the management of associations and their dissolution; 2) the exercise of the Interior Ministry’s authority for financial and administrative audits; and 3) the arrest and prosecution of the heads of associations and members of administrative bodies. Violations were as **follows:**

¹⁶⁴ Interview with Ahmad Abu Zeid in the “Associations Department” at the Interior Ministry on 14/01/2011.

¹⁶⁵ Ibid.

¹⁶⁶ “

¹⁶⁷ “

A) Dissolution and Interference in the Management of Associations

Article (22) of the Associations Law No (1) of 2000 states

“1. In the event that the Governing Council could not convene because of resignation or death, the remainder of the Council’s members, as a temporary committee, shall undertake the Council’s responsibilities for a maximum interim period of one month during which the Association’s General Assembly shall be invited to select a new council. 2. In the event of collective resignation of the Interim Committee or its failure to carry out its functions, the Minister shall appoint a new Interim Committee from among the members of the Association’s General Assembly that shall assume the responsibilities of the management body for a maximum period of one month, during which the General Assembly shall be invited to convene for the selection of a new council”.

ICHR obtained information which demonstrates that the Ministry of the Interior had indeed appointed (5) interim committees to a number of organizations in 2010. ICHR also observed that the appointment had in some cases not been made in accordance with the law since interim committees were appointed to some associations for no apparent reason. Their management boards were already functioning at the time and had not been affected by the death or resignation of its members, a matter which clearly indicates that the Ministry of the Interior had violated the provisions of Article (22) of the Associations Law by appointing committees external to the general assemblies¹⁶⁸.

Examples include the continued appointment of a temporary committee to manage Beit Ummar Orphans Care Association, despite the judicial decision issued by the Palestinian High Court of Justice on 08/07/2009, according to which

¹⁶⁸Article (37) of the Charitable Associations Law states "an association shall be dissolved in the event that: (a) the general assembly decides to dissolve the Association, a matter that needs to be brought immediately to the attention of the Ministry, (b) the association fails to commence its operations within the first year of its date of registration or licensing, unless the inactivity is caused by circumstances beyond the control of the Association. In this case, the registration is repealed after the association receives a written warning in advance. (c) It is proven that the association had committed a substantive violation of its bylaws, and failed to rectify them within three months of the date of receipt of notification to that effect by the Minister or the Department”.

the Interior Minister's decision to appoint a preparatory committee to run the Association in Beit Omar was abolished. This was instead of the previous elected General Assembly, due to the Interior Minister's violation of the Charitable Associations Law of 2000. The court decision was not implemented and the Interim Committee continued to run the Association during 2010. According to the Non-governmental Department at the Ministry of the Interior, the Association's General Assembly will be invited in two months to elect a new administrative board, instead of the interim committee appointed by the Interior Ministry earlier in 2009.¹⁶⁹

According to the information obtained by ICHR from the NGOs General Administration at the Interior Ministry, five committees for temporary associations were appointed in 2010. This is due to the resignation of the majority of the members or some of them from these associations according to the Ministry of the Interior. These associations include As-Sabaq Society for Intellectual Creativity/Ramallah, the Palestinian Center for Sustainable Development/Ramallah, Burin Association/Nablus, Ihsan Charitable Society/Hebron, and the National Orthodox Charitable Society/Bethlehem.¹⁷⁰

B) Ministry of the Interior's Exercise of Financial and Managerial Audit Power and Freezing of Associations' Bank Accounts

Article (6) of the Charitable Association Law clearly states that the authority to conduct financial and managerial audits of the performance of an association is vested with the competent ministry which mandate requires it to oversee the activities carried out by the association. Nevertheless, the Ministry of the Interior monitored the performance of (192) societies in 2010. The Monetary Authority has also imposed new restrictions on the opening of bank accounts for associations. It has become a standard bank requirement to demand that any association desiring to open bank accounts should first obtain an official letter from the Ministry of the Interior indicating its official registration status before such account could be opened. This practice also violates Article (31) of the Associations Law, which gives the association the right to deposit its money at one or more of the accredited banks when the association finalizes the prerequisites for registration as specified in the law. According to the Monetary Authority, the bank accounts of any association would be at risk of having its accounts frozen if the association fails to obtain the required letter.

¹⁶⁹ “

¹⁷⁰ “

C) Arrest and Prosecution of Heads and Board Members of Associations

In 2010, the Security Services continued to prosecute heads of associations and their board members. On 02/03/2010, the Preventive Security Service in Nablus summoned Abla Basalat, Head of Bazaria Association for Mutual Benefit, and the Treasurer Kholoud Salem.

“The Political Security Officer at the Preventive Security told the Head of the Association that the Preventive Security will replace the administrative board with a new board, fully affiliated with Fatah Movement. He requested the Head to close the Association and stop its activity. They closed the Association upon the request of the Preventive Service. It also requested the Director of the Association, Nawal Al-Qadi, for an interview and to bring with her copies of the checks and the telephone numbers of beneficiaries.”¹⁷¹

Additionally, many workers in charitable organizations have been exposed to pressure in an attempt to force them to resign from work in these associations. Examples include the exposure of some employees at the Islamic Solidarity Association in Nablus to investigations in order to force them to resign from work. ICHR received many complaints, noting that the Preventive Security Service in Nablus summoned a number of employees and the seizure of their identity cards to pressure them to resign, including (Islam Khudair, Asma’ Mona, Berlant Kamal Mansour, Siham Kamal Abu Saud, Inas Hamad, Walid Kamel Alila, and Sabrine Kamhiyah).

ICHR received a complaint from Asma’ Mona. It reads: “On 01/08/2010, she had an interview at the Preventive Security Service after being summoned by the Service. She stayed there from 10:00 until 15:30 pm. The questions were about her work in the Association. On 01/08/2010, her Identity Card (ID) was confiscated by the investigator and was not given back to her. She also used to go there every day from 10:00 until 15:00 pm to meet the investigators to pressure her to resign from work and her colleagues. Her ID card is still with them and they are still insisting on her to resign from work.¹⁷² She requested ICHR to approach the Preventive Security to return her ID card, to stop summoning her, and to stop interfering in her work.

¹⁷¹ According to a complaint received by ICHR.

¹⁷² Ibid

ICHR sent several letters about the complaints of the aforementioned citizens to Major General Ziad Hab al-Rih, Director of the Preventive Security Service. It received a reply stating “The above-mentioned citizen was summoned for clarification on some matters. She was released. The Service did not ask her to resign from work or not to go to work. The Service does not mind the above-mentioned citizen approaching the Directorate of Nablus to receive her personal ID card.”¹⁷³

D) Confiscation of Associations’ Funds by Security Services

Article (41) of the Law of Charitable Associations and Non-governmental Organizations states that “it is not allowed to lay hands on the funds of any association or body or to close or search it or any of its affiliates, but only after a decision by a competent judicial authority.” However, the Security Services continued in 2010 to seize the funds of some associations and put their hands on them, in a clear and explicit violation of the provisions of law. ICHR received a complaint from Bazaria Association for Mutual Benefit in the city of Nablus. It reads “The Association was founded in 2005, and the Preventive Security Service in the city summoned some women activists in the Association. On 02/03/2010, the Service called the Head of the Association, ‘Abla Basalat, and the Treasurer, Kholoud Salem, to approach the headquarters in Nablus. While en route to the interview, they were contacted and asked to state their location and remain where they were. Two members of the Preventive Security Service came and accompanied them to the Islamic Bank, where the Association has account. The members requested the signing of the checks and the withdrawal of (\$45,000 and (56,000 shekels) and received the amount without giving the Head of the Association any paper that proves they received the amount.”¹⁷⁴

The citizen requested ICHR check with the Preventive Security Service to give the administrative board the opportunity to perform the tasks entrusted with by the General Assembly until the end of the legal period in order to hold democratic elections in accordance with the laws and regulations, and to return the amounts in its possession to Bazaria Association for Mutual Benefit.

ICHR sent a letter to Major General Ziad Hab al-Rih, Director of the Preventive Security Service, which included the complaint of Bazaria Association for Mutual

¹⁷³ Text of the Preventive Security Service’s response to ICHR.

¹⁷⁴ According to a complaint submitted by the Association to ICHR.

Benefit - Nablus, represented by the Head of the Association 'Abla Basalat. It reads: "The Association has all the necessary licenses and operates within the laws and regulations and has no relations of a political or organizational character. It receives unconditional assistance with the knowledge of the concerned official parties. On 02/03/2010, the Head of the Association and the Treasurer had been summoned to the headquarters of the Preventive Security Service in Nablus and been asked to withdraw the funds allocated in the Islamic Bank of (\$45,000 and 56,000 shekels). The amount was handed to the institution's security official without any official evidences. She also received orders to close the Association account until the replacement of the administrative board by a new board, though without a court order or administrative justification. The procedural steps taken by the Preventive Security in Nablus to change the administrative board are illegal and contrary to the laws and regulations."¹⁷⁵

ICHR received a reply to its letter from the Legal Advisor of the Preventive Security Service. It reads: "With reference to your letter about the complaint submitted by Bazaria Charitable Association, we inform you the following: The moment we had been informed of your letter, the proceedings taken against the Association in question have been checked. Accordingly, we inform you that the actions taken were in line with law and order and in cooperation with the Ministry of Labor as a competent party in the supervision and control of associations registered with the Ministry of Labor."¹⁷⁶

III - The Status of the Formation of Charitable Associations in Gaza Strip¹⁷⁷

Charitable organizations in the Gaza Strip were exposed to numerous forms of violations during 2010. It was represented in the issuance of two decisions by the Interior Ministry, limiting and restricting the work and activity of the non-governmental organizations. On 22/02/2010, a circulation was issued by 'Ahed Hamadeh, Director General of the Interior Ministry in Gaza city. It was distributed to the charitable organizations in the Gaza Strip, stating

¹⁷⁵ Ibid..

¹⁷⁶ Text of the PSS Legal Advisor's reply to ICHR.

¹⁷⁷ ICHR is satisfied with listing some examples of violations of the right to freedom to form associations. For more information, refer to reports published on its website: www.ichr.ps

“All governmental employees are prohibited from working in any other job, whether paid or unpaid during or after working hours, except only after obtaining prior permission from his/her organization. If a violation is proven, it would be considered a breach of the licensing regulations of the charitable organizations and the local organizations. Accordingly, the employee violating this decision is exposed to accountability and disciplinary penalties provided by the law.”

This circulation was in accordance with decision no. (17) of 2010, issued by Fathi Hamad, Interior Minister in the Government of Gaza on 09/02/2010. It stated

“All government employees are prohibited from working in any job, whether paid or unpaid during or after working except only after obtaining prior permission from the organization. All public and private institutions, charities, civil organizations, shops, technical offices, and other professions shall not employ any government employee without prior permission from the head of the relevant governmental department, whether on a temporary or permanent operational program. If a violation is proven, it would be considered a breach of the regulations of licensing the associations and institutions. Accordingly, the employee violating the provisions of this decision is exposed to accountability and disciplinary penalties provided by law. This decision takes effect from the date of issuance and all competent authorities shall implement it.”

On 11/07/2010, a decision was issued by the Interior and National Security Minister in the Government of Gaza. It stated,

“All civilian employees shall affiliate with public charities and civil organizations or work as employees or members of the board of directors. Any board of directors of the above-mentioned associations is not approved, if there is any of the conscientious staff among its members. All parties shall implement this decision, each in his own jurisdiction. This decision takes effect from the date of issuance and anything that contradicts this decision shall be cancelled.”

The most significant violations of the right to form associations during 2010 and recorded by ICHR are as follows:

1- Violations Related to Registration

According to the information available by ICHR regarding the number of associations registered with the Interior Ministry in the Gaza Strip in 2010, the number of associations registered is (876) associations,¹⁷⁸ distributed as follows: the northern Gaza Strip (132) associations, Gaza City (431) associations, Central governorate (107) associations, Khan Younis (111) associations, Rafah (90) associations. During 2010, a total of (126) associations submitted applications, of which (86) were approved and (40) turned down.

2- Attacks on the Work of Associations

Attacks on the work of charitable associations in the Gaza Strip during 2010 took different patterns, and are discussed below.

A. Closure of Associations and Confiscation of Property

Contrary to the provisions of Article (41) of the Association Law, the Security Services of the Ministry of the Interior in Gaza stormed and shut down the headquarters of several associations and confiscated their contents in 2010. In this framework, ICHR documented many cases of closures and incursions carried out by the Security Services, including a raid by members of the Internal Security Service on 31/05/2010 headquarters of four NGOs in Rafah: Sharek Youth Foundation, Future Builders Center (FBC), Al-Jenoub Association for Woman Health, Women and Child Development Society. They searched these associations and confiscated most of the contents, including computers, monitors, faxes, cameras, papers and reports. They also confiscated the keys and informed them of the closure of those institutions without giving reasons.¹⁷⁹

In addition, many associations have been raided and closed by the Security Services of the Ministry of the Interior. On 30/11/2010, a group of police stormed Sharek Youth Foundation and asked the staff to leave the headquarters and turn in the keys under the pretext of a resolution by the Attorney General in Gaza Strip, Judge Mohammad Abed. They also closed all its branches in the Gaza Strip, and confiscated the contents.

¹⁷⁸ Information available until the end of November 2010.

¹⁷⁹ See ICHR monthly report for May, published on its website: www.ichr.ps

The Security Services of the Interior Ministry in the Government closed Sharek Youth Center, the Palestinian Youth Association for Leadership And Rights Activation (PYALARA), Rafah Central Reform Commission, Future Builders Center, Women and Child Development Society, the Small Parliament Institute, and Al-Nayzak for Extracurricular Education and Scientific Innovation. They also took control of the Red Crescent branch in Gaza. Also the General Union of Palestinian Farmers was seized during the year 2010.

During 2010, ICHR received many complaints submitted by the associations that had been closed, demanding it to persuade the Ministry of the Interior to re-open it, as the measures taken were not consistent with the provisions of the law.

ICHR sent numerous letters about the associations' experiences and received a response from the Comptroller General of the Ministry of the Interior regarding the inspection of a number of associations by the Internal Security Service. The reply reads:

“With reference to the measures carried out against a number of public associations in Gaza Strip, it resulted in the following 1) violation of these associations as provided for in their bylaws, specifically regarding the inadmissibility of the exercise of activities of a political nature; 2) the existence of serious irregularities in the actions and financial transactions of these associations; 3) the presence of pornographic and obscene material within the contents of most of the computers in these associations. A number of alerts had previously been sent to these associations to settle the conditions mentioned. Despite the foregoing, and after our follow-up with the brothers involved, there have been settlements with some of the associations to rectify their situation. Work is underway to resume and continue their work after verification of the settlement of their situation.”¹⁸⁰

B. Dissolution of Associations and Interference in Management

According to the information obtained by ICHR from the Ministry of the Interior in the Gaza Strip, the number of associations that have been dissolved is (57), of which (29) are due to not sending the final accounts, or due to not conducting

¹⁸⁰ Text of the Comptroller General of the Interior Ministry and the Internal Security's reply to ICHR on 28/07/2010.

elections of the board of directors after 3 months of the dissolution warning and not correcting certain conditions, and (3) shut down due to not obtaining a license, in addition to (25) dissolved on the background of irregularities that necessitate dissolution according to the Interior Ministry in the Gaza Strip.

ICHR documented the interference of the Interior Ministry in the Gaza Strip in the management and dissolution of associations in a clear and explicit violation of the provisions of the Palestinian Associations Law. During 2010, it recorded the dissolution of (57) Boards of Directors, including: Al Majed Women's Association, Youth for Palestine Association, Palestinian Surgeons Association, Al Adham Charity, and the Palestinian Theatrical Association. ICHR also received numerous complaints in this regard, including a complaint by Grace Tala, stating "I am the Chairperson of Al Majed Women Association's Board of Directors. On 01/08/2010, the Interior Ministry dissolved the Association's Board of Directors, where I received a signed resolution by the Director General of the Central Internal, Nabil Samour. It states the formation of a new Board of Directors for the Association, consisting of three people. They received the keys of the Association and the checkbook, and they changed the door locks. It should be noted that the Board of Directors was elected in August 2009."¹⁸¹

ICHR also received a complaint from Ibtisam Bassiouni, Chairperson of the Board of Directors of Al-Adham Charity/northern Gaza. It reported, "The Association was founded in 2001 and aims to raise the level of women's culture and bring attention to children and young people. On 15/01/2010, the Association received a resolution issued by the Interior Minister to dissolve it."¹⁸² On 12/07/2010, the Director of Women and Child Development Society, Yahya Hassan Jamal, reported "The Ministry of the Interior dissolved the Society, without reason or legal justification according to the Interior Minister's decision No. (24) after being closed on 31/05/2010. With reviewing the Interior Ministry, it did not give any legal reason to dissolve the Society. The Society is working on projects that are not yet over." ICHR demanded the associations whose board of directors have been dissolved to appeal to the Interior Ministry to cancel the decisions dissolving their board of directors and appointing a temporary committee in a manner contrary to law.

ICHR sent a letter to the Interior Minister in the Gaza Strip on the dissolution of these associations. His reply stated "A decision to dissolve the above-mentioned

¹⁸¹ According to a complaint submitted by the above-mentioned to ICHR.

¹⁸² According to a complaint received by ICHR.

Society was issued on 19/10/2005 under No. (67) of 2005. The General Union of Palestinian Farmers is the same as the General Union of Peasants. This is constant through the Society's file. A hand was laid on the Society's headquarters in preparation for the transfer of the headquarters to other associations of similar objectives based on the provisions of Article (39) of the Charities and Community Organizations Law No. (1) of 2000".¹⁸³

C. Exercise of the Power of Financial and Managerial Audits by the Ministry of the Interior

The Ministry of the Interior of the Deposed Government also exercised financial and managerial audits in contravention of the provisions of Article (6) of the Charitable Associations Law No. (1) of 2000, which restricted this power to the competent ministries. ICHR obtained information from the Ministry of the Interior indicating that the Associations' Department indeed monitored about (170) societies in 2009.

D. Arrest and Prosecution of Heads of Associations and Board Members

ICHR documented the arrest of Ziad Sarfandi, Head of the Popular Front for Refugees in Rafah, by the Security Services of the Interior Ministry in Gaza on 11/05/2010. ICHR sent several letters to the Interior Minister in Gaza on the inspection, storming, closure and dissolution of many associations, and the Interior Minister's exercise of the financial and administrative audit powers for many of them.

It is worth-mentioning that the conclusions reached by ICHR regarding the failure to follow the legal procedures in the registration and closure of associations, the appointment of new committees, and the prosecution and arrest of some of its members and employees, are the same findings and recommendations concluded by the Palestinian Independent Commission for Investigation, according to Goldstone Report:

"It was noticed there was an occurrence of a group of abuses and violations by the official authorities, specifically the Ministry of the Interior and the Security Services in the West Bank against the right to form associations. Abuses include: 1) the appointment of

¹⁸³ Text of the Interior Ministry's reply to ICHR.

*temporary committees to manage and facilitate the associations by persons other than members of these associations, rather than elected bodies by the members of these associations; 2) prevention of some associations by the Palestinian Security Services from exercising their work; and 3) threatening board members with arrest in case of violations of the prevention decisions and other legal violations.*¹⁸⁴

¹⁸⁴ Text of paragraph (10) of the conclusions reached by the Palestinian Independent Commission for Investigation, according to Goldstone Report. The Report's recommendations included: ⁽¹⁾ to stop interfering in the work of NGOs by the Ministry of the Interior, and ⁽²⁾ to stop appointing temporary committees for the management and operation of associations consisting of people who are not members of these associations, due to it being a violation of the provisions of the law.

Chapter Six

The Right to Movement and Travel

The right to movement and travel connotes an individual's right to move from one place to another, and his right to leave the country and return to it. The right to move and travel is considered the benchmark index of the extent of respect by the executive authorities in the state for civil and political rights and the enforcement of these rights, under which the right to movement and travel is subsumed. The violations of this right are directly linked to several other related rights and are affected by it in accordance with the principle of the unity and interdependence of rights.

During 2010, violations of the right to movement and travel emerged as a direct result of the continued political and geographical division of Palestine. It strengthened the base of political harassment that governs the relationship between the parties of the division. It became clear that prejudice against the rights and freedoms guaranteed by law become a hallmark that characterizes the time of political division. Perhaps violations of the right to movement and travel are the most prominent issue this year.

I -The Right to Movement and Travel in Accordance with International Standards and National Legislation

International Human Rights Law guarantees an individual's right to residence and movement and travel. The international covenants on human rights set aside explicit and detailed provisions that ensure the protection of this right, and determine restrictions on the practice of its exercise as an exception, through which it protects order and public morals or the rights and freedoms of others. Under Article (13) of the Universal Declaration of Human Rights (UDHR), it is stated that "Everyone has freedom of movement and residence within the borders of each state. The right of everyone to leave any country, including his own, and return to his country."

The International Covenant on Civil and Political Rights (ICCPR) addressed this right in Article (12) thereof, which states

"Everyone lawfully within the territory of a State, shall within that territory, have the right to freedom of movement and freedom to choose his residence. Everyone has the freedom to leave any country, including his own. The above-mentioned rights shall not be subject to

any restrictions other than those prescribed by law and are necessary to protect national security or public order or public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. No one shall be arbitrarily deprived of the right to enter his own country.”

The Committee on Civil and Political Rights at its seventy-sixth session in (1999) confirmed in general comment No. (27) the right of movement, freedom of movement and travel and its close connection with many other rights, and an essential condition, the human right to free development. The violation of the right to freedom of movement and travel will prejudice directly a set of fundamental rights protected by the texts of international conventions and declarations on human rights. Also, this comment identified standards to ensure the realization of this right, and adjusted the restrictions contained, including freedom of movement, freedom to choose residence, freedom to leave any country, including his own, and the right of a person to enter his own country, and the restrictions contained in the right are exceptions restricted by the texts of the law.¹⁸⁵

Article (10) of the Palestinian Basic Law amended in 2003 confirmed respect for human rights and fundamental freedoms, affiliation without delay to the regional and international declarations and conventions that protect human rights. Also Article (20) of the same Law states that “freedom of residence and movement is guaranteed within the limits of the law.”

Article (11) of the Law linked the right of movement and travel to personal freedom as being one of the natural rights inherent to human beings. This Article identified the legal controls to restrict the public authority regarding this right, as stipulated in the second paragraph which specifies the right of citizens to move

¹⁸⁵ The Committee on Civil and Political Rights interpreted in its commentary on the right of movement and travel restrictions contained on this right. Freedom of movement and travel should not be restricted, but an exception that must be stipulated in the law, or in cases where restrictions are necessary for reasons of national security or public order or public health or morals or the rights and freedoms of others, and these restrictions should not affect other civil and political rights, as set forth in the International Covenant on Civil and Political Rights. These restrictions are not acceptable, for example “in the case of preventing any individual from leaving the country except for only one reason: knowledge of state secrets”, or in the case of preventing the individual from traveling within the country without a special permit”. On the other hand, the restricted access to military areas for reasons of national security or to restrict freedom of stability in areas inhabited by groups of indigenous or minority groups may constitute allowable restrictions.

and not to be restricted of this right except through a court order in accordance with the provisions of the Law.¹⁸⁶

The Civil and Commercial Procedure Code no. (2) of 2001, particularly in Article (111) thereof dealt with the legal procedures to be followed to restrict citizens' right to movement and travel in civil disputes.¹⁸⁷ Article (28) of the Law states the inadmissibility of expelling any Palestinian from the homeland, or prohibiting him from returning or preventing him from leaving or stripping him of citizenship or extraditing him to any foreign entity.

II - Violations of the Right to Movement and Travel

West Bank

With the continued political division, and as a direct result of the widespread impact of its effects and consequences on citizens' rights and freedoms, violations of the right to movement and travel emerged during 2010. This is to be added to the series of violations against the rights and freedoms of citizens during the division period, and is a milestone in the use of citizens' rights and freedoms by the parties as tools of further entrenching the gap between them. Violations of the right to movement and travel during that period formed a phenomenon of colorful multiple images to form a whole new path for violations. Citizens are still paying its direct price from their rights and freedoms guaranteed by the law. In this context, ICHR received (73) complaints, including violations related to citizens' rights to movement and travel. Such violations have taken different patterns, many of them concentrated as direct reactions based on the political harassment between the division parties. These patterns have manifested in several ways, discussed below.

A- Continued Refusal of the Interior Ministry to Provide Gaza Strip Governates with Passports

¹⁸⁶ "No one may be arrested, searched, detained or his freedom restricted in any way or prevented from free movement except by judicial order in accordance with the provisions of law. The law shall specify the period of remand, and may not be detained or imprisoned in places that are subject to the laws regulating prisons."

In spite of the decision issued by the Palestinian President on 25/08/.2008 entrusting the authorities in the West Bank Government, with taking the necessary administrative procedures for the resumption of issuing passports in the Gaza Strip, it was not implemented. Citizens in the Gaza Strip are still suffering due to the continued running out of passports from November 2008 until now.

According to information ICHR obtained from officials at the Interior Ministry in Gaza, the Ministry of the Interior in the West Bank does not send passports for Gaza citizens, which results in the denial of their right to travel and movement. This is in addition to the urgent need for special cases, including cases of those seeking medical treatment abroad, and university students who are studying outside the country. In addition there is the need for thousands of people who have expired passports to have them renewed.

According to statistics released by the Ministry of Health in the Gaza Strip, (10) patients died as a result of their inability to obtain passports for medical treatment outside Gaza. Also (320) students could not attend their universities outside Gaza, due to their inability to obtain passports during the enrollment and registration period.¹⁸⁸

B- Depriving Citizens of Passports due to the “Safety Security” Requirement

During 2010, ICHR received dozens of complaints pertaining to the refusal of the Ministry of the Interior in the West Bank to enable citizens to obtain their own passports. The reason for this prohibition was that citizens did not obtain security approval from the General Intelligence Service. Examples include a complaint received by ICHR on 20/04/2010 from Akram Fayez Shaqoura, 31, from Jabalya. He reported that he was prevented from obtaining a passport from the Interior Ministry in Ramallah, through Hanif Office in Gaza on 03/04/2010. He claims according to his testimony that the passport was suspended for not passing the security clearance from the General Intelligence Service.

¹⁸⁸ See the legal memorandum on the prevention of sending the passports, issued by the Interior Ministry in the Gaza Strip from 2010 to 2011.

Gaza Strip

A- Preventing Fatah Council Members from Leaving the Gaza Strip

During 2010, the Government in the Gaza Strip prevented members of Fatah Revolutionary Council from leaving the Strip to the West Bank to attend the meetings of the Revolutionary Council. On 21/04/2010, ICHR received a complaint from Salah Abu Khatla (member of Fatah Mobilization and Organization Committee), as he was coordinating the delegation's departure. He reported that the Government in Gaza prevented members of the delegation (composed of Abdul Hamid al-Masri, Ismail Abu Shamala, Tahrir al-Haj, Usama al-Farra, Abdullah Abu Samhadana, Amal Hamad, Hisham Abdel-Razek) from traveling to the West Bank to attend the meetings of the Revolutionary Council. On 24/06/2010, ICHR received a complaint from (Ahmed Nasr, Ibrahim Abu Naja, Abdel Rahman Hamad, Suleiman Abdel-Razek, Massoud al-Ra'i, Salim al-Zari'i, Samih Nasr, Fatima Barnawi, Abdul-Karim Nassar), all of whom are members of the Fatah Revolutionary Council. In the complaint, they reported that they were prevented by the police from traveling to Ramallah through Beit Hanoun Crossing, on their way to participate in the preparatory meetings for the Sixth Conference for Fatah Movement. They were stopped by the police officers stationed near the crossing, their cars were searched and their identity cards seized.

B- Preventing a Delegation of the General Union of Palestinian Women from Participation in the General Union's Conference

The Security Services of the Government in Gaza prevented the delegation of the General Union of Palestinian Women from participating in the General Union's conference held on 21/05/2010 in the city of Ramallah. According to ICHR, on 20/05/2010, the Security Services of the Government in Gaza stopped the delegation heading to Ramallah through Beit Hanoun "Erez" Crossing, consisting of (58) members, at a police checkpoint before reaching the Crossing. Their personal identity cards were held, their bags searched, and they were prevented from travelling with no reasons given.

C- Prevention of Citizens from Travelling by Internal Security Service

During 2010, the Internal Security Service of the Interior Ministry in the Gaza Strip prevented some citizens from traveling outside the Strip. Examples include a complaint received by ICHR on 15/05/2010 from Mahran Samir Al-Mujaber, 28, from Beit Lahia, who works in the General Intelligence Service, Secretary of the Youth in the Fatah Movement. He reported that members of the Internal Security Service came to the departure lounge inside the Rafah Crossing, and took him to a dark room, and returned his passport and his luggage, and told him that he is banned from travel and transferred him to a car belonging to them outside the crossing.

D- Confiscation of Fatah Members' Passports in the Gaza Strip¹⁸⁹

The Internal Security Service in Gaza confiscated many passports of Fatah leaders in the Gaza Strip in 2010. ICHR received numerous complaints from citizens in this framework, including: a complaint from Dr. Rafiq Ashour Kishku, 38, from Gaza, a former member of Fatah leadership in eastern Gaza. He works as a doctor in cardiac surgery at Shifa Hospital in Gaza City. He reported that his passport was confiscated on 15/10/2010, after being summoned to the headquarters of the Internal Security Service in Gaza City.

Another complaint was submitted by Nasser Abed Badawi, 49, from Gaza, a member of Fatah leadership in the Zeitoun neighborhood of eastern Gaza. In the complaint, he reported that his passport was confiscated on 04/10/2010 after being summoned to the headquarters of the Internal Security Service in Gaza City.

E- Preventing Fatah Leaders from Entering the Gaza Strip

The Interior Ministry in the Gaza Strip prevented Fatah leaders (Abdullah al-Ifranji and Raouhi Fattuh) from entering the Gaza Strip through Beit Hanoun (Erez) Crossing. According to the information monitored by ICHR, on 28/11/2010, the police stationed at the "Customs" checkpoint near Beit Hanoun Crossing asked Fatah leaders to wait after crossing from the Israeli side. After about 30 minutes of arrest, the police informed the leaders that they were banned from entering Gaza based on the orders of the Government in Gaza.

¹⁸⁹ On 20/10/2010, ICHR addressed the Prime Minister in the Gaza Government to intervene and put a stop to such violations.

From the previous review of the patterns of complaints received by ICHR on violations of the right of movement and travel in 2010, it is evident that violations of the right to movement and travel were not only limited to prejudicing the right in itself, but also affected many other rights, whether associated directly with the right to personal liberty, or indirectly linked to it, such as the right of citizens to political participation. This emphasizes the unity of rights and their interdependence, and that prejudice to any basic human right means direct prejudice to other rights associated with this right. Prevention and confiscation of citizens' passports based on political affiliation, or not issuing passports due to the refusal of the security authorities means that in addition to the violation of their right to mobility and travel, there is also a violation of their right to equal enjoyment of rights and public freedoms. Article (9) of the Palestinian Basic Law has provided that "the Palestinians before the law and judiciary, without discrimination because of race, sex, color, religion, political opinion or disability", and the violation of their right to political participation, and the formation of political parties and joining them. Article (26) of the same law in the first paragraph stated "the Palestinians have the right of political participation, individuals and groups, and have the following rights in particular: the formation of political parties and to joining these parties according to the law."

However, ICHR sees in the patterns of previous violations the non-compliance of the two Palestinian Governments in the West Bank and Gaza Strip with the regulations and standards required by law to restrict that right. This confirms that citizens' rights and their fundamental freedoms is not the norm in the authorities' adaptation of its procedures, and, in turn, the performance of its legal role in protecting those rights, freedoms and maintenance thereof.

Chapter Seven

The Right to Work

The right to work is considered one of the fundamental rights enshrined in international human rights covenants and treaties. It is one of the rights that is affected by the social, economic and political conditions surrounding it. During the reporting period, Israeli policies aimed at destroying the Palestinian economy and annexing it to the Israeli economy continued. Israel continued its policy aimed at strangling the Palestinian citizen and depriving him of his right to work.¹⁹⁰

In this regard, Israeli policies affected the PNA policies in the provision of the right to work. Many of these policies have significantly contributed to increasing the unemployment rates, and to lowering the wages and purchasing power of these wages. Proper planning in employment policy and the provision of the right to work were absent in the work of official institutions. Some government policies contributed to reducing job opportunities and stopping a number of facilities which employ a number of workers. The following is a breakdown of these policies in two major areas: first, the international and national legal and institutional framework for the right to work; and second, the right to work in Palestine, including the unemployment rates recorded by the Palestinian Central Bureau of Statistics (PCBS), the supportive government policies to create jobs, and government policies prejudicing the right to work.

I - The Legal Framework for the Right to Work

Many international conventions and national legislation ensure the right of citizens to work, and order the official authorities in different countries to develop procedures ensuring this right to all citizens. Under Article (23) of the Universal Declaration of Human Rights (UDHR) it is stated

“Everyone has the right to work, to free choice of employment, in fair and satisfactory working conditions, and to protection against unemployment. ⁽²⁾ To all individuals, without any discrimination, the right to equal pay for equal work. ⁽³⁾ Everyone who works has the

¹⁹⁰ For more details, see the chapter on the “Impact of Israeli Violations on the Performance on the PNA” of this report.

right to just and favorable remuneration ensuring for himself and his family a living worthy of human dignity, and supplemented, if necessary, by other means of social protection.”

Article (22) of the same Declaration provides

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation, and consistent with the structure of each country and its resources, economic, social and cultural rights indispensable for his dignity and development of his personality in freedom.”

Article (6) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also reflects this, in that “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work, which he freely chooses or accepts, and will take appropriate measures to safeguard this right.” It is extended even further to include

“measures to be taken by each of the States Parties to the present Covenant to achieve the full realization of this right shall include provision of technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

There is also Article (7) of the Covenant, which obliges “States Parties to provide fair wages and equal remuneration for work of equal value without distinction of any kind ... and that work provides safe and healthy conditions.” Article (9) of the Covenant asserts “The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”

At the level of national legislation, the Palestinian Basic Law has ensured since 2002 the right of citizens to work. It stresses how 1) “Work is a right for each citizen. It is a duty and honor that the PNA seeks to provide for every capable person, and 2) work relationships are regulated in order to ensure justice for all

and provide care, security and health and social care for workers...”¹⁹¹ Article (2) of the Palestinian Labor Law issued in 2000 provides that “Work is a right for every citizen who can afford it. The PNA works to provide it on the basis of equal opportunity and without any kind of discrimination.”

II - The Status of the Right to Work in the Palestinian-Controlled Areas

A significant amount of data and statistics are involved in evaluating the status of the right to work in Palestine. We have adopted one key statistic, which is the unemployment rate set by the Palestinian Central Bureau of Statistics (PCBS). Of particular interest are the statistics shown in its report on the unemployment rates in the third quarter of 2010, with some comparisons of these statistics with periods during the last three years (from 2008 to 2010). government policies were evaluated to provide the right to work through access to 1) some important documents, such as the PNA Official Journal (*Palestine Facts*); 2) the so-called Government plan (*A Date with Freedom*); 3) Government guidelines in the formulation of the relevant draft laws; 4) complaints received by ICHR in this regard; 5) its follow-up of the right to work in the newspapers, newsletters, workshops, and seminars.

1- Unemployment and Poverty Rates in Palestine

The results of the labor force survey in the third quarter of 2010, implemented by the Palestinian Central Bureau of Statistics (PCBS), have shown high unemployment rates in Palestine. According to a report by (PCBS), and the International Labour Organization (ILO), the percentage of individuals who did not work and were seeking jobs in Palestine increased between the second quarter and third quarter of 2010. The results showed an increase in the unemployment rate from (22.9%) in the second quarter to (26.6%) in the third quarter of 2010, while the percentage was (25.8%) in the third quarter of 2009. In the Gaza Strip, the unemployment rate rose from (39.3%) in the second quarter of 2010 to (40.5%) in the third quarter of 2010.

According to the (PCBS) report, the unemployment rate in the West Bank rose from (15.2%) to (20.1%) during the same period. The southern governorates recorded the highest unemployment rate among the governorates of the West

¹⁹¹ Article (25) of the Palestinian Basic Law of 2002.

Bank in the third quarter of 2010. The unemployment rate in the governorate of Hebron amounted to (25.0%) and (24.7%) in the governorate of Bethlehem, while the Jerusalem governorate recorded the lowest unemployment rate among the governorates of the West Bank, reaching (13.3%).

The report showed a decrease in the number of employees in Palestine between the second quarter and third quarter of 2010 by (46,000) workers, to become (710,000) in the third quarter, compared with (756,000) in the second quarter. The number of workers in the West Bank decreased by (40,000) and the number of workers in the Gaza Strip decreased by (6,000).

In addition, the findings of the above report showed that the number of Palestinian female workers in Palestine had fallen from (134,000) in the second quarter to (112,000) in the third quarter of 2010. The number of female workers in the West Bank decreased from (110,500) to (101,100), and the number of female workers in the Gaza Strip decreased from (23,200) to (19,600) during the same period.

In general, when reviewing the (PCBS) reports with respect to the survey of the labor force and unemployment rates in the last three years (2008 - 2010), it should be noted that unemployment rates were as follows:

Unemployment rates of the labor force in Palestine (West Bank and Gaza Strip) according to the Palestinian Central Bureau of Statistics (PCBS).¹⁹²

| Period | 2010 | 2009 | 2008 |
|-------------------------|-------|-------|-------|
| 1 ST Quarter | 22% | 25.4% | 22.6% |
| 2 nd Quarter | 22.9% | 22.2% | 25.8% |
| 3 rd Quarter | 26.6% | 25.8% | 27.3% |
| 4 th Quarter | - | 24.8% | 27.9% |

2- Supportive Government Policies to Create Job Opportunities

We refer to the supportive policies to create job opportunities and to increase the employment rates in two categories: one deals with the Government policies

¹⁹² This data was collected from several reports issued by the Palestinian Central Bureau of Statistics and published on their website: <http://www.pcbs.gov.ps>

in the West Bank; and the second deals with the policies adopted in the Gaza Strip.

West Bank

- On 13/02/2010, the three production partners (workers, employers, and official parties represented by the Ministry of Labour) reached an understanding in the meetings held in Turin, Italy in the presence of the (ILO) on the agenda of the social dialogue and its administration of what is known as the "Statement of Turin."
- On June 09/06/2010, the private employment system developed by the Council of Ministers on 12/01/2010 was published in "Al-Waqa'i Al-Falasteeniyah". It stated that the system will take effect from the date of its publication. This system laid down the provisions relating to the employment offices, its licensing conditions, and procedures for regulating its work.
- On 16/11/2010, a campaign to support the Employment Fund and Social Protection for Palestinian Workers in Palestine was launched at the headquarters of the International Labour Organization (ILO) in Geneva "...under the new phase on which the Palestinian Ministry of Labor is working to address the unemployment and poverty crisis rampant among Palestinians" according to the Palestinian Labour Minister.

Gaza Strip

According to a report by the Ministry of Labour, the Ministry worked on providing jobs and aid to those in labor and professional categories and segments who lost their employment opportunities. The report estimated the number of unemployed at approximately (150,000). Additionally, the Government has implemented the temporary employment program to alleviate unemployment. In total, the Ministry of Labour has spent the equivalent of (8.2 million US dollars) in 2010, between the provision of approximately (24,404) job opportunities within the temporary employment program in the amount of (5.2 million US dollars), in addition to providing emergency and relief programs and immediate cash assistance for about (30,000) workers, an average of (\$100) per worker.

Despite the legal obligation imposed on the PNA for the realization of the right to work in its territory, it failed this year to fulfill this commitment as it should.

Contributing to the deficit, in addition to the continued Israeli occupation, is the deep-rootedness of the political division between the West Bank and Gaza Strip. Also, the efforts made by the Government in the Gaza Strip or those efforts still to be worked on which fall within the framework of providing the right to work for citizens in the Gaza Strip did not and do not appear to sufficiently correspond to the existing problem.

III - Government Policies Violating the Right to Work

In this section, we refer to the policies violating the right to work in two categories; the first deals with the government policies in the West Bank and the second deals with the policies adopted in the Gaza Strip.

West Bank

A- Violating the right to work by forcing citizens by the Security Services to submit their resignations: The Palestinian Security Services deprived a number of citizens of their right to work by demanding they resign from institutions and associations, and threatening to arrest them if they did not obey its orders to submit their resignations. ICHR continued to receive complaints from citizens claiming that they were summoned by the Preventive Security Service and had been asked to resign from work. ICHR received (9) complaints from staff working in the Solidarity Charitable Association in the city of Nablus, while it received (6) responses to a number of these complaints. The Service reported that it is dedicated to rights and freedoms in general, especially the right to work, and there was no truth to the claim of the complainants that the Service asked them to resign from their work. One example, according to citizen (A.A) was so reported: "On 21/07/2010, she was summoned by the Preventive Security Service for the interview on the same date and day. During the interview, the questions and inquiries were about her former activity in the university, and that she belonged to the Islamic Bloc and that she was required to admit it. On 22/07/2010, she went to meet them again and the main demand was that she submit her resignation from the Solidarity Charity. She was asked not to go to work or she would be arrested."

Also citizen (CA) reported "On 31/07/2010, she was summoned by the Preventive Security Service. When she went, she was asked by members of the Service to sign a pledge not to go to work to the Solidarity Charity or to

resign. But she refused. Her passport and identity card were seized. On the following day and upon arrival at ten in the morning, she was held in the room until three o'clock in the afternoon, and was required to sign the resignation.”

- B- Violating the right to work by flooding the market with products and imported goods and the closure of a number of production facilities: Flooding the market with products and imported goods has contributed to closing a number of facilities and halting a number of projects, such as the footwear, textile and clothing industries in Hebron city, which fell to at least (75%) of the usual production volume. This has led to denying a number of workers from their jobs. For example, the Ministry of the Economy reported that it granted (1,965) import permits in November 2010 alone, for goods totaling (226 million dollars). Also, the Chairman of the Palestinian Leather Industries Federation reported that the “invasion of imported goods to the West Bank markets directed a severe blow to the local industries of which a little has remained. The number of leather workshops and factories in Hebron has become no more than (150) workshops/factories. Also, the number of workers in these workshop and factories has deteriorated to approximately (4,000) workers with low and unstable incomes.¹⁹³
- C- Violating the right to work in the government plan: In view of the contents of the government plan called “An Appointment with Freedom” and issued in 2010, and particularly regarding the activities to be undertaken in the employment sector, it is noted that the government efforts made in regard to creating jobs and reducing unemployment and poverty rates in Palestinian society have remained minor and were not given the required degree of attention. Also the plan did not include the priorities set in this regard of the effective procedures that may increase employment, and reduce unemployment and poverty rates.

¹⁹³ According to Mr. Taher el-Muhtaseb, Deputy Director of the Chamber of Commerce and Industry of Hebron, on 17/07/2010 to the Palestine News Network (PNN). Mr. Tariq Abu el-Filat, Chairman of the Palestinian Federation of Leather Industries told WAFA News Agency on 02/12/2010 that “the invasion of the flood of imported goods to the markets of the West Bank is a decisive blow to local industries... And the number of leather workshops and factories in Hebron has become no more than 150 workshops/factories, and the number of employees dropped to approximately 4,000 workers with low and unstable incomes. He cited the example of the decline in his factory of the number of employees, which dropped from 30 employees to 8. In other words, the decline in the number of workers was close to 75%”.

- D- Violating the right to work by not developing an effective social security system for workers: The continued deprivation of workers of their right to social security prevents ensuring them a decent pension and putting legal text into practice.¹⁹⁴ Since the cancellation of the Social Insurance Act, which provided reasonable assurance for workers in their retirement in 2007, no fair alternative system was laid down.
- E- Violating the right to work by subjecting end-of-service (EOS) and retirement funds to income tax: During 2010, the PNA laid down a draft law amending the Income Tax Act, aimed at subjecting (50%) of the funds allocated to the end of service (EOS) and retirement to income tax, which would be a serious violation of workers' rights if it is ratified. Although the resolution amending the retirement law¹⁹⁵ and canceling the Social Insurance Act stipulated the subjection of the “non-governmental organizations, civil society, the private sector staff, workers subjected to the provisions of the labor law, employees and members of trade unions” to the civil retirement system related to government employees, it also provided that “it is regulated by an order issued from the Council of Ministers”. Despite the issuance of the mentioned regulation by the Council of Ministers,¹⁹⁶ this regulation did not develop a comprehensive pension system for workers in different NGO sectors and was not able to develop it without it essentially falling within the public pension law. This is assuming the integration of the retirement and social security systems together, one for public sector employees, and the second for the private sector employees. The applicable public pension system was developed to suit government employees only, who receive salaries from the general budget, and who assume service in the job for a purpose totally different from the goal of working in the private sector, which is the administration

¹⁹⁴ Article (22) of the Palestinian Basic Law for the year 2002 stipulates that: “1- Social, health, disability and retirement insurance shall be regulated by law; 2- Maintaining the welfare of families of martyrs, prisoners of war, the injured and the disabled is a duty that shall be regulated by law. The National Authority shall guarantee these persons education, health and social insurance.”

¹⁹⁵ Resolution Act No. 5 of 2007 amending the Law on Public Pensions for the year 2005 issued on 23/08/2007.

¹⁹⁶ The mentioned regulation was issued by the Council of Ministers on 09/08/2010.

of the state's affairs. Work is a right for all citizens, while public office in itself is not a right for all citizens. It is governed by the need for public office and the administration of the state, and is also governed by standards of fair choice that enables the selection of the best to manage the state's affairs.¹⁹⁷

- F- PNA policies violating the right to work: On 26/04/2010, the PNA laid down a decision with law No. (4) of 2010 on the prohibition and control of products of the settlements. Under this law, it prohibited dealing with the products of the Israeli settlements, where a number of Palestinian workers contribute to their production. It also prevented Palestinian workers from working in these settlements. Palestinian citizens are banned from dealing with settlement products, and Palestinian workers are also banned from working in the settlements, both in the production of these prohibited goods or in other services performed in these settlements.

This step carried pure nationalist intentions, especially in regard to the prohibition of dealing with the illegal Israeli settlements built on Palestine occupied in 1967. These intentions, however, have not been expressed in the best way that would provide the right to work for those who will be affected by this decision. These intentions have been expressed in a way that violated the constitutional right of citizens to work. They prevented Palestinian workers from working in Israeli settlements, and did not provide the appropriate national alternative for them, and did not impose on the Palestinian economic institutions any obligation to employ any worker who was prevented by the law in question from working in the settlements.¹⁹⁸

Gaza Strip

¹⁹⁷ For more information see the internal memorandum prepared by the Commission on the Public Employees Retirement System (PERS) in October 2010.

¹⁹⁸ Statistics of the Palestinian Central Bureau of Statistics in January 2010 indicate that there are about 10,800 Palestinian workers employed in Israeli settlements in the West Bank, according to the overall statistics for the year 2009.

By reviewing the measures taken by the Palestinian Ministry of Labour, we find that they are not sufficient and fall in the category of relief or temporary solutions, and do not provide citizens with the right to work nor do they reduce the rampant unemployment rates. The following are the main contributors to the situation: 1) the political division between the West Bank and Gaza Strip; 2) the difficult economic conditions; 3) the siege and closure imposed on the Gaza Strip; 4) the policies adopted by the Government are unable to achieve any significant breakthrough on the economic, social, health and educational and service levels experienced by the citizen.

Recommendations

The recommendations made here are arranged according to chapters and, where applicable, then divided between West Bank and Gaza Strip.

Chapter One: *The Right to Life and Physical Safety*

West Bank

1. To abolish the death penalty from the Palestinian legal system, it is essential that:
 - a. *The President of the PNA continue to refuse endorsement of death sentences imposed by the Palestinian courts and refer all the cases of civilians sentenced to death by military courts to competent civil courts for review.*
 - b. *The President of the PNA uses his constitutional powers of amnesty to commute the death penalty to imprisonment in all cases exercised by Palestinian courts.*
 - c. *Implementation of legal procedures allowing the appeal of death sentences imposed by military courts.*
2. The Public Prosecution should investigate murder cases to reveal their perpetrators and bring them to justice, and with particular emphasis on crimes committed under mysterious conditions and honor killing cases.
3. The President of the PNA and the Ministry of the Interior should continue to issue explicit orders to the security agencies not to practice torture or ill-treatment in the detention centers and prisons. Accordingly, they should hold whoever is involved in torturing any person accountable and ensure psychological and physical rehabilitation and compensation to the victims of torture.

4. The Public Prosecution should make serious investigations into allegations of violations of the right to life and physical safety by military service personnel, especially in the detention centers, in order to make the cases that reach the military judiciary in this regard a success and not allow those involved in such actions to escape justice.
5. The security agencies, especially the Preventive Security Agency and General Intelligence Agency, should investigate the allegations of citizens subjected to torture and ill-treatment, and take the appropriate measures against those involved in such crimes from the law enforcement bodies.
6. The Public Prosecution should play its monitoring role over the detention centers administered by the security agencies, to ensure that detainees are not subjected to torture, ill-treatment or any harmful measures, and it should also investigate any cases indicating that detainees were subjected to torture and/or ill-treatment.
7. Formal bodies should play an effective monitoring role over public facilities to make sure there are public safety precautions, as well as to activate the inspection system at work places based on the provisions of the Palestinian Labor Law. They should also optimize monitoring at swimming pools.
8. The Ministry of the Interior should appoint a Public Inspector to guarantee that the security agencies abide by the legal procedures and do not subject detainees to torture and/or ill-treatment, and also present regular reports to the Minister of the Interior to take the measures necessary for bringing those involved in torture practices to justice.
9. All security agencies holding citizens should allow **ICHR** to make regular and unannounced visits to the detention centers and refrain from blocking these visits.
10. The PNA should once again try the officers of the General Intelligence Agency who are accused of torturing Haitham Amr to death, and the Military Prosecution should provide sufficient evidence for condemning them.

Gaza Strip

1. Until the abolishment of the death penalty within the Palestinian legal system is achieved, the Government in the Gaza Strip should halt the carrying out of death sentences imposed by the courts, and do so in compliance with the increasing international demand to cancel the death penalty from national laws.
2. The bodies engaged in the work of the Public Prosecution should investigate all murder cases in order to bring the perpetrators to justice, especially in those cases of honor killing documented by ICHR this year and in previous years. They should also investigate the cases of women killed due to citizens' misuse of firearms.
3. The Government in the Gaza Strip should, through its different ministries, shoulder its responsibility for monitoring tunnels and prevent their proliferation, as well as handling the effects and results of their use in accordance with the law, using exceptional mechanisms to protect citizens against the dangers of using them and following up certain mechanisms to redress the tunnels' victims in accordance with the law.
4. The departments of the Government in the Gaza Strip should order the security agencies holding citizens to refrain from using torture and ill-treatment in the detention centers and prisons, and punish the perpetrators. They should also ensure psychological and physical rehabilitation and redress for the victims of torture.
5. The bodies engaged in the work of the Public Prosecution should investigate the allegations of infringement of the right to life and physical safety by the military personnel, especially in the detention centers, to ensure the success of the cases referred to the military judiciary in this regard, and not to allow perpetrators of these violations to escape justice.
6. The bodies engaged in the work of the Police and Internal Security Agencies should investigate the allegations of torture and ill-treatment and take the appropriate measures against the perpetrators of these crimes.

7. The bodies engaged in the work of the Public Prosecution should exercise their monitoring role over the detention centers administered by the security agencies to make sure that detainees are not subjected to torture, ill-treatment or any harmful measures, and should also investigate any cases indicating that a person or persons were subjected to torture and / or ill-treatment.
8. Formal bodies should practice effective monitoring roles over public facilities to make sure public safety precautions are observed. They should also activate the inspection system at work places based on the provisions of the Palestinian Labor Law and optimize monitoring of swimming pools.
9. The security agencies affiliated with the Government in the Gaza Strip should allow **ICHR** to make regular and unannounced visits to the detention centers administered by them and stop blocking such visits,. This especially applies to the Internal Security Agency, which does not allow ICHR to visit its detention centers.

Women's Right to Life and Physical Safety

1. Make adjustments to the stipulated legal sanctions applied in the West Bank and the Gaza Strip, particularly with regard to the abolition of laws that render the killing of women permissible, or allowing perpetrators to make excuses for their crimes as "the protection of family honor". Exoneration of offenders and mitigation of sentences against them encourage continued perpetration of such crimes.
2. Amend the Palestinian Code of Criminal Procedures or enact of a new code to regulate the procedures in cases of violence against women so as to ensure privacy and confidentiality, and take account of the needs of victimized women, as these issues imply polarization of societal and cultural dimensions that threaten women's lives.
3. Increasing the number of Social Protection Homes (shelters) to meet the increasing needs thereof, especially in the Gaza Strip, which lacks such facilities.
4. Demanding the Palestinian Police Agency in the West Bank establish Social Protection Homes in all the governorates of the West Bank and develop the

referral and cooperation mechanisms with the Ministry of Social Welfare to ensure better protection for women victims of violence.

5. Hold training courses for members of the Public Prosecution and members of the Police Agency dealing with women victims to further develop their capacities to meet the needs of this category, raise their awareness of human rights and strengthen their convictions and faith in justice.

Medical Errors and Responsibility

1. The Ministry of Health should shoulder its responsibilities in accordance with the effective laws, especially in regard to serious inspection and monitoring over hospitals, clinics and medical centers to make sure of their respect for the relevant laws and regulations and their competence in terms of financial and human resources.
2. The Ministry of Health and Palestinian Medical Association, each within the sphere of its jurisdiction, should make serious investigation into all medical-neglect related complaints.
3. Appropriate deterrent disciplinary measures must be taken against those involved in medical neglect.
4. Investigation Committees should write detailed technical reports on the different technical facts concerning medical neglect incidents being investigated, and clarify the degree of neglect as well as the persons involved. They should also set recommendations defining the penalties which should be imposed on those responsible for medical neglect.
5. The Ministry of Health and the Medical Association should cooperate to develop the professional and behavioral skills of the medical staff by organizing educational courses.
6. The Ministry of Health and Medical Association should cooperate to document medical neglect cases and establish a reliable database which can be useful for making studies on such cases and for learning from them to take better preventive measures.

7. The Public Prosecution should double its interest in investigating medical neglect cases, especially serious ones. It should pay special attention to investigating the cases which result in death by collecting forensic medical evidence to reveal and punish those responsible.

Chapter Two: *On Proper Legal Procedures*

West Bank

1. The Civil Prosecution should, based on Article 126 of the Palestinian Code of Criminal Procedures, inspect the Reformation and Rehabilitation Centers and detention centers administered by the security agencies to make sure no detainees are held outside the legal framework, and prosecute whoever violates the right to personal freedom.
2. The security agencies should: abide by the Palestinian courts' release decisions; refrain from bringing citizens before the judiciary for more than one time on the same charge; refrain from arresting released persons under the pretext of other charges following his release, thus using a revolving door policy.
3. The military judiciary should refrain from prosecuting civilians detained by the security agencies and instead refer their files to the civil judiciary.
4. Cancellation of the cooperation protocol between the Public Prosecution and Military Prosecution, which allowed the Military Prosecution to exercise its jurisdiction and powers after the Public Prosecution relinquished its role of releasing all the detainees held by the security agencies in the West Bank.

Gaza Strip

1. Stop arbitrary political detentions and release all political detainees
2. End the jurisdiction of the Palestinian Government in the Gaza Strip over the High Judicial Council in Gaza to dissolve it, and restructure the regular courts in accordance with the Palestinian Basic Law and the Law of the Judicial Authority.

3. Demand the security agencies of the Palestinian Government in the Gaza Strip to stop bringing civilians before the military judiciary and to abide by the effective Palestinian legislation bringing all civilian detainees before the competent civil judiciary to ensure a fair trial and fulfillment of rights to appear before their natural judge and appeal with a higher judicial degree.
4. Handle complaints filed against the security agencies of the Government in the Gaza Strip objectively and transparently, and punish those responsible for arbitrary detention.

Chapter Three: *The Right to Litigation*

West Bank

1. Demand the Executive Authority take appropriate measures – including instructions- to strengthen the independence of the judicial authority and guarantee security agencies' non-interference.
2. Demand the Executive Authority respect and implement courts' decisions without delay.
3. Set up a specialized committee for a reform of the judicial system. This committee shall be composed of representatives of the three authorities, ICHR, the Bar Association and civil society institutions, with a view to take practical steps to implement the basic principles of judicial authority independence.
4. Stop bringing civilians before the military courts and bring them instead before their natural judge in accordance with the provisions of the Basic Law and international standards of human rights. This is because the military justice authority has jurisdiction over military servicemen solely and lacks minimum guarantees for fair trial.
5. Enact a law of the administrative court in a manner that guarantees two-level litigation to ensure justice.

Gaza Strip

1. Revoke the decision to establish a High Justice Council to give consent for the High Judicial Council to fulfill its duties according to law.
2. Stop the prosecution of civilians before military courts and bring them instead before their natural judge in accordance with the Basic Law and international standards of human rights; the military justice authority has jurisdiction over military servicemen solely and lacks minimum guarantees for a fair trial.

Chapter Four: *The Right to Freedom of Expression and Peaceful Assembly*

Press Freedoms

1. The security agencies (General Intelligence, Preventive Security and Military Intelligence Agencies) should immediately release all the journalists detained in the West Bank. They should also discontinue bringing journalists before military courts.
2. Eliminate all the restrictions imposed by the security agencies in the West Bank (General Intelligence, Preventive Security and Military Intelligence Agencies) regarding the freedom of journalists.
3. The security agencies in the West Bank (General Intelligence, Preventive Security and Military Intelligence Agencies) should allow publication of banned newspapers (al-Risalah, Falasteen) and let them work freely, as was the case before the political division in 2007. They should also allow television and radio stations (al-Aqsa TV and al-Aqsa Radio) which were banned from working freely in the West Bank after the division.
4. Set up independent committees of human rights organizations and the Palestinian Union of Journalists to investigate violations of journalists' rights and hold perpetrators of these violations accountable in both the West Bank and the Gaza Strip.
5. Eliminate restrictions imposed by the security agencies in the Gaza Strip (Internal Security and Police Agencies) regarding the freedom of journalists.

6. The security agencies in the Gaza Strip (Internal Security and Police Agencies) should allow publication of banned newspapers (al-Ayyam and al-Hayyat) and allow them to work freely as the case was before the division in 2007. They should also allow television and radio stations (Palestine TV and Palestine Radio Station) to work freely after being closed down following the political divide.
7. The security agencies in the Gaza Strip (Internal Security and Police Agencies) should allow journalists' access to the Gaza Strip with no restrictions.

Freedom of Expression

1. The security agencies in the West Bank (General Intelligence, Preventive Security and Military Intelligence Agencies) should put a stop to questioning, arresting and prosecuting citizens against the backdrop of their opinions and views.
2. The security agencies (General Intelligence and Preventive Security Agencies) should return the items that they confiscated (computers, mobiles) from their owners upon detention against the backdrop of opinion and expression.
3. The security agencies in the Gaza Strip (Internal Security and Police Agencies) should stop summoning and detaining citizens against the backdrop of their opinions and expression.
4. The security agencies in the Gaza Strip (Internal Security and Police Agencies) should stop all the measures depriving citizens of the right to freedom of opinion and expression.

The Right to Belief and Religious Rites

1. The President of the PNA should issue a decree revoking the so called "Personal Affairs Prosecution", for its contravention of constitutional provisions, as well as the principle of Sharia' public right because it is a contradiction with the democratic trend of the Palestinian Basic Law.

2. The Sharia' judiciary should refrain from considering cases such as ending a marriage contract for apostasy because they constitute a clear breach of the Palestinian Basic Law and international human rights standards.

The Right to Peaceful Assembly

1. The security agencies in the West Bank and in the Gaza Strip (General Intelligence, Preventive Security, Military Intelligence, Internal Security and Police agencies) should immediately stop detaining citizens for participating in peaceful assemblies.
2. The security agencies in the West Bank and in the Gaza Strip (General Intelligence, Preventive Security, Military Intelligence, Internal Security and Police agencies) should allow the organization of peaceful assemblies.
3. Independent investigations into the incidents where participants in peaceful assemblies in the West Bank and the Gaza Strip were assaulted should be conducted.

Human Rights Defenders

1. The competent authorities in the West Bank should open investigations in cases where human rights defenders were subjected to assaults by the security agencies, and the perpetrators of such assaults should be brought to justice.
2. The security agencies in the West Bank (General Intelligence, Preventive Security and Military Intelligence) should allow all human rights defenders and human rights organizations to visit the detainees held in the detention centers administered by them.
3. Both the Ministry of the Interior in the West Bank and the Ministry of the Interior in the Gaza Strip should reopen civil society organizations and associations which they had shut down.
4. The security agencies (General Intelligence and Preventive Security) should return all the belongings confiscated from the defenders of human rights in contravention of law.

5. The human rights defenders should be allowed to visit the detainees held by the security agencies (Police and Internal Security) and administered by the Ministry of the Interior in the Gaza Strip.

Chapter Five: *The Right to Establish Associations*

West Bank

1. The Ministry of the Interior should carry out the decisions of the High Court of Justice, revoking the decisions of appointing interim boards for a number of associations in contravention of the law.
2. The Ministry of the Interior should abide by the provisions of the Law of Charitable Associations and Civil Society Organizations No (1) of 2000 and Its Executive Regulation No (9) of 2003 upon taking any relevant measures.
3. The competent authorities should immediately refrain from dissolving associations and / or interfering in their affairs in contravention of the law.
4. The Monetary Authority should order banks to allow the associations registered according to the law to open bank accounts without a special permit from the Ministry of the Interior.
5. The security agencies should stop detainment of Directors of Associations which had been shut down.
6. The security agencies should return the money confiscated from these associations to their accounts.

Gaza Strip

1. The Ministry of the Interior should abide by the provisions of the Law of Charitable Associations and Civil Society Organizations No (1) of 2000 and Its Executive Regulation No (9) of 2003 upon taking any relevant measures.
2. The security agencies should immediately refrain from dissolving associations and / or interfering in their management and internal audit in contravention of the law.

3. The security agencies should stop detainment of Directors of Associations which had been shut down.
4. The competent authorities should reopen the associations they shut down in the Gaza Strip.
5. The security agencies should return the money they confiscated from these associations to their accounts.
6. The Ministry of the Interior in the Gaza Strip should seriously investigate robberies that targeted associations in Gaza.

Chapter Six: The Right to Movement and Travel

West Bank

1. The Ministry of the Interior in the West Bank should carry out the decision issued by the President on August 25, 2008 ordering it to provide Gaza with passports and revitalize the communications mechanism, even if exceptionally, between the relevant authorities to enable the citizens of the Gaza Strip to obtain passports.
2. The security agencies, especially the General Intelligence, should refrain from denying citizens the right to acquire passports under security pretexts.

Gaza Strip

1. The relevant authorities in the Gaza Strip should stop restricting citizens' from freedom of movement and travel.
2. The relevant authorities in the Gaza Strip should stop forbidding citizens from entering or exiting the Gaza Strip for considerations related to the state of the ongoing divide.

Chapter Seven: *The Right to Work*

West Bank

1. The PNA should include effective employment policies into its public plans to reduce unemployment in Palestine.
2. The economic policies of the PNA should correspond with employment and job creation policies. It should reconsider the matter of banning Palestinian laborers from working in the Israeli settlements to finding a balance between the national aim of boycotting work in Israeli settlements, due to their illegitimacy, and binding the Palestinian economic establishments and factories to hire a number of the Palestinian laborers who lost their jobs in the settlements.
3. The PNA should invest some of the financial aid it receives into job generating projects and help achieve economic development.
4. There should be an effective social security system for the workers of the private sector suiting the nature of their work and taking into account the difference between working in this sector and working in the public sector.

Gaza Strip

1. The Government in the Gaza Strip should include effective employment policies in its public plans to reduce unemployment in Palestine.
2. The Government the Gaza Strip should review and increase its temporary employment programs both quantitatively and qualitatively in order to meet the urgent needs of the citizens in the Gaza Strip, reduce poverty and pauperism and tackle increasing employment rates.
3. Set provisional programs securing at least the minimum level of social aids, meeting the minimum standard of decent life for the poor.

Part III

Accountability for Human Rights Violations

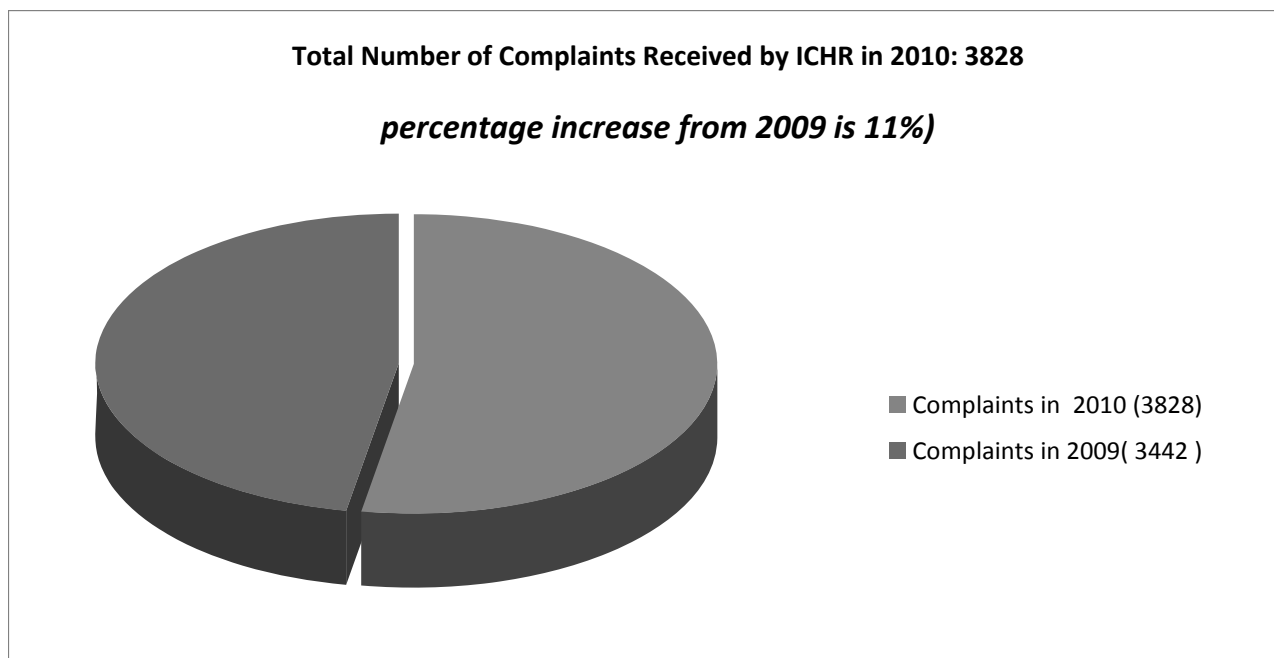
Chapter One

Patterns of Human Rights Violations Based on ICHR Complaints Received

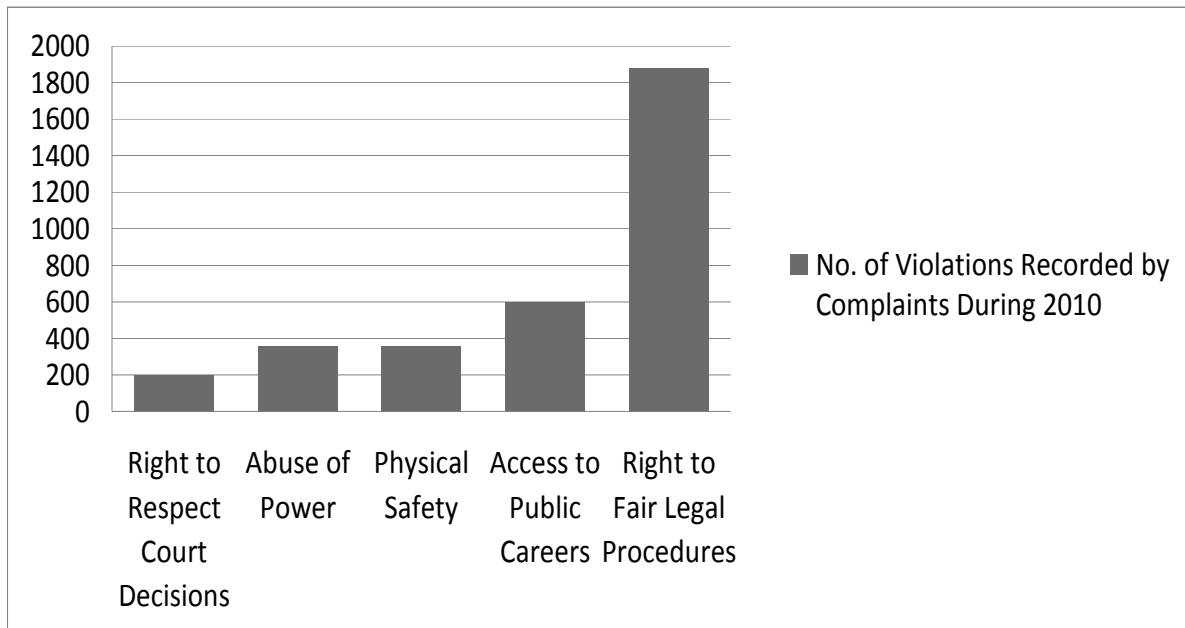
Complaints received by ICHR are an essential and important source in determining patterns of violations against Palestinian citizens, and an indication of the status of human rights. According to ICHR statistics in 2010, it received a total of (3,828) complaints, including human rights violations in the West Bank and Gaza Strip (WBGs). From these complaints, ICHR found the continued patterns of violations observed during previous years albeit at different paces.

I - Number of Complaints Received by ICHR During 2010

The number of complaints received by ICHR during 2010, compared with 2009, is an indication of deterioration or improvement in the situation of human rights in Palestine. During 2010, ICHR received (3,828) complaints on human rights violations, and attacks on public freedoms, whether by PNA civil or security service in the West Bank and Gaza Strip, of which there were (2,940) complaints in the West Bank, and (888) complaints in the Gaza Strip. However, ICHR received during 2009 (3,442) complaints, of which (2,449) in the West Bank and (994) in the Gaza Strip. These numbers show an increase in the number of complaints in 2010 compared to 2009 by (11%). It should be noted that the steady increase in the number of complaints received by ICHR during the past year and the preceding years is attributed to several factors, and one of the primary factors being the continued political division and its aggravation, which led to the deterioration of rights and freedoms and an increase in the number of human rights violations against Palestinian citizens on the one hand, and the spread of ICHR in the governorates of the West Bank and Gaza Strip, and the increased confidence of citizens in ICHR and its role as a national ombudsman, and a Complaint Office on the other hand.



ICHR found, through its analysis of complaints received during 2010, the continued patterns of violations observed during the previous years, though at different paces. The most prominent abuses are: 1) arbitrary detention without due process; 2) violations of the right of equal access to a public career in the public sector; 3) violations of the right to physical integrity, and protection from torture and ill-treatment, cruel or degrading to human dignity; and 4) violations relating to non-implementation of court decisions and the abuse of power. The table below shows the most prominent patterns of violations recorded by ICHR in accordance with the complaints received during the year 2010.



II - Division of Complaints by Type of Violations: *the most widespread violations*

1- Citizens' complaints in Regard to Violations of the Right to Fair Legal Proceedings (*Arbitrary Detention*)

ICHR monitored, in accordance with the complaints it received during 2010 and its analysis of the violations set forth therein, a noticeable increase in violations of the right to fair and proper legal procedures. Lack of due process in detention and arrest was the largest share of patterns of violations recorded by ICHR. The number of complaints, which included violations of the right to fair legal procedures, in particular arbitrary arrest and detention due to political background, reached up to (1,880) complaints until the end of December 2010, of which (1,559) complaints generated from the West Bank, and (321) complaints were made within the Gaza Strip.¹⁹⁹

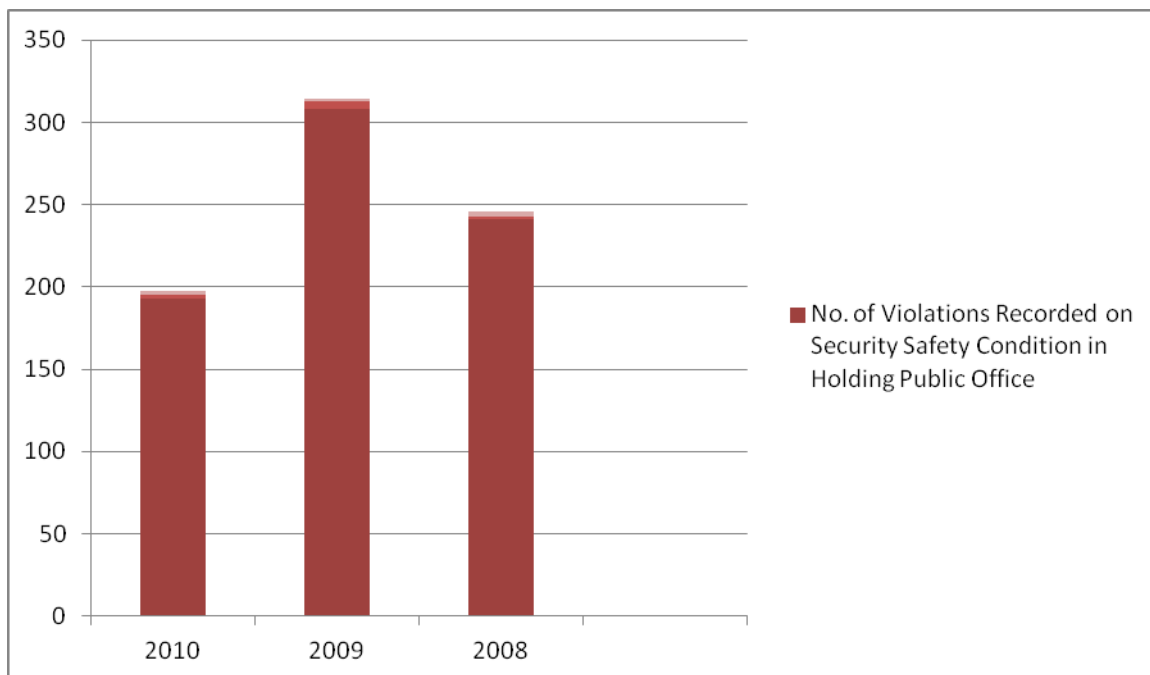
2- Citizens' Complaints about Violations of Rights Relating to Public Service

During the period covered by the report, citizens' complaints about the violation of official rights to public service continued. The number of complaints received by ICHR on the right to hold public office reached nearly (400) complaints in the West Bank and Gaza Strip. These violations included the following violations: (50) violations on the exercise of discrimination policy and unfair competition in employment in the West Bank; and (366) violations on the erosion of rights to public office, such as delays in promotions, or referrals to retirement, or the erosion of financial rights, and such violations focused in the West Bank. The number of violations relating to unfair dismissal from public office amounted to (193) violations, all of which focused on the West Bank.

¹⁹⁹ According to the classification system adopted by ICHR in its manual for following up complaints, the citizen's right to fair legal procedures also considers the following elements:

- A. Arbitrary detention, which is without a warrant or without an indictment or false or frivolous accusation, or without a presentation to the public prosecutor or the magistrate, or arrest without trial.
- B. Detention based on political background.
- C. The right to a lawyer or a lawyer appointed by the court.
- D. The right to visits from family and lawyer.
- E. The right to treatment on the basis of innocence until guilt is proven.

According to this classification, a complaint may include one violation or multiple violations at the same time of any of the rights and freedoms.



By analyzing the affidavits of the complainants, ICHR discovered that most violations of the right of equal access to public service are limited to the requirement of security safety, the approval of the Security Services for work appointments, the exclusion of employment applications, and competition for employment in public service due to the non-approval of the Security Services, all in violation of the Civil Service Law and conditions for appointment contained therein.

3- Citizens' Complaints about Ill-treatment, Cruel Treatment and Torture during Detention

Violation of the right to physical safety and protection of the body from exposure to torture and ill-treatment occupies a third situation wherein violations were observed by ICHR during 2010. During the reporting period, ICHR continued to receive complaints, including violations of human rights to personal safety and violations of treatment in a decent and humane detention manner during arrest or investigation by the competent authorities. The number of complaints received by ICHR during 2010 amounted to (381) in the West Bank and Gaza Strip, of which (220) complaints were registered against the Internal Security and Police Services in the Gaza Strip. However, the West Bank's share of those complaints was (161), which was distributed among the Security Services as follows: (54) complaints against the Preventive Security Service, (30) complaints

against the General Intelligence Service, (71) complaints against the Civil Police Apparatus, and (6) complaints against the General Intelligence Service.

The following table shows the number of complaints and their distribution among the Security Services by month during the year 2010.

| Month | Preventive Security Service | General Intelligence Service | Police/West Bank | Intelligence Service | Internal Security/Gaza (includes police) |
|--------------|-----------------------------|------------------------------|------------------|----------------------|--|
| January | 1 | 1 | 2 | - | 28 |
| February | - | 1 | 9 | - | 23 |
| March | 3 | 4 | 3 | - | 14 |
| April | 2 | 1 | 11 | - | 25 |
| May | 5 | 6 | 2 | - | 12 |
| June | 2 | 5 | 5 | 3 | 15 |
| July | 5 | - | 6 | - | 6 |
| August | 2 | 3 | 12 | 1 | 9 |
| September | 3 | 1 | 6 | - | 16 |
| October | 13 | 4 | 7 | - | 39 |
| November | 12 | 1 | 2 | - | 39 |
| December | 6 | 3 | 6 | 2 | 20 |
| Total | 54 | 30 | 71 | 6 | 220 |
| | | | 161 | | 220 |

No. of complaints in the West Bank (161) and (220) in Gaza Strip

4- Citizens' Complaints about the Authorities' Lack of Respect for the Provisions of the Judiciary

The Palestinian Basic Law noted that the provisions of the Palestinian judiciary are enforceable, and that all those who do not implement these provisions shall be punished by imprisonment and dismissal from service when he is a public employee. In this regard, ICHR received a number of complaints in which citizens alleged the failure of different official bodies to implement judicial decisions of their own. It recorded a total of (181) violation in this area, mostly focused on the release of persons detained by the Security Services, as well as the implementation of financial and legal decisions for these persons which were

issued in their favor.²⁰⁰ This pattern of violation has been documented against security agencies in the West Bank only.

5- Citizens' complaints about the Official Authorities' Arbitrary Use of Power

In 2010, ICHR received approximately (300) complaints about the arbitrary use of power by the official authorities, compared with (227) complaints in 2009, indicating a significant increase in the abuse of power. In reviewing the complaints for the year 2010, they turned out to be distributed between the West Bank and Gaza Strip, generally at comparably close rates. These complaints included procedures in which the official authorities were abusive in the use of its rights. These authorities were varied between security and civil authorities. Examples include: 1) searches conducted by the Security Service without a warrant; 2) confiscation of property and cash from citizens; 3) cancellation of licenses of some citizens; and 4) confiscation of citizens' identity cards, passports and health insurance cards.

6- Citizens' Complaints concerning Violations of the Right to Life

Violations of the right to life were concentrated in the Gaza Strip, while no complaints had been recorded in the West Bank during the year 2010. In this regard, ICHR received (22) complaints in the Gaza Strip, compared with (35) complaints in 2009 in the West Bank and Gaza Strip. Complaints received during the year 2010 were distributed as follows: (2) complaints about death as a result of misuse of arms, (1) complaints about death as a result of medical negligence, and (19) complaints about the issuing of death sentences against citizens, received from citizens sentenced to death currently held in Gaza Central Prison. During 2010, (5) death sentences were implemented against citizens in Gaza, including a number of those who submitted these complaints.²⁰¹

²⁰⁰ For more information, see the monthly reports on human rights violations published on ICHR's website: www.ichr.ps

²⁰¹ On 15/04/2010, death sentences were carried out against ⁽¹⁾ Nasser Salameh Abu Freeh, 28, from Beit Hanoun, and ⁽²⁾ Mohammed Ibrahim el-Sabe', 37, from Rafah after being convicted of collaborating with the enemy. On 18/05/2010, death sentences were carried against ⁽¹⁾ Amer Saber Jundiye, 41, ⁽²⁾ Matar Harb Shobaki, 35, and ⁽³⁾ Rami Said Juha, 29, after being convicted of murder. All are residents of Gaza City.

7- Citizens' Complaints about Violations of the Right to Peaceful Assembly and Formation of Associations

During 2010, the number of complaints received by ICHR totaled (42) complaints about the violation of the right to peaceful assembly and formation of associations, compared with (37) complaints in 2009, and distributed as follows: (18) in the West Bank and (24) in the Gaza Strip; (28) complaints about the violation of the right to peaceful assembly, and (14) complaints about the violation of the right to form associations.

8- Citizens' Complaints about Violations of the Right to Freedom of Movement, Travel and Residency

During 2010, it was noticed that this violation was concentrated in the Gaza Strip. The number of complaints received by ICHR was (73) complaints, of which (70) complaints involved the Gaza Strip and (3) complaints concerned the West Bank, compared with (41) complaints in 2009 in both the West Bank and Gaza Strip. These complaints dealt with: 1) preventing citizens in the Gaza Strip from movement and travel; 2) placing restrictions on freedom of movement, travel and residency, without a warrant by members of the Security Services of the Interior Ministry "Police and Internal Security Services" during the passage of citizens through Beit Hanon "Erez" Crossing to travel to the West Bank, or through Rafah Border Crossing to travel to Egypt; and 3) confiscation of passports of many citizens. Furthermore, the Interior Ministry in Ramallah refused applications submitted by citizens from the Gaza Strip seeking to obtain or renew a passport, and in the wake of the Ministry's continued prevention from providing Gaza Strip with passports for more than two years.

9- Citizens' Complaints about Violations of the Right to Health Care

The number of complaints received by ICHR during 2010 amounted to (65) in the area of the right to health care. These complaints were distributed throughout the West Bank and Gaza Strip, compared with (44) complaints in 2009. The complaints were distributed as follows: (37) on the violation of the right to obtain necessary and equal medical service, (25) violations on the responsibility for medical errors and (3) violations on public health.

III - Public Authorities on which Complaints Focused

By classifying 2010 complaints in terms of the respondent authority, it turned out that there are two types of respondents: civilian authorities and security authorities. The number of civil complaints during 2010 reached (1,086) in the West Bank and Gaza Strip, constituting (28%) of the total number of complaints. Comparing this percentage with last year (2009), which amounted to (40%), it was found on one hand to have decreased at the expense of an increase in the percentage of security complaints. On the other hand, the number of security complaints received by ICHR during 2010 was (2,769), constituting (72%) of the total number of complaints in the West Bank and Gaza Strip. Comparing this percentage with the year 2009, it turned out that it increased from the previous year, in which the percentage of security complaints was (60%).

1- Civil Authorities

Complaints against civil authority “ministries and public institutions” were received in the West Bank and Gaza Strip due to the continued status quo in Palestine and the continued political division since mid-2007. This situation resulted in the presence of two authorities in the West Bank and Gaza Strip, leading to duplication in the work of institutions which provides services to citizens.

A. Council of Ministers

West Bank: ICHR received (14) complaints in 2010 against the Council of Ministers, compared with (130) complaints in 2009, mostly focusing on any one of five areas: 1) requesting the disbursement of financial allowances for the employees, or requesting other job rights; 2) requesting the disbursement of allowances for workers whose contracts were terminated for more than a year; 3) the right to education; 4) the right to property and of the non-issuance of possession decisions; and 5) the right of the Council of Ministers to perform legal duties imposed by law.

Gaza Strip: ICHR received (7) complaints against the Council of Ministers in the West Bank, mostly focused on the re-payment of salaries which were suspended following the political division taking place since the mid-year 2007. This pertained to government employees, civilian and military, from the Gaza Strip, under the “pretext of lack of commitment to legitimacy”. ICHR followed up on

such complaints with the Prime Minister, though without achieving a satisfactory result.

B. Ministry of the Interior

West Bank: ICHR received (67) complaints against the Ministry of the Interior, compared with (59) complaints in 2009, mostly focusing on 1) the violation of the right to physical safety as a result of misuse of weapons; 2) the arbitrary use of power against citizens by the Interior Ministry; 3) the right of citizens to public service and to live in a clean environment; 4) the right of citizens to housing; 5) the right of citizens to obtain a passport which enables them to move freely; and 6) the right to hold public office.

Gaza Strip: ICHR received (66) complaints in 2010 against the Ministry of the Interior, compared with (712) complaints in 2009. The complaints during the year 2009 that were registered against the security services in the Gaza Strip were registered against the Ministry of the Interior as the security authority. To explain this gap, during 2010, the Interior Ministry was registered as a civilian authority and the complaints were registered against the security services in isolation from the Interior Ministry for accuracy. Most of the complaints focused on 1) violation of the right to life; 2) exposure to torture and physical and moral abuse, and cruel and degrading treatment during arrest; 3) detention on political grounds; 4) attack on non-governmental organizations, and the closure of their premises and confiscation of their assets; and 5) violations of the right to peaceful assembly and preventing citizens from organizing peaceful marches or rallies on several festive occasions, and arresting or summoning those in charge.

C. Ministry of Finance

ICHR received (115) complaints during 2010 against the Ministry of Finance in the West Bank and Gaza Strip, compared with (156) in 2009. The complaints were distributed as (115) complaints in the West Bank and (63) complaints in the Gaza Strip. Most of the complaints focused on: 1) the suspended salaries of many employees both in the West Bank or Gaza Strip, under the pretext of lack of commitment to the so-called decisions of the “legitimate government”; 2) the payment of financial dues to citizens; 3) the settlement of salaries; 4) demanding correction of employment conditions, such as charging occupational bonuses and seniority bonus; 5) payment of pensions or their adjustment; 6) payment of financial dues for unemployment; 7) payment of advances on wages; and 8)

payment of the amounts approved by the Council of Ministers for the demolition of homes by the Israeli occupation forces. Additionally, the complaints included a number of other violations, such as abuse of power, the right to respect the provisions of the judiciary, and the right to obtain official documents.

D. Ministry of Health

West Bank: ICHR received (89) complaints during 2010 against the Ministry of Health, compared with (121) complaints in 2009, mostly focusing on two aspects, the first being the staff of the Ministry of Health. Most of the complaints in this aspect focused on employment rights; they related to: 1) the provision of services to the people; 2) demanding the coverage of treatment expenses; 3) failure to provide health services and outpatient medical referrals; 4) investigation in cases of medical negligence; 5) failure of hospitals to receive those with certain medical conditions; 6) demanding the issuance of health insurance, provision of necessary medicines, and provision of medical staff for clinics and hospitals.

Gaza Strip: The number of complaints received by ICHR during 2010 against the Ministry of Health amounted to (26) complaints, compared with (44) complaints in 2009. These complaints focused on: 1) failure of the Ministry of Health to provide health care service; 2) demanding investigations into suspected deaths occurring in hospitals, which were the result of medical error or neglect; 3) medical referrals for treatment abroad; 4) access to health insurance; 5) health insurance cards for PNA military personnel; 6) the requirement for medical certificates and medical reports.

E. Ministry of Education and Higher Education

West Bank: ICHR received (229) complaints during 2010 against the Ministry of Education and Higher Education, compared with (287) complaints in 2009. Most of the complaints focused on the Ministry of Education and Higher Education in two aspects. The first relates to the employment affairs and the rights of public employees, constituting (90%) of the complaints against the Ministry. The most prominent issues in the field of public service are: 1) arbitrary dismissal; 2) suspension of recruitment procedures; 3) demanding that years of service be counted as years of experience; 4) demanding the payment of financial dues; 5) non-appointments in education careers; 6) non-implementation of court decisions; 7) and arbitrary employment transfer. The second relates to the services provided by the Ministry, such as demanding the disbursement of scholarships, covering tuition fees, investigations in exposure to violence within

the schools, and objections to the curriculum. The complaints against the Ministry included such violations as the right of access to public service, the right to participate in holding public jobs, the rights of its occupants, and other rights of the public employee, and the rights of children and adolescents, particularly their protection from social and economic exploitation as well as abuse.

Gaza Strip: In 2010, ICHR received (11) complaints against the Ministry of Education and Higher Education, compared with (16) complaints in 2009. They were divided into (8) complaints against the Ministry of Education and Higher Education in Gaza, and (3) complaints against the Ministry of Education and Higher Education in Ramallah. These complaints focused on obtaining official documents, and education certificates.

F. Ministry of Social Affairs

West Bank: ICHR received (83) complaints during 2010 against the Ministry of Social Affairs, compared with (47) complaints in 2009. The majority of these complaints followed-up by ICHR related to two areas: the first in the area of employment rights, such as arranging appointments in public office, obtaining promotions and objections to placement within the structure; the second concerns services, such as the adoption of social cases within the Ministry's different programs. The complaints submitted against the Ministry included the following violations: 1) abuse of power; 2) the right to holding a public job and the rights of its occupants; 3) the right to social security; and 4) citizens' rights to security from physical or mental abuse.

Gaza Strip: ICHR received (20) complaints against the Ministry of Social Affairs, compared with (13) complaints in 2009. The complaints focused on: 1) the right to social security; 2) the recognition of citizens as social cases for obtaining a living subsidy; 3) provision of health insurance for the disabled; 4) and a complaint about the attack on a student by the director and a teacher in the vocational training center affiliated to the Ministry of Social Affairs.

G. Ministry of Local Government

West Bank: ICHR received (33) complaints against the Ministry of Local Government, compared with (62) complaints in 2009. The complaints focused on: 1) service matters handled by the local authorities and municipalities supervised by the Ministry of Local Government; 2) employment matters related to four

areas of concern. Those are (a) the right to participate in holding public jobs and the rights of the occupants of those jobs, (b) employment rights for workers in public office, (c) implementation of decisions taken by the Supreme Court of Justice for a number of citizens, (d) objection of citizens and a number of local councils to the intervention of the Ministry of Local Government in a number of their internal affairs.

Gaza Strip: ICHR received (13) complaints against the Ministry of Local Government in Gaza, compared with (10) complaints in 2009. Such complaints were against the Ministry of Local Government as the responsible authority for the work of municipalities and local councils. In addition to those complaints, ICHR received (9) complaints against municipalities directly on the same violations. The complaints, received against the Ministry of Local Government, municipalities and local councils, focused on violations related to the right to receive public service, such as drinking water supplies, repair of water pipes, supply of agricultural irrigation water, sanitation services, health hazards, and paving roads. Also a number of these complaints focused on the failure to grant licenses to retail shops, failure to hand in leased club premises from the municipality, and terminating the membership of people in the local councils.

H. General Personnel Council

ICHR received during 2010 (31) complaints against the General Personnel Council in the West Bank and Gaza Strip, compared with (32) complaints in 2009. The majority of the complaints focused on: 1) the demand to grant transportation allowances; 2) granting employment grades; 3) modification of job titles; 4) calculating years of service as years of experience; 5) official or formal employment after a probation period; and 6) demanding access to specific certificates for the settlement of pensions.

2- Judicial Authorities, including the Higher Judicial Council, Public Prosecution and Military Justice

A. Higher Judicial Council

ICHR received (14) complaints during 2010 against the Higher Judicial Council in the West Bank, compared with (29) complaints in 2009. The complaints focused on: 1) the right to fair legal proceedings; 2) the right to appoint an attorney; 3)

the right to family visits; 4) the right to a competent, open and impartial court; 5) and the right of citizens in the Gaza Strip with a court ruling from Gaza Strip courts to implementation of this ruling in the West Bank.

B. Public Prosecution

West Bank: ICHR received (9) complaints in 2010 against prosecutors, compared with (21) complaints in 2009. The majority of the complaints received focus on the following violations: 1) the right to fair legal proceedings; 2) the right to participate in holding public jobs; 3) and the right of citizens to obtain official documents and in accordance with the law.

Gaza Strip: ICHR received (11) complaints in 2010 against prosecutors in Gaza, compared with (15) complaints in 2009. Complaints focused on the failure of the prosecution to perform its legal duty to investigate citizens' complaints about the incidents and attacks suffered by them, and demanding to have access to forensic reports in cases of death.

C. Military Justice

ICHR received (40) complaints in 2010 against the military justice in the West Bank, compared with (16) complaints in 2009. The complaints focused on the following violations: 1) the right to fair legal procedures; 2) the right to appoint an attorney; 3) the right to family visits; 4) the right to a competent, open and fair court; 5) the right to freedom of opinion and expression; 6) the right of citizens to personal security and protection from torture and threat during arrest; 7) the right for the official authorities' respect for the provisions of the Palestinian judiciary; and 8) the discontinuation of considering civilian files before military courts.

3- Security Authorities, including Security Services in the West Bank & Gaza Strip

A. Civil Police with its Various Sections

West Bank: ICHR received (384) complaints during the year 2010 against the civil police, compared with (256) complaints in 2009. Complaints received during 2010 included various police departments, including civil police, by (188), General Investigations by (20) complaints, Criminal Investigation by (19) complaints, anti-

narcotics by (15) complaints, public administration of the reform and rehabilitation centers by (142) complaints.

The majority of the complaints received by ICHR against the civil police focused on: 1) holding detainees in jails for longer periods than permitted by law; 2) demanding the transfer of military prisoners to prisons of their own; 3) taking the necessary measures in regard to arresting attackers; 4) bringing detainees before the competent judicial authorities; 5) exposure to torture and ill-treatment in jail; 6) searching homes without due process of law; 7) demanding improvement of detention conditions; and 8) providing necessary medical treatment for detainees.

Complaints submitted to ICHR against the different police branches included the following violations: 1) the right to fair legal procedures; 2) the right to separate prisoners; 3) the right to appoint an attorney; 4) the right to family and lawyer visits; 5) the right to medical care inside prisons; 6) the right of citizens to a competent, open and fair court; 7) and the rights of children and adolescents and their protection from social and economic exploitation.

Gaza Strip: ICHR received (267) complaints in 2010 against the civil police, compared with (227) complaints in 2009. Complaints received during 2010 included various departments of the police, including civil police (160), the General Investigation Service (52), anti-narcotics (24), public administration of the reform and rehabilitation centers “Gaza Central Prison”.

The majority of the complaints focused on the following violations: 1) the right to fair legal procedures; 2) the arrest of citizens, and home searches without a warrant issued by the competent authority; 3) detention of citizens in jails in the police stations for periods beyond those identified by the law, including continued detentions for periods as long as several months, and occasionally continued detention in jails after the court rules against the charges; 4) the practice of torture by the police, especially members of the General Investigation and members of anti-narcotics; 5) cruel and degrading treatment while in detention; and 6) the living and health conditions of detention in non-alignment with the law. The complaints received against the public administration of the reform and rehabilitation centers focused on three areas, being the lack of services related to living and health conditions inside Gaza Center for Reform and Rehabilitation “Central Prison”, the exposure of a number of inmates to physical assault and “beatings” inside the center as a punishment and without

justification, and the non-separation between inmates set forth in the law, and discrimination among inmates by the administration.

B. Preventive Security

ICHR received (924) complaints in 2010 against the Preventive Security Service in the West Bank, compared with (570) complaints in 2009. The complaints focused on: 1) the investigation into the conditions of detention and arrest; 2) the failure to follow legal procedures; 3) torture, ill-treatment and violence; 4) not allowing the families to visit their detained relatives; 5) failure to bring detainees before the competent judicial authorities; 6) delay or failure to implement court decisions; 7) provision of medical treatment during arrest; 8) house searches without a warrant; and 9) confiscation of property and other special items. Complaints submitted against the Preventive Security Service included the following violations: 1) violation of the right to fair legal proceedings, such as arbitrary arrest and detention on political background and detention without trial; 2) the right of citizens to obtain public services; 3) the right of citizens to a competent, open and fair court; 4) the right of citizens to participate in holding public jobs; 5) the right of citizens to private property; and 6) the right of citizens to personal security and not being exposed to torture, cruel and degrading treatment or to physical or moral assault.

C. General Intelligence Service

ICHR received (632) complaints in 2010 against the General Intelligence Service in the West Bank, compared with (342) complaints in 2009. Complaints focused on: 1) failure to follow legal procedures during arrest and detention; 2) failure to implement court decisions; 3) exposure to torture and ill-treatment in places of detention; 4) arbitrary detention on political grounds; and 5) the confiscation of private property. Complaints received by ICHR included violations on the following rights: 1) the right to life; 2) attack on citizens' financial rights; 3) freedom from abuse of power; 4) the right to fair legal proceedings, such as arbitrary arrest and detention on political grounds; 5) citizen's right to peaceful assembly; 6) the right to obtain public services; and 7) the right to hold public jobs.

D. Military Intelligence

ICHR received (130) complaints in 2010 against the Military Intelligence Service, compared with (104) complaints in 2009. The majority of the complaints received

against the Service focused on: 1) the need for investigating the conditions of detention; 2) exposure to torture and ill-treatment; 3) failure to bring detainees before the competent judicial authorities; 4) failure to follow legal procedures; and 5) the arrest and detention of civilians, despite it being a military service.

E. Internal Security Service

ICHR received (230) complaints in 2010 against the Internal Security Service in the Gaza Strip, compared with (373) complaints in 2009. The majority of the complaints focused on: 1) the failure to follow legal procedures in arrest, detention, and home searches; many home-owners claimed they were searched without a warrant issued by the competent authority; 2) torture and cruel treatment during detention; 3) failure to announce a detainee's whereabouts according to the law; 4) failure to allow relatives to visit detainees; 5) failure to allow lawyers to meet detainees in accordance with the law; 6) failure to bring detainees before the judicial authorities within the period specified by law; 7) failure to transfer detainees to the Central Prison; and 8) poor health conditions inside the center.

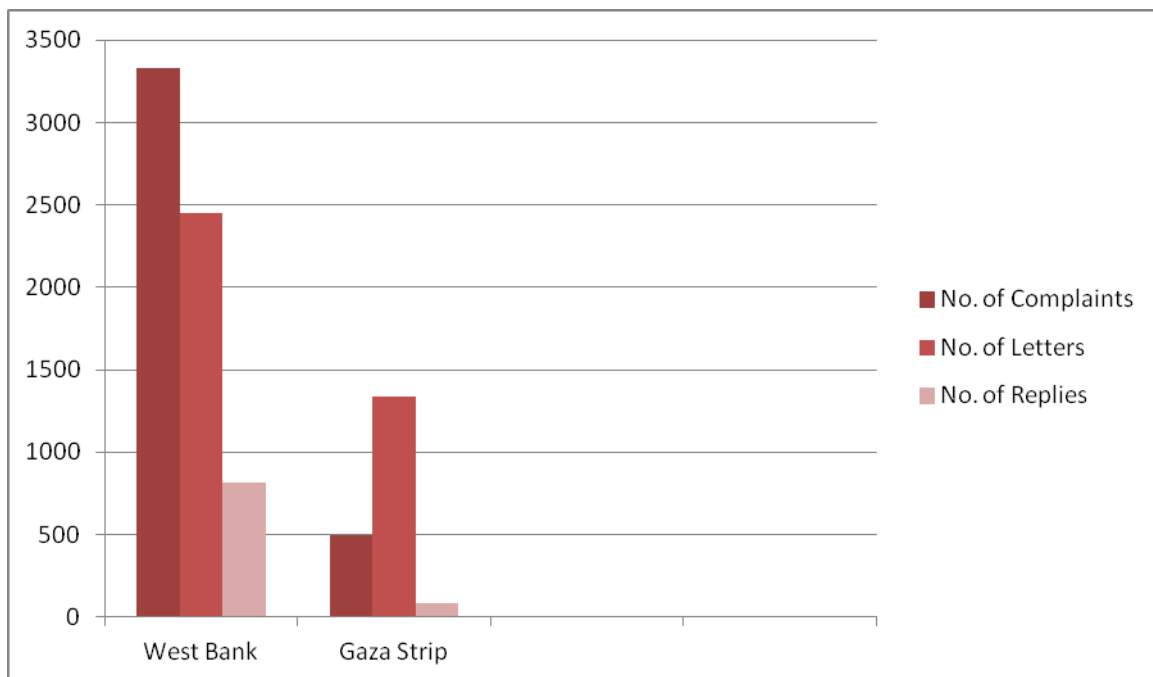
IV- Tracking Complaints by Follow-ups and Replies

ICHR followed up such complaints through correspondence with the parties who or which were objects of the complaints. In this framework, ICHR sent (3,782) letters during 2010 to the parties concerned, and this includes original letters and reminders. Through its offices in the West Bank, it sent (2,448) letters; from its Gaza Strip offices, (1,334) letters were sent.

In 2010, ICHR received (1,409) written replies to official correspondence, compared with (904) replies in 2009. Of those responses, (818) were from the West Bank authorities (52%) while only (86) responses were from the authorities in the Gaza Strip (8%). Compared with 2009, ICHR has noticed an increase in responses received in the West Bank in 2010 to its official correspondence, while witnessing a decrease in responses from the Gaza Strip (41% and 15.5% respectively).

Despite the high number of written responses received by ICHR from the authorities in the West Bank, it continued to receive typical replies, especially from the Security Services, which often do not respond to its demands or deny the allegations submitted by citizens without taking any action to ensure the

accuracy of these allegations. To overcome this, ICHR included the correspondence of legal texts that have been violated, but that did not change anything; On the contrary, typical replies continued.

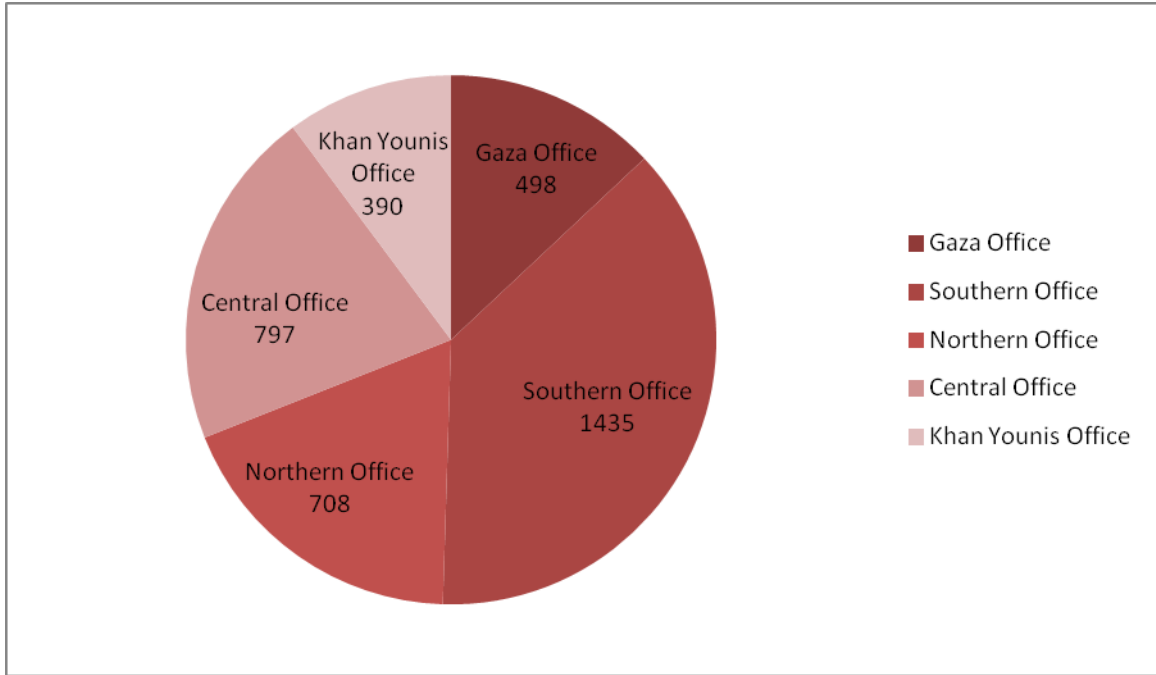


V - Division of Complaints by Complainants

This section may help in developing a data base or index as to whether violations are primarily a local problem, or a problem with a more widespread and national dimension. This may help to understand the PNA's general policies, or contribute to identifying the most marginalized areas, as well as indicate whether there has been an active presence of ICHR in these areas.

According to this division, ICHR's Office in the southern part of the West Bank received the largest number of complaints (1,435). The Office includes the governorates of Hebron and Bethlehem. The Central Office, which includes the governorates of Ramallah, East Jerusalem and Jericho, occupied the second highest number in terms of the number of complaints (797). The Northern Office, which includes the governorates of Nablus, Jenin, Tulkarem, Salfit, Qalqilya and Tubas, ranked third in terms of the number of complaints by (708). The Gaza Office, which includes the governorates of Gaza, northern Gaza and Deir al-Balah, ranked fourth place. It received (498) complaints. Finally, the Office of Khan Younis, which includes the governorates of Khan Younis and Rafah, ranked fifth in terms of the number of complaints (390).

The Geographical Distribution of Complaints among ICHR's Offices Of the Total Number of Complaints (3,828)



Chapter Two

Mechanisms and Procedures for Accountability in Human Rights Violations

In 2010, the Palestinian Government in the West Bank tended to constitute and activate new internal control bodies, such as expanding the authorities of the Inspector General of Palestinian General Intelligence (PGI), appointing an Inspector General, and establishing the Office of the Ombudsman and Human Rights at the Police Service. The Ministry of the Interior in the West Bank also played a more efficient role in handling complaints lodged at his office.

The Government in the Gaza Strip has declared through its officials the formation of a number of investigating committees to look into the killings and shootings carried out against a number of citizens during the Israeli aggression, and the events that took place in the mosque Ibn Taymiyah in Rafah following the clashes which broke out between a number of armed Salafi members, the security forces and al-Qassam Brigades. However, no results were announced by these committees.

During 2010, alarming and quite serious human rights violations continued, represented by unlawful killings in the Gaza Strip during the Israeli aggression, torture and other cruel types of harsh treatment that degrade human dignity, and arbitrary detention in both the West Bank and the Gaza Strip, all due to the weakness of the accountability procedures taken against the perpetrators. The public statements issued by PNA officials or the Government to condemn the events and protect human rights resulted in no significant results on the ground.

I- Responsibility and Accountability in National Legislation

Article (6) of the Basic Law asserts that "The principle of the rule of law shall be the basis of government in Palestine. All governmental powers, agencies, institutions and individuals shall be subject to the law" whereas Article (9) avows that "Palestinians shall be equal before the law and the judiciary...."

The provisions of the abovementioned Articles, and similar ones in Part II of the Basic Law, highlight the mandatory nature and the importance of respect for human rights and freedoms. These Articles also lay the foundations for adopting

responsibility, accountability and compensation as legal tools, ensuring the right of redress to those whose rights are violated, and to subject the violators amongst public officials to accountability with legal prosecution and through the realization of human rights, as well as their integration into the course of official business.

Article (32) of the Basic Law clearly addresses these guarantees by stating

"Any violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair compensation to those who suffered such damage".

Therefore, Article (32) points out that the Basic Law has laid down the protection rules for the rights' system and stresses its prosecution mechanisms by criminalizing any transgressions of personal freedoms and public rights as crimes not subject to the statute of time limitations. That is, the victims or those aggrieved by the violations of personal freedoms and rights can submit a motion to activate a criminal case at any time or phase in which subjective and objective conditions for that were made available. The Attorney General shall initiate an investigation in accordance with the provisions of the law. However, the victim and the affected can request compensation from the PNA through a civil suit. It should be noted in this regard that the Jordanian Penal Code No (16) of the year (1960) which is applicable in the West Bank, states in Article (178) that "Each employee who arrests or detains a person other than in cases stipulated by law is punishable with imprisonment from three months to one year"

Article (106) of the Basic Law contains even clearer provisions for accountability, particularly in regard to the non enforcement of judicial rulings and court sentences. For example, the aforementioned Article stipulate

"Judicial rulings shall be implemented. Refraining from or obstructing the implementation of a judicial ruling in any manner whatsoever shall be considered a crime carrying a penalty of imprisonment or dismissal from position if the accused individual is a public official or assigned to the public service. The aggrieved party may file a case directly to the competent court and the National Authority shall guarantee a fair remedy for him".

The Article went even further to address a legal procedure in order to pursue those behind the disruption of the enforcement of court rulings, and doing so with clearly stipulated punishment, with its minimum exemplified as suspension from office for those who are civil servants or delegated to public service, and beyond suspension the Article provides for imprisonment.

II- Disruption of the PLC Functions and its Impact on Accountability

Generally, the Palestinian Legislative Council is responsible for two main tasks: drafting legislation and control over the functions of the Executive Authority by subjecting all the operations of the Executive Authority to overseeing, accountability and parliamentary accountability.

The Basic Law sets forth the accountability mechanisms to be followed by PLC members in Paragraph (2) of Article (74) and Paragraph (3) of Article (56). Both Articles visibly state the importance of holding the Government, or Ministers, or any public figures of equivalent rank, over matters of public issues, political question of public interest or decisions that have direct impact on the citizens' rights. Evidently, Article (57) of the Basic Law permits ten PLC members to submit a request to withdraw confidence in a Government or Minister in case the interpellation results in the formation of an opinion that the Government's public policy is either inconsistent with the public interests, contradictory to any rights and freedoms, or not in harmony with the governmental agenda on the basis of which the PLC granted its confidence to the Government.

Similarly, Article (58) of the Basic Law emphasizes the PLC's overseeing role in the consolidation of accountability and responsibility by delegating to the Council the authority for the formation of fact finding committees to inquire into public issues or matters. This delegation is extended to all kinds of inquiries, whether they seek to investigate issues pertinent to public rights and freedoms, corruption or nepotism, or in order to review the performance of any public institutions. The same Article permits the PLC to refer to its permanent committee to investigate issues of public interest. The most prominent form of accountability is contained within Article (64) of the Basic Law, which obligates the government to "present the draft budget to the Legislative Council at least two months prior to the start of the fiscal year" where the PLC is entitled to request whatever amendments it deems appropriate. However in case no agreement is reached in the Council on the ratification of the proposed general budget, this may lead to the withdrawal of confidence in the government.

The continued disruption of the Palestinian Legislative Council (PLC) during 2010 has led to: 1) the absence of its role in monitoring; 2) its failure to perform its supervisory duties; 3) its inability to hold the Government accountable, to exercise a vote of confidence or no confidence, or question it; and 4) its inability to investigate grave violations and breaches of Palestinian human rights which occurred during 2010. Violations include: 1) violations of the right to life and physical safety; 2) exposure to torture and ill-treatment; 3) arbitrary deprivation of liberty due to political affiliation; 4) separation from public office; 5) career exclusion; 6) attacks on media freedoms; and 7) restrictions on basic rights, such as the right to form associations and the right of freedom of movement and the right of peaceful assembly.

III - Public Policies and Their Impact on Accountability

Despite efforts made by the current Palestinian Authority in the West Bank through its direct and precise instructions to the security forces to respect the rule of law and to comply with its provisions, the fait accompli still witnesses a continuous lack of compliance from the security forces regarding the proper legal procedures in carrying out arrests, inspection, extension of terms and detention. Several detainees were subjected to many cases of unlawful ill-treatment and torture during the period of detention, but neither the Ministry of the Interior nor its Security Services have implemented the resolutions of the Supreme Court of Justice, which ruled on the release of the detainees held by the Security Services. Security Services refrained, in many cases, from implementing decisions of the High Court of Justice, such as demanding the release of detainees held by the Security Services in violation of the law.²⁰²

²⁰² During 2010, the phenomenon of non-implementation of court decisions or delay in their implementation continued in violation of the provisions of the law - specifically some decisions of the Supreme Court of Justice and the Court of First Instance. ICHR has documented more than (181) violations of court decisions. The Executive Power in both its security and civil branches failed to implement those decisions in a timely manner, as the non-implementation of decisions issued by Palestinian courts regardless of their degrees is a clear violation of the provisions of the Palestinian Basic Law and in particular Article (106) thereof. The Article stipulates that the "Judicial rulings shall be implemented and refraining from or obstructing the implementation of a judicial ruling in any manner whatsoever shall be considered a crime carrying a penalty of imprisonment or dismissal from position..."

This is ascribed to the fact that the resolutions issued by the current Government remained within the framework of general principles and the rules of disciplinary conduct which focuses on the significance of respect for human rights. Although the majority of these resolutions concentrated on the fulfillment of the conditions of detention by the Security Services, they have evidently overlooked the integrity of legal procedures in cases of arrest, detention, extension of terms and inspection since, in the absence of proper legal procedures, detention becomes contrary to law. Both the Basic Law and the Jordanian Penal Code No (16) of 1960 state the necessity for holding personnel in charge of law enforcement accountable in case of the unlawful restraining of freedoms in a way which violates the law²⁰³.

In contrast, the Government in the Gaza Strip adopted an apparent policy on arrest and arbitrary detention for political considerations without regard to the integrity of legal procedures. In 2010, the detainees were subjected to forms of torture and ill-treatment in which the Security Services of the Deposed Government used excessive force on more than one occasion. The Internal Security Service also continued during 2010 to prevent ICHR and human rights organizations from visiting detainees being held by the Service, despite the allegations by a number of families that their sons were being exposed to torture and ill-treatment inside the Internal Security Prison. According to ICHR, monitoring the conditions of detainees in places of detention is weak and insufficient by the Public Prosecutor and the judiciary.

Additionally, regarding the elements of accountability to be integrated, it is necessary to prosecute all those who restrain freedoms in a way that violates the provisions of the law. Those engaging in torture and other forms of ill-treatment must be held accountable in investigations, and all the perpetrators of such affairs must be referred to an impartial independent judicial authority. Further, all those whose basic rights were denied require the provision of justice to the victims, as well as some deterrents for perpetrators.

The current justice system proves to be unable to hold those in charge of murder, torture and ill-treatment violations accountable for their deeds, which results in creating an environment of impunity, absence of transparency and the inability to respond to victims' complaints. Accordingly, the mechanisms employed by the concerned authorities to follow up violations and grievances were regarded to be

²⁰³ View Article (176) of the Jordanian Penal Code No (16) for the year 1960.

insufficient. On the level of physical safety violations, those violated must receive appropriate and fair compensation, as stipulated in Article (32) of the Basic Law.

Impunity

Through following up and analyzing the violations of human rights in the Palestine in 2010, ICHR found that the Palestinian accountability procedures against the perpetrators of unlawful killings, torture and ill-treatment, or against the violations of prisoners' and detainees' rights were insufficient, both through the arrest procedures and the exposure of detainees to torture, cruel and degrading treatment. During 2010, ICHR recorded (161) complaints, including allegations of detainees in the West Bank allegedly exposed to torture or ill-treatment by members of the various Security Services, in addition to (220) complaints in the Gaza Strip. According to the cases followed up by ICHR, it seems that crimes of torture or ill-treatment had actually been committed against detainees, and with almost complete impunity.

West Bank

1- The Role of Public Prosecution in Accountability and Non-impunity

The Office of the Public Prosecutor plays a crucial role in adopting punitive measures against the perpetrators of crimes, beginning with prosecuting them, overseeing the legality of an investigation, supervising the implementation of court decisions as well as the exercise of other tasks. As representatives of the public interest, it may efficiently contribute to respect for human dignity in terms of its contribution to the procedures, integrity, and the intactness of the proper functioning of the criminal justice system. In accordance with the law, the Public Prosecutor watches the course of justice, oversees the jails and detention centers, and law enforcement. He also represents the executive power in front of the judiciary and the courts, and communicates with the competent authorities directly.

The Public Prosecutor also supervises judicial police officers who are subject to his control with respect to their jobs²⁰⁴. He is entitled to ask the competent authorities for the adoption of disciplinary action, including punitive

²⁰⁴ Article (20) paragraph (1) of the Palestinian Penal Procedural Code of 2001.

accountability against all those who violate their duties or obligations, or who neglect their jobs²⁰⁵.

Ever since the political divide between the West Bank and Gaza Strip took place, the role of the Civil Public Prosecutor has become debilitated. Hamas controlled the headquarters of the Civil Public Prosecutor and appointed a new Public Prosecutor and a new cadre for the civil Public Prosecution to replace Mr. (Ahmad al-Mughni) and his staff. The Security Services in the West Bank negated the role of the Public Prosecutor and his various cadres through seeking the continuous aid of the Military Judicial Commission, which in return issued detention, arrest and extension memoranda in a method that violated the provisions of the Basic Law, and the Palestinian Penal Procedural Code No. (3) of 2001.

ICHR notes that after submitting complaints to the Attorney General, which included requests for an investigation into the facts of illegal arrest, detention and assault, the result was not as expected. The majority of the complaints have not been investigated and no action has been taken. For example, on 23/09/2010, ICHR filed a complaint to the Attorney General requesting him to investigate the facts of illegal arrest, detention and search, and an assault on the immunity of PLC member Abdul Rahman Zeidan from Tulkarem.²⁰⁶ This requires an investigation by the prosecution in these facts for violating Article (53) of the Palestinian Basic Law amended in 2003, which stipulates that:

“1. Council Members may not be questioned in civil or criminal proceedings due to opinions they express, facts they mention, their voting in Council sessions or committee meetings, or because of any action they undertake outside the Council in the course of performing their parliamentary duties; 2. No Member shall be interfered with in any manner, nor shall any search be made of a

²⁰⁵ Article (20) paragraph (2) the Palestinian Penal Procedural Code of 2001.

²⁰⁶ PLC member Abdul Rahman Zeidan filed a complaint to ICHR stating that “On 21/09/ 2010, a joint force of the Security Services raided his home in the city of Tulkarem. They broke the door and entered the house violently, grabbed him and put him in a corner of the house where they started inspection in the house and his personal papers and files. Also the security forces did not present any search warrant or arrest or any legal paper, did not identify themselves, and did not submit any documentation of the items being confiscated from his house. He then was arrested after being shackled with metal devices, where he was taken to the headquarters of the national security in Tulkarem. He was mocked and verbally abused. He was released after half an hour, without a return of the seizures items.”

Member's luggage, home, place of residence, car, office, or any real estate or movable property belonging to the Member, throughout the period of immunity."

It is also contrary to Article (11) of the Palestinian Basic Law amended in 2003, which states that "Personal freedom is a natural right, shall be guaranteed and may not be violated. It is unlawful to arrest, search, imprison, restrict the freedom, or prevent the movement of any person, except by judicial order in accordance with the provisions of the law."

It is also contrary to Article (178) of the Jordanian Penal Code of 1960 and applied in the West Bank, which states that "Every employee who arrests or detains a person in cases stipulated by law shall be punished by imprisonment from three months to a year." And Article (181) of the same body of law states that

"every employee who enters in his capacity as an employee the residence of one of the people or extensions of his residence in the cases permitted by law, shall be punished by imprisonment from three months to three years and a fine of twenty dinars to one hundred dinars. If joined to investigate the place to do this work or any other arbitrary action, punishment shall be not less than six months. If the employee has committed the above-mentioned act without taking into account assets imposed by law shall be punished by imprisonment from one month to one year and a fine of five dinars to twenty dinars."

On 29/09/2010, the Attorney General responded to ICHR's communiqué.²⁰⁷ It included a letter from the Chief Prosecutor of Tulkarem, which stated that "the Chief Prosecutor of Tulkarem, in a follow-up of the complaint, addressed the Chief of Police of Tulkarem on 26/09/2010, requested a statement on the fact. The Police Chief of Tulkarem told him that based on the minutes of inference and inquiry, Fahmi Zeidan has in his possession legally-prohibited materials. Given the circumstances of urgency and necessity, and fear of being smuggled, they asked permission to inspect the house. A search warrant, signed by the Prosecutor of Tulkarem, was issued. The house was indeed searched at night without being recognized by the police only after being transferred with the materials (which

²⁰⁷ Attorney-General's letter on 29/09/2010 to ICHR, no. (2745) and its attachments in response to the complaint of LC member Abdul Rahman Zeidan submitted by ICHR.

consist of two computers, mobile phones, and different papers) to the Security Committee in Tulkarem area. He was released after being identified as a member of the Legislative Council.” In spite of the explicit and clear text of Article (53) of the Basic Law amended in 2003, referred to by ICHR in its communiqué that “No Member shall be interfered with in any manner, nor shall any search be made of a Member’s luggage, home, place of residence, car, office, or any real estate or movable property belonging to the Member, throughout the period of immunity.” However, the Chief Prosecutor of Tulkarem confirms that the search warrant was organized in accordance with the law by the prosecution, eventually claiming that all which was mentioned in PLC member Abdul Rahman’s complaint is not true.

ICHR concludes through this case and other similar cases that among the factors that impede the access of victims of violations to equity is the authority of the prosecution in saving (closing) investigations or not referring them to justice. This is associated with how the Public Prosecution functions. It is to be a justice institution which investigates crimes and prosecutes suspects legally.

Other factors that contribute to the impunity of the perpetrators specifically in violation of the right to physical integrity and crimes of torture is the legal framework in force in Palestine, which fails to criminalize torture in full. This is not in line with international standards found in the Convention against Torture (CAT).

Finally, the practice of torture in Palestine and the failure of the executive authorities to hold perpetrators responsible lies within the broader context, which is the prevailing state of division, and has actually led to finding the grounds and the environment for the work of the Security Services to operate above the law. This is evident in arbitrary detentions and resorting to military justice.

2- The Role of Military Justice in Accountability and Non-impunity

The Palestinian Basic Law safeguards personal freedom, and asserts

“Each aggression committed against any personal freedom or against the private life of a human being or against any rights or public freedoms, which have been guaranteed by the law or by this Basic Law, shall be considered a crime. Criminal and civil case resulting from such infringement shall not be subject to any status of

limitation. The National Authority shall guarantee fair indemnity for those who suffered from such damages.”²⁰⁸

Furthermore, Article (247) of the Revolutionary Penal Code of 1979, applicable to the members of the Palestinian Security Services, states that anyone who detains or imprisons any person for any case other than those cases indicated in the law shall be imprisoned for at least six months.

The Jordanian Penal Code No. (16) of 1960 - in force in the West Bank - stipulates

“it is not permissible for any person, whoever was the person, to detain or imprison another person other than the authorities that have the power to arrest or imprison.” And Article (178) of the Jordanian Penal Code states “every employee who detained or arrested another person under conditions other than what is indicated in the law shall be punished by imprisonment from three months to one year.” In Article (179), it is stated that “accepting the custody of a person without a warrant or a judicial decision, or being kept in prison after the imprisonment period by the prison administrators and guards or disciplinary institutes or corrections centers or any public servants on behalf of the prison wardens shall be punished by imprisonment from one month to one year.”

Under International Human Rights Law (IHRL), the states are obliged to pay compensation for any violations of the right to personal freedom and safety. The International Covenant for Civil and Political Rights (ICCPR) affirms that any person who has fallen victim to illegal detention has the right to mandatory compensation.²⁰⁹

In spite of these principles and provisions, the victims of arbitrary detention and violations of legal procedures in Palestine cannot obtain compensation as a result of the damage inflicted upon them. The Military Public Prosecutor is competent to follow up on complaints received against the military personnel of the Preventive Security and General Intelligence, both of which follow the Chief of the Military Judiciary Commission, at the time the military prosecution gives these services the authority and permission to detain individuals and extend their detention.

²⁰⁸ Article (32) of the Amended Palestinian Basic Law of 2003.

²⁰⁹ Article (9) paragraph (5) of the International Covenant for Civil and Political Rights (ICCPR).

In light of the jurisdiction of military justice in holding members of the Security Services accountable for human rights violations, particularly the right to physical integrity and protection from torture and ill-treatment, the military courts did not condemn any member of the Security Services of committing crimes of torture or ill-treatment, and did not have any suspect being tried for these crimes during the year 2010.²¹⁰ It seems that accountability for these actions stop at taking administrative procedures, and not taking on judicial proceedings. And if cases reach the judicial authorities, the files may not be complete. In such cases, the court then issues a verdict acquitting the suspects in these cases. The special military court held in the city of Hebron on 20/07/2010 issued a decision, acquitting the five accused members of the General Intelligence Service, who were accused of causing the death of Haitham Amer on 14/06/2009, who was captured by the Service in the city. The court decision stated the following:

- *Innocence of the five present militaries from the charges of causing the death, in violation of the provisions of Article 280/c, and Article 82/A: military sanctions of 1979 due to lack of evidence pursuant to Article (229) of the Military Tribunals Code of 1979.*
- *Blood money and compensation according to Sharia Law to the heirs of the deceased (Haitham Amer) is a right from the Palestinian National Authority represented by the General Intelligence Service - Hebron Governorate, in return for negligence and failure to take necessary measures to protect detainees.*

In spite of documented reports,²¹¹ consistent, and credible testimonies of the occurrence of the crime of torture that may have led to death, those involved have not been convicted of the charges of torture. On the other hand, ICHR recorded the absence of four of the suspects (accused) of the five defendants from attending the first and second court sessions. The five suspects attended

²¹⁰ This is what came in the Chief of Military Justice, Major General Ahmad Al-Mbayed's response to ICHR's letter on a number of cases where the military courts issued rulings on crimes of torture and ill-treatment No. PO. A. P / 2010 / 1367 dated 09/12/2010.

²¹¹ According to the medical report dated 07/02/2010 and signed by the Director of the Institute of Forensic Medicine at Abu Dis University, the direct cause of death was caused by "clogged arteries, pulmonary (stroke) resulting from doubling the bruised tissues under the skin resulting from direct torture."

the third and last session, during which the court issued its ruling,²¹² acquitting them due to lack of evidence. This constitutes a failure to prosecute perpetrators or suspects in crimes of torture, and their unjustified escape from punishment.

3- The Role of the Interior Ministry in the West Bank Government

Despite the Interior Ministry's attempts in 2010 to work hard to stop violations against Palestinian citizens, there are still a number of steps which need to be activated and strengthened in order to stop the violations committed against Palestinian citizens or at least significantly reduce them. Resolution No. (149) issued the observance by security institutions of the optimal rules and standards on detainees, and targeted investigation and detention centers, and particularly security forces personnel, requiring them to comply with legal provisions in arrest and search and show full respect for human rights and fundamental freedoms. The resolution included directions for the Security Services to treat detainees humanely, and that detention is to take place in facilities where all health requirements are available. It also pointed to the prohibition of any corporal punishment against inmates and detainees, as well as technical or actual participation in it.

During 2010, ICHR registered more than (1,880) complaints concerning arbitrary detention and failure to follow the legal procedures set forth in the Criminal Procedure Code, in addition to the documentation and follow-up of more than (324) complaints on ill-treatment and torture. The conditions of detention are still quite poor, many of them not having the minimum requirements for detention centers.

As for the procedures emanating from the Interior Ministry in the field of military discipline, and criminal and administrative accountability procedures against military violators, the figures and statistics announced by the Interior Ministry in the field of disciplinary procedures constitute a positive step for the Ministry's role in pursuing violations against citizens committed by the Security Services and police. During 2010, the Interior Ministry recorded (1,600) complaints filed by citizens against the military. Of the (1,600), (634) have been referred to the

²¹² The Special Military Court issued its ruling of acquittance in the criminal case (10/21 special 7/9 n p x/ 2010) from Judge Brigadier Abdul Karim Al-Masri as President, in the presence of the representative of the Military Public Prosecution and the lawyer of the deceased citizen delegated by the Court jury and in the presence of the five defendants.

Military Public Prosecutor, where (459) violations proved to be committed by military personnel. Various penalties have been applied to them, including cases of military personnel detained by the Military Intelligence Service, amounting to (74) detainees. The issuing of a booklet by the Interior Ministry shows various disciplinary irregularities, and the booklet was circulated among all security members. Considering that the booklet is mandatory, it is a step in the right direction. ICHR finds that disciplinary procedures in itself, even if applied in the manner referred to in the Interior Ministry's report, are still not sufficient to address the gravity of the crime of torture, and shall not be considered under any conditions an alternative for criminal investigations.

4- Specialized Committees and Departments

Palestinian police have established a number of departments to follow up on human rights violations. The most prominent departments are given below.

A. Grievances and Human Rights Department

This Council or Department was established to directly follow the Director General of Police. The aim of this Department is to receive citizens' complaints²¹³, and if the violations of the police do not constitute a crime punishable by law, or are not within the jurisdiction of the courts operating in the country, this is an abuse of authority, as well as revealing a lack of transparency, or discrimination in treatment or favoritism, neglect, or failure to implement instructions. This Department has no authority over the decisions of various courts. It receives complaints from citizens, and acts as an intermediary between the complainant and the police. It conducts visits to reform and rehabilitation centers and police stations to support the observance of human rights. ICHR followed up many complaints with the Grievances Office in the police. However, the responses of the Office were mostly typical. The majority of the responses deny citizens' allegations in light of the absence of specific mechanisms to investigate allegations of human rights violations, in addition to a lack of investigative staff, which in turn makes it difficult to conduct investigations in an effective and efficient manner.

B. Permanent Commission of Inquiry in the Police

²¹³ It is noted that this Department received in 2010 a total of (182) complaints, of which (89) complaints were lodged directly from citizens, and (93) complaints filed through ICHR.

During 2010, ICHR held several meetings with the Permanent Investigation Committee, which was formed in order to consider the torture complaints filed by ICHR. The Commission received many complaints filed by ICHR. But until now, it did not add anything new to the work of other structures within the police system. Its work is not different from the Grievances Department, and its replies and investigations did not add anything new. The work of this Commission has taken the nature of formalities only, and no results have been reached in the majority of the complaints. This can be attributed to the lack of a cadre within the Commission, and to the absence of powers and responsibilities assigned to it.

Gaza Strip

The Government in the Gaza Strip formed many monitoring bodies and practiced many aspects of accountability. The Office of the Comptroller General of the Interior Ministry has continued to receive citizens' complaints and to follow up with the various authorities in the Interior Ministry. The Public Administration for the Inspector General of Police followed up control over the actions of police officers and its different departments according to specific tasks, including: 1) follow-up on implementation of decisions; 2) inspection of police departments through direct control and performance reports; 3) disclosure of abuses and determining the responsibility of the perpetrators; 4) studying complaints from the public and services members; and 5) ensuring respect for court rulings.

In spite of these structures, the reality of the Gaza Strip presented different patterns of human rights violations. According to citizens' complaints and ICHR's monitoring and documentation of these complaints, control and accountability procedures require reconsideration, procedures that provide assurances of accountability and responsibility, punishment for those who commit crimes or errors, and compensation for victims, particularly victims of torture.

And through following up the responses of the Security Services to ICHR's correspondence relating to citizens' complaints, we conclude there is no reason for a continuation of the previous approach, such as calling for a denial of most human rights violations, or arguing that they are individual errors which do not reflect an approach or a policy. Based on violation patterns and accountability procedures, we make the following observations:

- 1- *The crime of torture is still practiced in places of detention in the Gaza Strip. ICHR sought to request the investigation into allegations of many citizens being subjected to torture.²¹⁴ No legal action have been recorded against public officials who committed acts of torture against detainees held by the Security Services. This may lead to a further increase in torture and repetition of violations.*

- 2- *ICHR continued to receive complaints from citizens on the failure to follow legal proceedings in detention or presentation of civilians before prosecutors and the military judiciary. ICHR sent letters to the Interior Minister, the Comptroller General of the Interior Ministry, police officers and internal security officers, demanding an investigation into allegations of citizens. ICHR did not receive any responses demonstrating new procedures which ensure accountability for mistakes or guarantee the respect for citizens' rights within due process in accordance with the Palestinian Basic Law and the Criminal Procedure Law No. (3) of 2000, so as to achieve fair trial procedures and bringing the citizen before his natural judge.*

- 3- *ICHR notes that during the year 2010, the results of the work of commissions of inquiry formed in recent years have not been announced.²¹⁵ This raises the question of how seriously the work of these committees, especially since the Government in the Gaza Strip did not respond to ICHR's letters so far, many of them pertaining to the serious violations of human rights, and despite ICHR's perseverance by sending reminders on specific issues.*

²¹⁴ During 2010, ICHR received a total of (220) complaints, including allegations of torture and ill-treatment.

²¹⁵ See pages (248-249) of the ICHR's fifteenth Annual Report on "the situation of human rights in the Palestinian National Authority areas."

Recommendations

Chapter One: Patterns of Human Rights Violations based on Complaints Received by ICHR

1. The institutions of the PNA should take the complaints monitored by ICHR seriously, and respond to its letters without delay. This recommendation has been made continuously over the last three years (2008, 2009 and 2010).
2. The Government should carry out the decisions and rulings of the Palestinian courts without delay in compliance with the Palestinian Basic Law. This recommendation has been forwarded over the past three years (2008, 2009 and 2010) with particular emphasis in 2010, due to the increasing number of courts' decisions demanding release of detainees brought before the military judiciary.
3. The Palestinian security agencies should abide by the directives issued by the Palestinian President regarding not bringing civilians before the military judiciary. Prosecution of civilians before military courts increased noticeably in 2010.
4. The PNA should ensure fair guarantees and commitments to appropriate legal procedures, exemplified by not bringing civilians before military courts and holding detainees in the legal detention centers in accordance with the law. This recommendation has been forwarded over the last three years (2008, 2009 and 2010).
5. The PNA should issue express directives for its security agencies to immediately halt all patterns of torture and ill-treatment, and bring those who violate these directives to justice for punishment. This recommendation has been desperately forwarded over the last three years (2008, 2009 and 2010).
6. The PNA should refrain from subjecting public office to political consideration, and abide by the provisions of the Palestinian law, especially civil service law. The intensity of this issue declined during

2010 when compared to 2008 and 2009. It is worth mentioning that it should be fully resolved.

7. The competent judicial departments in the West Bank should immediately consider citizens' case files in accordance with the provisions of the law, especially the files of detainees who have been in detention for extended periods.

Chapter Two: Accountability Mechanisms and Procedures

1. The Public Prosecution should exercise its monitoring powers over reform and rehabilitation centers (besides the detention centers administered by the security agencies) to ensure no person is detained outside the legal framework, and to prevent arrest or detention outside reformation and rehabilitation centers.
2. The Public Prosecution should exercise its monitoring role over implementation of court decisions and prosecution of those who act in contravention of the law.
3. The Public Prosecution should return to exercising the powers the military judiciary took over from them, and reconsider all the cases brought before the military judiciary, including the cases of civilians prosecuted by military courts.
4. The PNA should, in accordance with the law, redress the victims of human rights violations.
5. The internal monitoring units and structures of the security and police agencies should be strengthened and adequately staffed so they may fulfill their responsibilities.
6. Allegations of torture and ill-treatment should be investigated and the results of investigations should be publicized in order for the citizens to have access to them.

Closing Remarks of the Editor

This report began with some thought-provoking comments and observations in its Preface and Introduction, so perhaps it is only fitting to end this report by reflecting on a few of them.

One of those comments referred to a compass for Palestinian human rights to follow, and whether any such compass actually exists. But if we understand the purpose of a compass to be something which helps us to find our way, to allow us to see where we came from and where we are headed, then it can be said yes, a compass does exist, and it exists in the form of the great constellation of international conventions on human rights, and the Palestinian Basic Law. Frequently mentioned throughout this report, they point the way towards an ideal to work towards, standards to live by, and the continuation of norms already well established.

Most of the other concerns mentioned, however, could be understood as the predictable problems of the birth and infancy of any new state, no matter its location or circumstances. There will always be, for example, those who choose to only see the dark side, and to never notice what small but important gains have been made.

The idea of there being a mosaic of human rights in Palestine, and of there being ups and downs, is a particularly realistic one, because it admits that any sort of progress made is not going to be uniform across the population, throughout the government, and in every aspect of human rights issues. It will always progress in small slices, or large chunks, making great strides in some ways but needing more work in others. It is a frustrating mosaic to look at, but if one steps back to look at the entire work, the larger picture begins to become clear.

Of course all the parties involved are obsessed with security issues, and this is perhaps the greatest obstacle to any forward movement. It is interesting, however, that in the midst of it there even exists at all the Independent Commission for Human Rights in Palestine, and that it is a high-functioning institution with admirable impartiality in the enormous research and reporting it undertakes day after day.

They report of an 11% increase in complaints from 2009 to 2010, and it might at first glance sound like bad news. Although that could very well be the case, there is also the possibility that their work regarding human rights awareness is beginning to take hold, and perhaps it is not entirely an increase in abuses, but also an increase in people's awareness that they have a RIGHT to make a complaint, which is one of the most important hallmarks of a democratic society.

With human rights being one of the cornerstones of any democracy and particularly fledgling democracies, the Commission has made great gains in firmly embedding a human rights cornerstone into Palestine's foundation. In spite of the violations they report and obstacles in their path, their work adds to and strengthens Palestine's great democratic efforts, and in so doing, raises a glimmer of hope.

Annex (I)

Deaths and Murders During 2010

Table (1)**Deaths Resulting from Weaknesses in the Rule of Law, 2010**

| No. | Encoded Name ²¹⁶ | Age | Sex | Weapon | Address | Date of Death | Circumstances of Killing | Classification Of Case |
|-----|-----------------------------|-----|------|----------------|-----------------|---------------|---|------------------------|
| 1. | K.G | 37 | male | bullet | 'Anata | 31/12/2010 | Killed with another person by shooting; linked to family revenge | family dispute |
| 2. | F.S | 50 | male | not identified | Hebron | 27/12/2010 | His body was found near the settlement of Haggai, and was missing for several days. He had been suffering from memory loss. | mysterious |
| 3. | F.A | 18 | male | bullet | Hebron | 27/12/2010 | Found dead near his home with gunshots in different parts of his body. | mysterious |
| 4. | R.K | 31 | male | not identified | Shaqba-Ramallah | 26/12/2010 | Found dead in his home. The police arrived on the scene and the corpse was transferred to the Institute of Forensic Medicine to determine the cause of death. | mysterious |
| 5. | M.A | 28 | male | bullet | Gaza | 22/12/2010 | Fatally wounded in the chest, killed during a family dispute that took place in the city. | family dispute |
| 6. | Z.G | 40 | male | bullet | Jabalia | 20/12/2010 | Shot in the neck during a family dispute taking place in the refugee camp. | family dispute |

²¹⁶ In encoding the names, it was decided to use the first letter of the first and last names of the deceased.

| | | | | | | | | |
|-----|-----|----|--------|------------------|------------------------|------------|---|-------------------------------|
| 7. | Y.K | 45 | male | beating | Qabatia-Jenin | 12/12/2010 | Severely beaten to a death by a number of anonymous individuals. | fight |
| 8. | A.A | 23 | male | not identified | Al-Izzariyeh | 11/12/2010 | Found dead in a car in the family garage in town. | mysterious |
| 9. | R.B | 47 | male | bullet | 'Aqarba-Nablus | 03/12/2010 | Died from being shot by a weapon he was handling. | misuse of weapons by citizens |
| 10. | B.Z | 22 | male | bullet | Beit lahia | 25/11/2010 | Killed after being shot while his friend was cleaning the barrel of a gun. | misuse of weapons by citizens |
| 11. | A.A | 65 | male | sharp tool | Yata Hebron | 21/11/2010 | Killed after being beaten with a sharp tool during a family fight, taking place in town. | fight |
| 12. | F.S | 20 | female | bullet | Al-Zawaydeh-Gaza Strip | 10/11/2010 | Killed after being shot in her house. The source or the background was not identified. | mysterious |
| 13. | A.G | 13 | female | not identified | Bethlehem | 09/11/2010 | Found dead in her grandfather's house in Jericho. The cause of death has not been identified. | honor killing |
| 14. | M.A | 13 | male | collapse of soil | Khan Younis | 07/11/2010 | Killed as a result of the collapse of soil while collecting gravel. | negligence-work |
| 15. | A.R | 24 | male | bullet | Hebron | 07/11/2010 | Killed after being shot by a number of anonymous individuals while being taken from prison to court for trial regarding an old fight. | prison deaths |
| 16. | M.W | 27 | male | electric shock | Al-Shyoukh-Hebron | 06/11/2010 | Died of electric shock while working in a construction site, where the concrete mixer hit him with electric wires. | negligence-work |
| 17. | A.A | 20 | male | sharp tool | Nablus | 04/11/2010 | Killed as a result of a family fight over a financial issue, taking place in Salfit. His beating included several fatal blows in | fight |

| | | | | | | | | |
|-----|-----|----|--------|-----------------------|------------------------------|------------|---|-------------------------------|
| | | | | | | | various parts of his body. | |
| 18. | G.A | 23 | male | falling from a height | Yata-Hebron | 27/10/2010 | Died of wounds sustained from falling from a building under construction. | negligence-Work |
| 19. | A.Z | 37 | male | sharp tool | Hebron | 20/10/2010 | Killed after being stabbed with a sharp tool in his car. The police believe that the offender has a previous problem with the victim. | family fight |
| 20. | M.G | 25 | male | hanging | Gaza-Nusseirat | 11/10/2010 | Found dead, tied with a plastic rope from his neck in his house. | mysterious |
| 21. | Z.K | 25 | female | bullet | Gaza | 06/10/2010 | Died after being shot by her husband's weapon while cleaning it. | misuse of weapons by citizens |
| 22. | H.D | 27 | male | beating | Rojib-Nablus | 04/10/2010 | Died of wounds sustained after being attacked by a number of people in the town. | misuse of weapons by citizens |
| 23. | C.S | 34 | male | beating | Beit Hanina-Jerusalem | 26/09/2010 | Found dead near Qalandia checkpoint after being beaten. | mysterious |
| 24. | A.K | 30 | male | sharp tool | Kharabtha el-Misbah-Ramallah | 26/09/2010 | Killed with sharp instruments as a result of a family dispute in the village of Beit Sira adjacent to his town. | family dispute |
| 25. | S.A | 52 | male | sharp tool | Bitonia-Ramallah | 20/09/2010 | Killed after being beaten with a sharp tool by another person because of a disagreement between them. | fight |
| 26. | A.G | 15 | male | drowning | Sorif Hebron | 08/09/2010 | Died by drowning in a swimming pool in the village of Numb while he visited. | negligence |
| 27. | Y.A | 63 | male | bullet | Al-Jaroushiye-Tulkarem | 03/09/2010 | Killed by two bullets fired by a locally-made weapon as a result of a family dispute. | fight |
| 28. | M.Q | 58 | male | sharp tool | Beni Suhaila- | 03/09/2010 | Was stabbed to death by a sharp | family fight |

| | | | | | | | | |
|-----|-----|----|--------|-----------------------|----------------------|------------|--|----------------|
| | | | | | Gaza | | instrument during a family fight. | |
| 29. | S.N | 33 | male | bullet | Al-Bureij-Gaza | 30/08/2010 | Killed after being shot throughout his body during a family fight. | fight |
| 30. | A.H | 15 | male | sharp tool | Jaba'-Jinin | 28/08/2010 | Found dead; after several days it became clear that the offender was another minor, who was then arrested. | fight |
| 31. | S.A | 39 | male | electric shock | Gaza | 28/08/2010 | The victim's family received an anonymous phone caller who found the body; death by electric shock and a poison syringe found in his hand. | mysterious |
| 32. | M.T | 27 | male | sharp tool | Kufur Jamal-Tulkarem | 25/08/2010 | Stabbed to death during a family dispute in the village. | fight |
| 33. | G.A | 62 | female | bullet | Gaza | 17/08/2010 | Died as a result of opening fire on her from a car while she was standing in front of her house. | mysterious |
| 34. | M.M | 11 | male | suffocation | Khan Younis | 14/08/2010 | Found hanged and strangled with a scarf in the family home. | mysterious |
| 35. | H.Q | 45 | female | bullet | Hebron | 06/08/2010 | Found dead in her home with gunshots. | mysterious |
| 36. | A.H | 19 | male | bullet | Gaza | 05/08/2010 | Killed by a bullet during a family dispute. | family dispute |
| 37. | A.S | 25 | male | falling from a height | Gaza | 03/08/2010 | Died by falling from a high building. | mysterious |
| 38. | A.M | 11 | male | not identified | Rafah | 31/07/2010 | family reported his absence during a wedding ceremony and he was found dead later. | mysterious |
| 39. | M.M | 29 | male | bullet | Khan Younis | 13/07/2010 | Wounded by a gunshot during a fight and died later. | fight |
| 40. | A.A | 30 | male | sharp tool | Salem-Nablus | 09/07/2010 | Stabbed to death with a sharp instrument during a family dispute in the village. | family dispute |
| 41. | A.S | 74 | male | sharp tool | Sair-Hebron | 08/07/2010 | Killed during a family fight in the village. | family dispute |

| | | | | | | | | |
|-----|-----|----|--------|------------------------------|-----------------|------------|---|-------------------------------|
| 42. | M.S | 45 | male | electric shock | Rafah | 05/07/2010 | Died of electric shock during maintenance work of power lines. | negligence-work |
| 43. | F.S | 30 | female | electric shock | Beit Layha-Gaza | 01/07/2010 | Died of electric shock in the cafeteria. | negligence-Work |
| 44. | M.D | 26 | male | bullet | Gaza | 25/06/2010 | Was shot in the head with his brother's weapon while handling it. | misuse of weapons by citizens |
| 45. | A.B | 5 | male | bullet | El-Nussairat | 24/06/2010 | Was shot dead during a family fight. | family dispute |
| 46. | D.M | 14 | male | drowning | Shuqba-Ramallah | 23/06/2010 | Died by drowning in a swimming pool in 'Aboud Village, where his head hit the floor of the pool. | negligence |
| 47. | W.A | 17 | male | hydraulic cylinder explosion | Yata | 16/06/2010 | Died as a result of a hydraulic cylinder explosion. | negligence |
| 48. | M.F | 3 | male | suffocation | Jabalia | 12/06/2010 | Found dead and handcuffed at a farm near his house. | mysterious |
| 49. | M.A | 27 | male | rockslide | Yata Hebron | 07/06/2010 | Killed by a rockslide in a quarry where he previously worked. | negligence-work |
| 50. | K.A | 25 | male | drowning | Khan Younis | 31/05/2010 | Died by drowning in the sea near Khan Younis. | negligence |
| 51. | R.J | 29 | male | bullet | Gaza | 18/05/2010 | Executed after he was sentenced to death on 14/04/2004 on charges of kidnapping, rape and murder. | execution of death penalty |
| 52. | A.J | 41 | male | bullet | Gaza | 18/05/2010 | execution after he was sentenced to death on 10/03/2009 by a military court in Gaza on charges of murder. | execution of death penalty |
| 53. | M.S | 35 | male | bullet | Gaza | 18/05/2010 | Executed after he was sentenced to death on 20/03/2009 on charges of murder. | execution of death penalty |
| 54. | S.Q | 34 | male | sharp tool | Dir el-Balah | 16/05/2010 | Died after being stabbed with a sharp instrument during a fight involving | fight |

| | | | | | | | | |
|-----|-----|----|--------|----------------|-------------------------|------------|--|---|
| | | | | | | | several people. | |
| 55. | M.M | 24 | male | burns | Rafah | 16/05/2010 | Died of burns he suffered several days earlier while welding a fuel barrel at a gas station, which led to the explosion of the barrel and his death. | negligence-work |
| 56. | G.G | 18 | male | not identified | El-Nussairat | 08/05/2010 | Body was found dumped in an apartment, dying from a drop in blood circulation. The police opened an investigation into the incident. | mysterious |
| 57. | H.A | 17 | male | sharp tool | El-Nussairat | 06/05/2010 | Died after being stabbed by a sharp tool in the neck during a family dispute. | family dispute |
| 58. | B.K | 7 | female | bullet | Jabalia | 05/05/2010 | Was shot fatally as her brother was handling a weapon. | misuse of weapons by citizens |
| 59. | A.M | 18 | male | missile | Khan Younis | 02/05/2010 | Wounded by shrapnel from a homemade shell falling on his house during the military training of one of the military groups in the region. | misuse of weapons by citizens |
| 60. | R.A | 16 | male | bullet | Hebron | 01/05/2010 | Wounded by a gunshot when the national security personnel fired on a car. | misuse of weapon by law enforcement officials |
| 61. | A.A | 20 | male | suffocation | Gaza | 29/04/2010 | Found strangled in a building under construction in Tal al-Hawa. | mysterious |
| 62. | M.M | 21 | male | bullet | Jabalia | 28/04/2010 | Shot by unknown assailant, which led to his death. | mysterious |
| 63. | M.A | 7 | male | drowning | Ein Sultan Camp Jericho | 20/04/2010 | Died as a result of falling at a sanitation hallway in the camp. | negligence |
| 64. | M.S | 37 | male | bullet | Rafah | 15/04/2010 | execution of the death sentence issued against him by a military court on 04/11/2009 on charges of espionage and | execution of death penalty |

| | | | | | | | | |
|-----|-----|----|--------|------------------------|------------------------------|------------|---|----------------------------|
| | | | | | | | murder. | |
| 65. | N.A | 33 | male | bullet | 'Azbet Abed Rabbo-Gaza Strip | 15/04/2010 | execution of the death sentence issued against him by a military court on 22/2/2009 on charges of treason and interference in murder. | execution of death penalty |
| 66. | N.Z | 34 | female | bullet | Beit Lahia | 12/04/2010 | Killed by gunshot, fired by masked men who broke into her house in the neighborhood of el-Salatin in Beit Lahiya. | mysterious |
| 67. | S.B | 18 | male | bullet | Rafah | 10/04/2010 | Killed by a bullet during a family dispute between two families in the neighborhood of Al-Salam in Rafah. | family dispute |
| 68. | M.H | 13 | female | suffocation | Yata-Hebron | 06/04/2010 | Found hanged with a rope in her house. | mysterious |
| 69. | N.A | 12 | male | falling from a height | El-Khader-Bethlehem | 25/03/2010 | Died from falling from the walls of an unfenced school close to el-Khader Sports Stadium. | negligence |
| 70. | S.A | 21 | male | sharp tool | Yata-Hebron | 24/03/2010 | Was stabbed with a sharp object by a citizen regarding a fight over some land. | fight |
| 71. | A.A | 35 | male | electric elevator | Qalandia camp | 23/03/2010 | Died due to falling from an electric elevator during maintenance. | negligence-Work |
| 72. | M.S | 44 | male | sharp tool | Nablus | 21/03/2010 | Was killed in ar-Ram as a result of a fight with another worker. | fight |
| 73. | H.H | 4 | male | drowning | Al-Shoyoukh-Hebron | 17/03/2010 | Died due to falling in a pool of water in the factory owned by the family. | negligence-work |
| 74. | A.A | 19 | male | gas cylinder explosion | Al-'Azeh Camp-Bethlehem | 16/03/2010 | Died due to the explosion of a gas cylinder in the bakery where he works. | negligence-work |
| 75. | M.A | 65 | male | bullet | Rafah | 14/03/2010 | Suffered fatal gunshot during a fight between two families. | family dispute |
| 76. | M.H | 42 | male | hanging | Al- | 11/03/2010 | Found hanged in his house. The Public | mysterious |

| | | | | | | | | |
|-----|-----|----|--------|----------------|----------------------------|------------|--|-------------------------------|
| | | | | | Shawawreh-Bethlehem | | Prosecution investigated this incident and conducted an autopsy. | |
| 77. | S.Q | 25 | male | hanging | Al-Thahiriyeh-Hebron | 27/02/2010 | His body was found hanged in a store of his family | mysterious |
| 78. | A.H | 30 | female | bullet | Al-Nussairat Camp-Gaza | 25/02/2010 | Shot dead by her brother's weapon while handling it. | misuse of weapon by citizens |
| 79. | A.G | 27 | female | hanging | Gaza | 25/02/2010 | Died by a rope wrapped around her neck tied to the ceiling of the room. | mysterious |
| 80. | M.A | 34 | male | bullet | Gaza | 11/02/2010 | Was killed by shooting himself with his own weapon. | misuse of weapon by citizens |
| 81. | K.A | 24 | female | not identified | Tarqumia-Hebron | 08/02/2010 | Found dead; taken to the hospital and her injuries were linked to the anatomy of a suspected criminal. | mysterious |
| 82. | F.A | 28 | male | bullet | Al-Maghazi Camp-Gaza Strip | 07/02/2010 | Suffered a fatal gunshot from his weapon while cleaning it. | misuse of weapons by citizens |
| 83. | G.S | 26 | male | bullet | Al-Zawaydeh | 26/01/2010 | Killed by a shot in the chest in his house; his personal weapon found at his side. | mysterious |
| 84. | A.A | 35 | male | not identified | Jericho | 25/01/2010 | Body brought to Jericho Government Hospital. The motives and causes of death remained unknown, but the Attorney General referred the body to the Institute of Forensic Medicine to clarify the cause of death. | mysterious |
| 85. | A.H | 39 | female | beating | Nor Shams-Tulkarem | 25/01/2010 | Killed by hitting her on the neck with a sharp tool during a family dispute. | family dispute |
| 86. | S.M | 35 | female | not identified | Al-Taybeh-Jenin | 24/01/2010 | Body found lying beside the road near Jaba' village. | mysterious |

| | | | | | | | | |
|-----|-----|----|--------|---------------------------|--|------------|--|--------------------|
| 87. | A.K | 35 | male | bullet | Nebi Saleh-Qalqilia | 20/01/2010 | Died of wounds sustained from gunshot during a family dispute. | family dispute |
| 88. | G.S | 39 | male | not identified | Wadi Qadoun-Jabal Al-Mukabber in Jerusalem | 17/01/2010 | Killed during a family dispute in the neighborhood. | family dispute |
| 89. | A.K | 41 | male | electric elevator | 'Anabta-Tulkarem | 14/01/2010 | Died during elevator maintenance in Ramallah after falling from the sixth floor. | negligence at work |
| 90. | B.K | 22 | male | oxygen cylinder explosion | Khan Younis | 12/01/2010 | Died from oxygen cylinder explosion while working in an ice cream factory. | negligence at work |
| 91. | S.A | 28 | female | falling from a building | Hebron | 10/01/2010 | Died due to falling from a building. | mysterious |
| 92. | R.A | 28 | male | bullet | Hebron | 10/01/2010 | Died from a bullet wound to the head during a family dispute in the city. | family dispute |
| 93. | C.S | 42 | male | bullet | Jericho | 09/01/2010 | Died from gunshot wounds during a fight erupting between two families in Ein al-Sultan Camp. | family dispute |

Table (2)
Categories of Deaths during 2010

| | Background Murder | West Bank | | | Gaza Strip | | | Grand Total (WBGZ) | % of the Total No. |
|----|--|-----------|----------|-------|------------|----------|-------|--------------------|--------------------|
| | | Total | Children | Women | Total | Children | Women | | |
| 1) | fights & family disputes | 20 | 1 | 1 | 11 | 3 | 0 | 31 | 25% |
| 2) | misuse of weapons by law enforcement officials | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 0.8% |
| 3) | misuse of weapons by citizens | 1 | 0 | 0 | 8 | 2 | 3 | 9 | 7% |
| 4) | mysterious circumstances | 14 | 2 | 5 | 13 | 4 | 4 | 27 | 21.4% |
| 5) | family honor | 1 | 1 | 1 | 0 | 0 | 0 | 1 | 0.8% |
| 6) | collaboration with the enemy | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7) | internal fighting | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8) | death sentences | 0 | 0 | 0 | 5 | 0 | 0 | 5 | 4% |

| | | | | | | | | | |
|-----|---|-----------|-----------|----------|-----------|-----------|----------|------------|-------------|
| 9) | tunnel mortalities | 0 | 0 | 0 | *33 | - | - | 33 | 26.1% |
| 10) | deaths due to negligence and failure to take safety precautions | 12 | 6 | 0 | 6 | 1 | 1 | 18 | 14% |
| 11) | prison deaths | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0.8% |
| | Grand Total | 50 | 11 | 7 | 76 | 10 | 8 | 126 | 100% |

Annex (II)

**Recommendations of the
Palestinian Independent Investigation Commission
(PIIC)**

in Accordance with the Goldstone Report

Recommendations²¹⁷

1. Order the Military Public Prosecution and the Military Justice to halt arrest and detention decisions against civilians; demand military courts to cease trying civilians; and bring all those arrested and sentenced by the Military Justice to be heard at competent regular courts.
2. Cancel the Cooperation and Understanding Protocol between the Public Prosecution and the Military Public Prosecution, which was concluded between the parties on 28 June 2006; according to this, the Attorney General allowed the Military Public Prosecution to exercise its jurisdiction and powers regulated by law in relation to the establishment and follow-up of proceedings in crimes set forth in the Penal Codes in the West Bank and Gaza Strip.
3. The PNA Security Services shall: respect the validity of arrest and detention; not implement any arrest without a prior judicial order; abide by the duration of arrest set out under the Criminal Procedure Code; refrain from implementing any seizure or detention in places not designated for that purpose; and respect the sanctity of homes and other places, and not enter and search them without judicial orders. Furthermore, the competent Palestinian authorities shall prevent the Military Intelligence Service from exercising the power of detention and arrest against non-military persons.
4. The Palestinian Public Prosecution shall implement its powers by inspecting the reform and rehabilitation centers' "prisons" and places of detention in its departments to ensure there is no inmate or detainee present illegally, and practice its role in intervention to prevent detention and arrest outside the reform and rehabilitation centers. The Public Prosecution is also required to act to prevent security services personnel who do not have the status of the judicial police, specifically the Military Intelligence Service, from taking on the powers of those bodies which legally are empowered with judicial police status.

²¹⁷ Taken from the website of the Palestinian Independent Commission Investigating for the Goldstone Report <http://www.picigr.ps/index>

5. All law enforcement bodies shall respect and implement the decisions of the regular courts related to the release of detainees. It was proven to ICHR that some Security Services, including the Preventive Security Service, the General Intelligence Service and the Military Intelligence Service, often refrain from implementing the decisions of the regular courts in those courts' calls for the release of detainees or decisions regarding release on bail. The detention of detainees has continued in spite of the decisions of the regular courts to release them.
6. There shall be a halt to the arrest and detention of civilians by the Military Public Prosecution and the Military Judiciary Commission, primarily because it constitutes a clear and explicit appropriation of the powers of the civil judiciary, and deprives citizens of the right to appear before their natural judge, a right which is protected and confirmed by the national legislation and international human rights covenants. ICHR considers that the Military Public Prosecution and the Military Judiciary Commission, having granted themselves the authority to arrest and detain civilians, has resulted in exercising the duties of the judicial police against civilians by the Military Security Services. This has led to an erosion of rights and freedoms guaranteed by the Palestinian Basic Law and the Palestinian Criminal Procedure Code.
7. The Military Public Prosecution and the Military Justice shall stop exercising the authority to investigate cases which are in fact under the jurisdiction of the civil judiciary, as well as people for whom the civil judiciary has specialization in handling their disputes and crimes. This is due to the fact that it constitutes a clear attack on the rights and freedoms of individuals, especially because the Palestinian civilian judiciary, and through its highest judicial references, namely the Supreme Court of Justice, confirmed under dozens of court rulings the inadmissibility and illegitimacy of prosecuting and arresting Palestinian civilians by the Military Public Prosecution and the Military Justice.
8. Release of all detainees held by the PNA and the De Facto Authority in the Gaza Strip, including those who have not been brought before the competent normal judiciary.
9. Prohibit all forms of torture, beating and mistreatment during interrogation. It was proven to ICHR that the Security Services exercise a wide range of forms of

torture and degrading treatment during different stages of arrest in order to extract information and force the detainee to admit what has been attributed to him or to others' acts or statements.

10. The official authorities in the West Bank shall take responsibility in regard to the accountability and prosecution of violators of the provisions of the law, both in terms of arbitrary arrest and at the level of crimes of torture and other cruel and degrading treatment to human dignity, or at the level of violations of other rights and freedoms. This is due to the fact that ICHR is convinced that the absence of effective and fundamental accountability for the perpetrators of crimes of torture as well as members of the Security Services conflicts with the rules and regulations of detention and arrest; this has contributed to the high frequency of these abuses and encouraged their perpetration.
11. Demand the PNA investigate all killings and extrajudicial executions that occurred in the Gaza Strip, to ensure accountability of the instigators and perpetrators of these crimes, and to ensure that they do not escape punishment.
12. Require the De Facto Authority in the Gaza Strip to take the necessary legal measures to end raids, searches and arrests by masked persons who are operating in violation of the law, and remind the Authority of their duty to intervene in ending the detention and arrest of persons in secret detention centers other than those designated by the law.
13. The Security Services of the De Facto Authority in the Gaza Strip shall: abide by what is stipulated in the Palestinian Criminal Procedure Code in regard to the inadmissibility of implementing any arrest without a prior judicial order; show respect for the sanctity of homes and other places; not enter them without court orders; and respect the admissible detention periods.
14. The De Facto Authority in the Gaza Strip shall prohibit all forms of torture, beatings and mistreatment during interrogation and investigation; it was proven to the Commission of Inquiry that the Security Services of the De Facto Authority have engaged in all forms of torture and degrading treatment during all stages of detention.
15. The De Facto Authority in the Gaza Strip shall respect its responsibilities arising from national laws and international human rights law by prosecuting violators of the provisions of the law, both in terms of extrajudicial executions or acts of

arbitrary arrest, or at the level of crimes of torture and other cruel and degrading treatment of human beings.

16. The De Facto Authority in the Gaza Strip must bring an end to referring civilians to military courts, as this referral is a violation of the rights of the accused, who should only be tried before their natural judge.
17. The PNA and the De Facto Authority in the Gaza Strip have a duty to correct the conditions of all public employees who were dismissed from their jobs and reinstate them from where they were removed, both in the West Bank and Gaza Strip. In addition, they must compensate the public employees for the damage caused to them, as most of the dismissals were based on individuals' political affiliations and not for professional or practical reasons.
18. Retract the stipulation of the Government Authorities in the West Bank and Gaza Strip that an employee must obtain the approval of the security authorities as a requirement for appointment in public office. This requirement is an illegal act and constitutes an explicit and clear violation by the Government Authorities of the provisions of the Palestinian Basic Law and the Civil Service Law currently in effect.
19. The Security Services in the West Bank and Gaza Strip shall refrain from pursuing, arresting and investigating journalists because of their work, and shall not prevent or impede the work of journalists, because this constitutes a clear and explicit violation of the right to freedom of opinion and expression, as well as freedom of the press, all guaranteed under national and international legislation.
20. The Palestinian Interior Ministry shall stop interfering in the work of NGOs, such as appointing temporary committees for the management and operation of them by people who are not members of these associations; this constitutes a violation of the provisions of the law.
21. The Palestinian Interior Ministry shall respect and implement decisions of the Palestinian High Court of Justice on the revocation of Government Authorities' decisions regarding the appointment of temporary committees for associations.

22. The PNA Security Services shall respect the work of the NGOs, cease interfering in their affairs, and refrain from closing, searching or interfering with their assets without legal justification.
23. Compensation by the PNA and the De Facto Authority in the Gaza Strip for all the victims of human rights violations and freedoms is to be agreed on and arranged regardless of the degree and gravity of each violation.
24. The competent Palestinian authorities shall recognize the deficiencies of the current penal legislation in terms of the shortcomings, lack of treatment for and criminalization of torture and other cruel, inhumane and degrading treatment, through the adoption of clear legislation to criminalize these practices and determine penalties proportionate to the nature of the crime. Therefore, ICHR emphasizes the importance of correlating these laws to what is specified in the 1987 *International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, as a legal reference authority that must be respected and applied.
25. The PNA shall form a Palestinian committee of judicial bodies, civil society institutions and official bodies to follow up the implementation of these recommendations.
26. The need to show respect for Palestinian fighters in their armed struggle to reach their legitimate right to self-determination, as ratified by the rules and provisions of International Humanitarian Law and Public International Law, particularly regulating the behavior of combatants during armed conflict; the need for full compliance of these rules regarding guarantees and principles which offer protection to civilians in international armed conflicts.
27. The United Nations shall take on its legal responsibilities in regard to the implementation and realization of the right of the Palestinian people to self-determination and freedom, including their emancipation from Israeli domination and occupation. This is instigated by the fact that the continued Israeli occupation of Palestine has resulted in denying the collective rights of the Palestinian people, as well as the abuse and at times absence of human rights and freedom of the Palestinians. The Palestinian people are subjected continuously to the abuse of their dignity and humanity through Israeli measures

and practices which have included murder, torture, exile, confiscation of property, imposition of restrictions on movement, the unjust siege imposed on the Gaza Strip and more.

Annex (III)
ICHR Annual Budget

ICHR Annual Budget

Statement of Financial Position as of 31 December 2010

| | <u>2010</u> U.S.\$ | <u>2009</u> U.S.\$ |
|--------------------------------------|-----------------------|-----------------------|
| <u>Assets</u> | | |
| Non-Current Assets: | | |
| Property and Equipment | 781,478 | 823,610 |
| | <u>781,478</u> | <u>823,610</u> |
| Current Assets: | | |
| Contributions receivable | 52,225 | 31,740 |
| Other current assets | 173,773 | 2,198,363 |
| Cash and cash equivalent | <u>803,275</u> | <u>681,781</u> |
| | 1,029,273 | 2,911,884 |
| Total Assets | 1,810,781 | 3,735,494 |
| <u>Net Assets and Liabilities</u> | | |
| Net assets | | |
| Unrestricted net assets | <u>619,046</u> | <u>666,708</u> |
| Total net assets | <u>619,046</u> | <u>666,708</u> |
| Non-Current Liabilities: | | |
| Provisions for employees' indemnity | 833,332 | 624,167 |
| Deferred revenues | <u>208,768</u> | <u>238,646</u> |
| | 1,042,100 | 862,813 |
| Current Liabilities: | | |
| Temporarily restricted contributions | 121,460 | 2,117,192 |
| Accounts payable and accruals | <u>28,145</u> | <u>88,781</u> |
| Total Current Liabilities | <u>149,605</u> | <u>2,205,973</u> |
| Total Liabilities | <u>1,191,705</u> | <u>3,068,786</u> |
| Total Net Assets and Liabilities | <u>1,810,751</u> | <u>3,735,494</u> |

List of Activities and Change in Net Assets
for the year ending 31 December 2010

| | <u>2010</u> <u>U.S.\$</u> | <u>2009</u> <u>U.S.\$</u> |
|--|------------------------------|------------------------------|
| <u>Revenue</u> | | |
| Achieved Revenue of Temporarily Restricted Contributions | 1,960,359 | 1,926,451 |
| Unrestricted Grants and Contributions | 99,993 | 103,077 |
| Deferred recognized revenue | 60,790 | 57,087 |
| Profits on sale of fixed assets | 9,511 | - |
| (Losses) profits of foreign currency conversion | <u>1,495</u> | <u>556</u> |
| Total Revenues | <u>2,132,148</u> | <u>2,087,171</u> |
| <u>Expenses</u> | | |
| Operating expenses | 1,960,359 | 1,926,451 |
| Depreciation | 73,044 | 69,673 |
| Currency exchange losses | <u>146,407</u> | <u>5,976</u> |
| Total Expenses | 2,179,810 | |
| 2,002,100 | | |
| (Decrease) increase in net assets | (47,662) | 85,071 |
| Net assets at beginning of the year | <u>666,708</u> | <u>581,637</u> |
| Net assets at end of the year | 619,046 | 666,708 |

Statement of Cash Flow
for the year ending 31 December 2010

| | <u>2010</u> <u>U.S.\$</u> | <u>2009</u> <u>U.S.\$</u> |
|--|------------------------------|------------------------------|
| Cash flow from operating activities | | |
| (Decrease) increase in net assets | (47,662) | 85,071 |
| Adjustments: | | |
| Depreciation | 73,044 | 69,673 |
| Provision for employees' indemnity | 248,170 | 231,897 |
| Deferred recognized revenues | (60,790) | (57,087) |
| Profits on sale of fixed assets | <u>(9,511)</u> | <u> </u> |
| | 203,251 | 329,554 |
| Changes in Working Capital: | | |
| Dues from donors | 2,024,590 | 1,656,788 |
| Other assets | (20,485) | (19,164) |
| Temporarily restricted contributions | (1,995,732) | (1,837,927) |
| Accounts payable | (60,636) | (13,469) |
| Paid employees' allowances | <u>(39,005)</u> | <u>(77,288)</u> |
| Net cash used in flow from operating activities | 111,983 | 38,494 |
| Investment Activities: | | |
| From the sale of fixed assets | <u>9,511</u> | <u> </u> |
| Cash flow from investment activities | <u>9,511</u> | <u> </u> |
| (Decrease) increase in cash and cash equivalent | 121,494 | 38,494 |
| Cash and cash equivalents at beginning of the year | <u>681,781</u> | <u>643,287</u> |
| Cash and cash equivalents at end of the year | 803,275 | 681,781 |

