

# Human Rights in the Occupied Territories Since the Oslo Accords:

## Status Report

December 1996

A Joint Report of

**The Palestinian Human Rights  
Monitoring Group**



**B'Tselem: The Israeli Information  
Center for Human Rights in the  
Occupied Territories**

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## **The Palestinian Human Rights Monitoring Group**

The PHRMG was founded in 1996 to protect human rights in Palestine under the new reality of the Palestinian National Authority, and to publicly advocate for human rights victims abused by Israel and the PNA.

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## **B'Tselem: The Israeli Information Center for Human Rights in the Occupied Territories**

B'Tselem was founded in 1989 to provide information to the Israeli public and the international community about human rights violations in the Occupied Territories. It publishes reports, engages in advocacy efforts and serves as a resource center.

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## Introduction

The Oslo Agreements obligate the Palestinian Authority and Israel to respect human rights. Article 19 of Oslo II ("The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip," signed in Washington on 28 September 1995) stipulates:

Israel and the Council [of the Palestinian Authority] shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.

In similar manner, article 11(1) of Annex 1 of Oslo II, which deals with the conduct of the security forces, stipulates:

Subject to the provisions of this Agreement, the Palestinian Police and the Israeli military forces shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms of human rights and the rule of law, and shall be guided by the need to protect the public, respect human dignity and avoid harassment.

Other articles, relating primarily to obligations undertaken by Israel, also deal with one aspect or another of human rights.

This report surveys the policy of the two parties concerning human rights in the Occupied Territories since they signed the Oslo Agreements. The findings portray a gloomy picture in which both Israel and the Palestinian Authority are responsible for widespread violation of human rights, including violation of the most fundamental of those rights.

This is a joint report of B'Tselem and The Palestinian Human Rights Monitoring Group; B'Tselem wrote the first section, dealing with Israeli human rights violations, and The Palestinian Human Rights Monitoring Group wrote the second section, addressing the Palestinian National Authority.

## **Human Rights Violations by Israel\***

On 25 October 1996, the Israeli government published a document stating that the government considers the human rights violations committed by the Palestinian Authority to be "extremely serious violations" of the Oslo Agreements. In making this statement, Israel declared that respect for human rights is an important dimension of these agreements, and we welcome this declaration.

The Oslo Agreements obligate the Palestinian Authority and Israel equally. To comply with its undertakings, therefore, Israel must immediately cease violating human rights.

Israel systematically violates human rights in the Occupied Territories in various areas, in violation of the Oslo Agreements and in breach of its obligations under international human rights agreements.

### **Articles of the Oslo Accords Concerning Human Rights that Israel breaches**

- A. The articles dealing explicitly with human rights, as set forth in the Introduction.
- B. Other articles of Oslo II dealing with specific subjects within the area of human rights:
  - 1. Annex 1, Article 10:  
There shall be a safe passage connecting the West Bank with the Gaza Strip for movement of persons, vehicles and goods, as detailed in this Article.
  - 2. Interim Agreement, Chapter 2, Article 11:  
The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.
  - 3. Annex 3, Article 28(11):  
the Palestinian side has the right, with the prior approval of Israel, to grant permanent residency in the West Bank and the Gaza Strip to: ... b. spouses and children of Palestinian residents; and c. other persons, for humanitarian reasons, in order to promote and upgrade family reunification.
  - 4. Interim Agreement, Chapter 5, Article 31(5):  
Permanent status negotiations ... shall cover remaining issues, including: Jerusalem, refugees, settlements...
  - 5. Interim Agreement, Chapter 5, Article 31(7):  
Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.

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\* This section was written by B'Tselem.

## Prohibition on Torture

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*

Art. 7, International Covenant on Civil and Political Rights

*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*

Art. 2(2), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment<sup>1</sup>

### A. Israel's policy

When interrogating Palestinians, General Security Service interrogators use methods that constitute torture under any international criterion. These methods include sleep deprivation, tying-up in painful positions and covering the head with a sack, compelling the detainee to crouch on his toes, humiliation and threats, and "shaking."

Data compiled by the Attorney General indicate that, in 1987-1994, the GSS interrogated more than 23,000 Palestinians. The late prime minister, Yitzhak Rabin, stated that, according to his figures, the GSS had "shaken" some 8,000 Palestinians as of the middle of 1995. Already in 1994, the Committee against Torture of the UN, which supervises execution of the Convention against Torture and is charged with its interpretation, determined that it finds "moderate physical pressure" to be "totally unacceptable."

In several instances, the High Court of Justice has allowed the GSS to use various methods of torture that violate Israeli law, the court contending that the interrogators are protected by the "defense of necessity" (see B'Tselem reports on torture). Following the HCJ decision in Hamdan, of 14 November 1996, which relied on those grounds in permitting the use of physical force during interrogation, the UN Committee against Torture (CAT) issued a special statement, in which it declared that this decision "contrary to the conclusions of the Committee" in that "despite any legal decision, there can be no circumstances which justify the use of torture."

### B. Recommendations

Since the CAT takes this unequivocal position, and since suffering inflicted on a detainee with the approval of the authorities constitutes torture, even if there is, pursuant to HCJ decisions, a loophole in Israeli law that enables torture under "the necessity defense," the government remains responsible for the torture it inflicts. The Israeli government must cease, once and for all, the use of torture. The government and the Knesset must act to amend the Israeli law to comply with Israel's international undertakings, and prohibit torture under any circumstances.

## Freedom of Movement

*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

Art. 12(1), International Covenant on Civil and Political Rights

## A. Israel's policy

Israel imposes harsh restrictions on the movement of Palestinians residing in the Occupied Territories, preventing most of them from travelling between the Gaza Strip and the West Bank and from entering East Jerusalem and Israel. At times, Israel imposes a total closure, and does not allow anyone to leave the Occupied Territories. In several instances, Israel imposed an internal closure on the West Bank, which prevented its residents from leaving their towns and villages.

In Oslo I, signed in Cairo in May, 1994, Israel undertook to provide safe passage between the Gaza Strip and the West Bank. It has not yet fulfilled its undertaking. This failure has resulted in an almost total severance between the Gaza Strip and the West Bank, which is defined in Oslo II as one territorial unit.

Israel ignores the position of the international community and of international law that the status of East Jerusalem is identical to that of the rest of the West Bank, and that East Jerusalem serves as the medical, economic, religious, and educational center of the Occupied Territories. The artificial severance from the other portions of the West Bank that Israel decreed on East Jerusalem by means of the closure causes serious harm to the Palestinian residents.

Restrictions on movement, primarily the closure, creates problems in all areas of Palestinian life. These restrictions eliminate sources of income, prevent treatment of the ill, separate persons from their families, and create substantial economic loss.

Restrictions on the movement of medical personnel and ill persons frequently caused delay in receiving treatment, including cases in which the patients were critically ill and required urgent treatment. During the early days of the total closure imposed in February of this year, at least nine persons died after they were delayed or denied access to medical treatment.

## B. Recommendations

Israel must allow Palestinians total freedom of movement within the Occupied Territories, including East Jerusalem. Most importantly, it must grant, even during closure, all medical personnel and ill persons access to medical facilities.

## Law Enforcement

*All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Art. 26, International Covenant on Civil and Political Rights<sup>2</sup>

### A. Israel's policy

When Palestinians attack Israelis, the Israeli authorities employ all measures, among them those that blatantly violate human rights, to arrest and try the suspects. However, these same authorities tend to be extremely lax in handling cases of violence against Palestinian residents in the Occupied Territories, whether committed by Israeli civilians or by Israeli security forces, and treat the wrongdoers with forgiveness, lenience, and mitigation.

In doing so, Israel breaches its duty to enforce the law and protect the lives, property, and rights of all persons residing under its control, and ensure their security, for which it is responsible.

### B. Recommendations

The law enforcement authorities - the police, the military, and the administration of justice - must vigorously and without compromise, although equally and fairly, enforce the laws in a manner that will ensure the safety and security of all residents of the Occupied Territories, Israeli and Palestinian, without discrimination or bias.

## Settlements

*The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.*

Art. 49, Fourth Geneva Convention

*Private property cannot be confiscated.*

Art. 46, Hague Regulations<sup>3</sup>

### A. Israel's policy

Since 1967, Israel has expropriated hundreds of thousands of dunams of Palestinian land in the Occupied Territories, and established on them permanent civilian settlements for Jewish Israeli civilians. Israel has done this to change the demography of the Occupied Territories and to realize political goals. During implementation of the interim agreements, Israel

expropriated additional thousands of dunams to build "bypass roads" intended to benefit the settlers.

According to the Central Bureau of Statistics, in 1995 there were 136 Jewish settlements in the Occupied Territories, in which some 138,000 persons lived. The various Israeli governments established the vast majority of the settlements directly, and all settlements received governmental support for infrastructure, construction, establishment of public institutions, and the like.

Israel created in the Occupied Territories two systems of laws and infrastructure, with one population (the settlers) benefiting from appropriate services and full rights, and the other population (the Palestinians) being denied their basic rights and suffering numerous and varied restrictions.

## **B. Recommendations**

The future of existing settlements must be determined in the framework of negotiations between the parties. Until such determination, the IDF, as the occupying army, must act in accordance with international humanitarian law, which prohibits the occupying power to establish settlements in the occupied territory. Israel must immediately cease expropriating land, expanding settlements, establishing new settlements, and building bypass roads.

## **Rights of Residents of East Jerusalem**

*the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Art. 26, International Covenant on Civil and Political Rights<sup>4</sup>

### **A. Israel's policy**

Since annexation of East Jerusalem in 1967, Israel has maintained a policy of intentional and systematic discrimination against the city's Palestinian population. This discrimination is primarily manifested in land expropriation, planning and building, and revocation of residency rights, and its goal is to create a demographic and geographic situation that will thwart any future attempt to question Israeli sovereignty over East Jerusalem.

**Planning and building:** Since 1967, Israel has expropriated more than one-third of East Jerusalem (some 23,500 dunams). Most of the land had been privately owned by Arabs. Almost 40,000 residential units for Jews have been built on this land, but not one unit for Palestinians. While Israel refrained from planning and developing residential areas for Palestinians, it severely restricted the issuance of building permits and demolished houses built without a permit. This policy has led to a housing density in the Palestinian sector twice as high as that of Jerusalem's Jews, a gap twice as high as it was in 1967, and a housing shortage among Palestinians exceeding 20,000 residential units.

**Residency:** Israel granted Palestinian residents of East Jerusalem the legal status of residents. This status may be revoked at the discretion of the Interior Ministry. Since March of 1994 - and more vigorously in recent months - the Interior Ministry has confiscated numerous identity cards of residents of East Jerusalem on the contention that the focus of their life no longer lies in the city. Included within this category are residents who went abroad to study, residents who became a citizen of another country, or settled in Gaza or Jordan. All these persons lose forever their right to live in Jerusalem, and have no right to appeal the ministry's decision. The same is true for East Jerusalem Palestinians who moved to Jerusalem's suburbs, many of whom moved after the Jerusalem Municipality refused to grant them building permits, or because they married Palestinians residing in the West Bank (see "Integrity of the Family" below).

## **B. Recommendations**

Israel must grant irrevocable permanent residency status to Palestinian residents of East Jerusalem, including those whose residency has been revoked. Israel must also allocate lands and prepare town planning schemes for Palestinian neighborhoods in East Jerusalem that will provide an appropriate response to Palestinian housing needs.

Until the permanent status agreement is reached, Israel must act in East Jerusalem - as it must act in other areas of the Occupied Territories - in compliance with international law, which prohibits establishment of settlements in occupied territory.

## **Prohibition on Arbitrary Detention**

*No one shall be subjected to arbitrary arrest or detention.*

Art. 9(1), International Covenant on Civil and Political Rights

## **A. Israel's policy**

According to IDF statistics, on 25 December 1996, Israel was holding 267 Palestinians and one Israeli Jew in administrative detention. International humanitarian law allows administrative detention, but only as a preventive means and in exceptional cases where "reasons of security necessity" exist. Israel, however, employs administrative detention broadly, and frequently as punishment or in lieu of trial when it lacks sufficient evidence. Since the beginning of the intifada, more than 15,000 administrative detention orders have been issued against Palestinians in the Occupied Territories.

Recently, the fear has grown that administrative detention will be used against settler activists on the political right.

## **B. Recommendations**

The Israeli authorities must try persons against whom there is a *prima facie* evidence that they committed a crime, and release those against whom no such suspicions exist. Only where a concrete suspicion that a specific person is likely to endanger the security of the

area, and no other way exists to eliminate this danger, may the authorities consider employing administrative detention. But in that case, too, more limited administrative means must be used, such as house arrest, and they must be restricted to a limited and defined period of time.

## Integrity of the Family

*applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by State Parties in a positive, humane and expeditious manner.*

Art. 10(1), Convention on the Rights of the Child<sup>5</sup>

### A. Israel's policy

**In the Occupied Territories (except East Jerusalem):** Since August, 1993, Israel has recognized the right of residents of the Occupied Territories to join their spouses and children. However, since then, Israeli policy on approving requests for family reunification has been based on an insufficient annual quota. Furthermore, the requests are handled in a complex, bureaucratic manner that often takes years to obtain approval, during which the family members remain separated.

Even following Oslo II, which transferred to the Palestinians the administrative authority to handle requests for family reunification in the Occupied Territories, Israel continues to hold supreme authority to determine whether to approve or reject the application. The limited quota also remained. Now, a year after implementation of Oslo II began, the Israeli and Palestinians sides have not reached agreement over setting the procedures for handling applications for family reunification. The reason is that Israel has refused to conform the annual quota to meet the needs of the population.

The dispute has created almost total inaction: since the transfer of authority, few requests for family reunification in the Occupied Territories have been granted; the large number of applications grow and remain unattended; Palestinian families continue to suffer from the forced and lengthy separation between husbands and wives and between parents and their children.

**In East Jerusalem:** In breach of its undertaking following a petition to the High Court of Justice, the Interior Ministry does not allow non-Jerusalemite spouses of residents of East Jerusalem to live with them in the city until their request for family reunification has been approved. This approval process can take years. Since the total closure of the Occupied Territories this past February, residents of the Occupied Territories who are married to residents of East Jerusalem have not been able to enter the city. Entry is denied despite a "divided families procedure" that granted entry permits and permits to stay in the city to such families prior to the closure.

In many cases, residency rights were revoked from residents of East Jerusalem who married residents of the Occupied Territories and left the city to live with their spouse.

## B. Recommendations

Israel must set, in agreement with the Palestinian Authority, procedures that will entitle, within a short period of time, all the Palestinian residents of the Occupied Territories to family unification with their spouse and children, and enable them to live a proper and full family life in the Occupied Territories. Israel must also grant permanent residency status to spouses and children of Palestinian residents of East Jerusalem.

### Prohibition on Collective Punishment

*No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.*

Art. 33, Fourth Geneva Convention<sup>6</sup>

### A. Israel's policy

In the Occupied Territories, Israel uses various means that constitute collective punishment. The Israeli authorities demolish and cement-shut houses where Palestinians suspected of taking part in violent acts live. Since the beginning of the intifada, Israel has demolished, under the aforementioned circumstances, more than 440 Palestinian houses and cemented-shut more than 300. In March-April of this year, the authorities demolished eleven houses of families in which one of their members had been suspected by Israeli of being linked with suicide attacks. The demolition of houses has left thousand of innocent persons, many of them children, homeless.

These demolitions of the homes of Palestinians whose only "crime" is their family relation to persons suspected of violent acts constitutes collective punishment and violates international law.

Many other Israeli policies, including sweeping travel restrictions and the closure of educational institutions also constitute collective punishment.

## B. Recommendations

Israel must refrain from punishing innocent persons, including the relatives, neighbors, and communities of persons involved, or suspected of involvement, in violent acts.

### Economic Rights

*Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his*

*dependents.*

Art. 39, Fourth Geneva Convention<sup>7</sup>

### **A. Israel's policy**

Tens of thousands of Palestinian families in the West Bank are dependent for their support on a relative working in Israel. When the closure is intensified, these workers are not allowed to reach their work place, and unemployment in the Occupied Territories soars.

Although many Palestinians who worked in Israel have made payments over the years to Israel's National Insurance Institute in the same amount as Israeli employees, unlike their Israeli counterparts, Palestinian workers are not entitled to any social benefits because the NII Law grants social benefits only to Israeli residents. Israel does not, for example, ensure compensation to employees who are unable to earn a living because of the closure, and refuses to pay them unemployment compensation.

### **B. Recommendations**

Israel must immediately ensure alternative sources of income, in an amount sufficient to provide a reasonable standard of existence, for Palestinians who were deprived their sources of income because of the closure. Furthermore, Israel must pay unemployment compensation and other social benefits to Palestinian workers who made payments to the NII over the years.

## Right to Education

*The States Parties to the present Covenant recognize the right of everyone to education.*

Art. 13(1), International Covenant on Economic, Social and Cultural Rights

### A. Israel's policy

Israel refuses to allow 1,200 students from Gaza who are studying at universities in the West Bank to cross Israeli territory and remain in the West Bank to study. Israel closes educational and welfare institutions for many months at a time because of their ostensible identification with Islamic movements. Israel takes this measure without presenting any proof before any judicial authority that the institution has committed any illegal act. These actions constitute collective punishment, and impairs the exercise of the right to education. In March of 1996, Israel's security forces closed seven educational institutions, among them universities and colleges, for six months. Hebron University, which was ordered closed at that time, just recently (28 December 1996) was allowed to open.

### B. Recommendations

Israel must allow Palestinian students to cross from the Gaza Strip to the West Bank so that they can exercise their right to education. Also, Israel must not arbitrarily close educational institutions.

- \* The Hague Regulations are part of customary international law, and as such binding on all countries.
- \* Israel ratified the Fourth Geneva Convention in July, 1951.
- \* Israel ratified the International Covenant on Civil and Political Rights in August, 1991.
- \* Israel ratified the Convention on the Rights of the Child in August, 1991.
- \* Israel ratified the International Covenant on Economic, Social and Cultural Rights in October, 1991.
- \* Israel ratified the Convention against Torture in November, 1991.

## Notes: Additional provisions in international agreements binding Israel

1. *For the purposes of this Convention, the term "torture" means 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 intimidating or coercing him or a third person ... 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 capacity.*

Art. 1(1), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

*No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.*

Art. 31, Fourth Geneva Convention

*Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*

Art. 2(1) Convention Against Torture

2. *Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; ... (c) To ensure that the competent authorities shall enforce such remedies when granted.*

Art. 2(3), International Covenant on Civil and Political Rights

3. *The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.*

Art. 55, Hague Regulations

4. *The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.*

Art. 11(1) International Covenant on Economic, Social and Cultural Rights

*Everyone has the right to a nationality.*

Art. 15, Universal Declaration of Human Rights

5. *States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine ... that such separation is necessary for the best interests of the child.*

Art. 9(1), Convention on the Rights of the Child

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.*

Art. 17, International Covenant on Civil and Political Rights

*The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society...*

Art. 10(1), International Covenant on Economic, Social and Cultural Rights

*6. Any destruction by the Occupying Power of real or personal property ... is prohibited.*

Art. 53, Fourth Geneva Convention

*7. 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 steps to safeguard this right.*

Art. 6(1), International Covenant on Economic, Social and Cultural Rights

*The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...*

Art. 11(1), International Covenant on Economic, Social and Cultural Rights

## **Human Rights Under the Palestinian National Authority\***

The Palestinian National Authority (PNA) was established in April 1994. The territory under its control (Area A) constitutes 4% of the West Bank and 60% of the Gaza Strip. Approximately 60% of the Palestinians in the Occupied Territories live in Area A.

During 1996, numerous and systematic human rights violations occurred in areas controlled by the PNA. Mass arbitrary arrest campaigns resulted in the detention of hundreds of people. Following the suicide bombings by Hamas and the Islamic Jihad in February and March 1996, which resulted in the death of 58 people, the PNA conducted one such arrest campaign, holding most of the detainees without charge or trial. Palestinian security forces are also responsible for torture of detainees. Nine Palestinians have died in PNA custody, most after being tortured and one as a result of Palestinian security forces gunfire. State Security Courts, whose proceedings fall far short of minimum standards for a fair trial, were used to try detainees. Most detainees tried by these courts, for example, were not informed of the charges against them before being brought to trial.

While the PNA has publicly committed itself to abide by human rights norms, its reluctance to hold a public and fair investigation into suspected human rights violations has led to their increase. During 1996, three human rights activists and dozens of Palestinian journalists were arrested for their opinions, writings and criticism of the PNA.

We recognize that the PNA is under tremendous pressure from external forces, particularly in the current deteriorating political situation. However, such pressure can never justify the detention of hundreds of persons for days, weeks or even months without bringing them before a court. Furthermore, according to international human rights standards, no extenuating circumstance can justify torture.

The Palestinian Authority must immediately take a number of steps to address the deteriorating human rights situation and to enact and enforce laws that can guarantee basic rights.

The fourth draft of the Palestinian Authority Basic Law stipulates that:

Every person has the right to liberty and security of person. No person shall be subjected to arbitrary arrest or detention. No person shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by Law.

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\* This section was written by the Palestinian Human Rights Monitoring Group.

Article 113 of 1961 Jordanian Code of Criminal Procedure stipulates that:

If the accused is arrested under the terms of a warrant and held in custody for more than 24 hours without being questioned by the attorney-general or brought before him in accordance with the provisions of the previous article his arrest shall be regarded as an arbitrary act and the official responsible shall be prosecuted for the offense of deprivation of personal liberty provided for in the Penal Code.

Since the arrival of the PNA, the Attorney General has claimed that it still follows Jordanian law, which governed the West Bank 1948 - 1967. He added that arrest procedures in the Gaza Strip are governed by the 1924 Criminal Procedure Ordinance, issue by the British Mandate.

Although all those arrested on the basis of political affiliation are tried by the State Security Court, in 1996 only 50 detainees were brought before this court, while 1000 such detainees were held during the past year without charges. Many were held in custody for months and often denied family visits. Upon release, they were granted no documents certifying their detention and release.

In several cases, mass arrests and prolonged detention without trial of suspected Islamist activists followed pressure from external forces, particularly Israel. Many of these detainees were held for prolonged periods.

The Palestinian security forces use the illegal practice of holding family members hostage as a means of pressure on suspects and their families.

The largest arbitrary arrest campaign conducted by the PNA occurred in March 1996 following the suicide bombings perpetrated by Hamas and the Islamic Jihad. At that time, the PNA arrested more than 1200 people suspected of supporting those groups. Israeli security forces arrested hundreds as well. Palestinians who live in what is defined in the Oslo Accords as "Area B" are therefore subject to arrest by both the PNA and Israel. Of those detained by the PNA during this period, 150 remain in Palestinian detention centers.

## Torture and Ill-Treatment

Article 11 of the Palestinian Basic Law Fourth Draft stipulates:

All persons are equal in human dignity. No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no person shall be subjected without his free consent to medical or scientific experimentation. No effect shall be given to any statement or confession obtained as a result or under the threat of torture, cruel, inhuman or degrading treatment.

The torture of detainees is in danger of becoming systematic in the Palestinian detention centers in the West Bank and Gaza Strip. The fear currently expressed by victims that they would suffer reprisals as a result of their names being publicized by human rights organizations has increased over the past year and is closely related to the increasingly widespread use of torture and ill-treatment.

The methods practiced on the detainees vary from one case to another. The most common methods are sleep deprivation and being tied in painful physical positions. These methods closely resemble those approved by the Israeli High Court and practiced by Israel for many years against Palestinian detainees. Torture victims confirmed that their torturers are often Palestinians who were arrested and tortured in Israeli detention centers.

The primary methods of abuse employed by Palestinian security forces are:

- a. Deprivation from sleep, and being tied in painful physical positions.
- b. Burning with cigarettes and electric instruments.
- c. Hanging by the ankles from the ceiling.
- d. Beating with electrical cables and sticks in addition to kicking and punching.
- e. Humiliation and threats

We have reached the following conclusions:

1. The increasingly widespread use of torture is due in part to the prolonged period of incommunicado detention. Families of political detainees used to have the right to visit the prisoner after a few days. Now, they can only visit after the first week or more.
2. The branches of the Palestinian Security forces, including the Palestinian Police, the Preventive Security Service, the Security Services, Intelligence, the Marines and Force-17, all engage in torture. In addition, the commanders of the forces are reluctant to investigate torture cases brought to their attention.
3. The Palestinian Authority has not taken any steps to prevent torture. Complaints of torture filed by detainees are ignored. The PNA's negligence strengthens the hand of those who would disregard torture cases, and ensures no accountability for those who engage in torture. Torturers are only put on trial in cases which generate tremendous media attention or where the victim is an important person (like Mahmoud Jumayel who died on July 31, 1996 after being severely tortured by Palestinian Marines in Jneid prison in Nablus District).

## Deaths in Custody

Ten people have died in Palestinian prisons and detention centers. Some of these were the result of torture. The PNA has not publicly addressed some of these cases, and in those cases where investigations were initiated, their results have not been provided. In some of these cases, the punishment of people from various security forces for offenses related to these deaths was announced, however their names were not published. The only exception is the case of Mahmud Jumayel (number 7 below), in which the names of those charged were released.

1. Farid Hashem Jarboa' from the Gaza Strip, died in Gaza Prison on July 6, 1994. The Palestinian Justice Minister announced that Jarboa' died as a result of violence used against him. Four police officers were arrested and later released.

2. Salman Jalaytah, aged 40, from Jericho, died in Jericho Prison on January 18, 1995. According to his family, he was severely tortured by members of the Preventive Security Service, and there were indications of violence on his body.
3. Youssef A-Saa'rawi, aged 21, from Gaza Strip, shot in the head with live ammunition during interrogation on May 26, 1995. According to the Attorney-General, Khalid Al-Qidra, a weapon misfired and the officer responsible would be tried. To date, no one has been tried and the request of Amnesty International to clarify the matter has not been answered.
4. Mohammad Abdelmajid Al-Amour, age 50, from Khan Yunis, was brought to A-Shifa Hospital on June 19, 1995 and died on June 21, after being detained for 2 months by the Preventive Security Service. According to his family, there were signs of burns on his body. An autopsy was conducted and a commission of inquiry established. However, to date the results of the autopsy or any other information has not been provided.
5. Tawfik Al-Sawarka, age 36, from the Gaza Strip, died in the central Gaza Prison on August 27, 1995. It was announced that he died of a heart attack. A commission of inquiry was established and it was announced that 2 interrogators were suspended. To the best of our knowledge, to date no one has been charged with an offense related to this case.
6. Azzam Mosleh, from 'Ayn Yabrud in the Ramallah district, was detained on September 27, 1995 by the Preventive Security Service. On September 29 his family received his body. An autopsy was performed. According to his family, there were signs of beatings on his body. The Palestinian authorities announced that three officers were charged; two were sentenced to one year in prison and the third to seven years in prison. The names of those convicted have not been published.
7. Mahmoud Jumayel, 26 years old, from Nablus, died in Hadassah Hospital in Jerusalem on July 31, 1996. Jumayel was arrested on December 18, 1995 and eight days later transferred to the Palestinian Marines in the Juneid Prison in Nablus. He was severely tortured, beaten with electric cable and clubs and given electric shocks. President Arafat ordered an investigation into the incident. The Legislative Council also established an investigation. The results of these investigations have not yet been published. Three interrogators were tried and each sentenced to 15 years imprisonment.

8. Nahed Mojahed Dahlan, 24 years old, from Gaza, was found dying near his house on August 7, 1996. He died in a hospital that same day. He was called for interrogation by the Palestinian Intelligence every night for the week before he died. An official announcement stated that the autopsy revealed that he committed suicide by swallowing pesticide but neither we nor his family have received the autopsy report.

9. Khaled Issa Al-Habal, 60 years old, from Hirbata village in the Ramallah district, died in Ramallah Police station on August 11, 1996. He was detained the day before following a dispute between neighbors. On August 13 his body was transferred to his family. According to the family, marks of violence were visible on the body. The Ramallah public prosecutor ordered an autopsy. The results have yet to be provided to his family. The police announced that Al-Habal committed suicide, and we are not aware of detention or any legal steps which have been taken concerning this case.

10. Rashid Daud Al-Fatiani, shot to death on 3.12.96 in Jericho prison by a Palestinian police officer. Al-Fatiani was detained on January 15, 1995 by the Preventive Security Service. According to his family, he was severely tortured at the beginning of his detention. According to the prison authorities, a dispute broke out between Al-Fatiani and a police officer, in which the officer shot Al-Fatiani 13 times. The officer was suspended and it was announced that he would be tried.

#### The Right to a Fair Trial - The State Security Court:

*All persons shall be equal before the courts and tribunals....everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

Article 14 (1), the International Covenant on Civil and Political Rights.

The State Security Court was established in February 1995 through a presidential decree issued by Yasser Arafat. The State Security Court holds its sessions in Gaza, Jericho, Nablus and Jenin. Defendants accused of committing security crimes were brought before the court beginning in April 1995.

The proceedings of the SSC violate the minimum conditions set by international humanitarian law for fair trial. The SSC holds its sessions secretly, often late at night. These sessions are very brief, often only lasting a few minutes, in which time the defendant is accused, tried, convicted and sentenced. The PNA does not notify the defendants in advance of the time and place of their trial. Defendants are usually brought from their cells at midnight. The family of the defendants is not informed as to the charges or the court date, and may only hear the details through the media. These procedures show the Palestinian judicial system does not function properly, nor does it maintain independence and impartiality.

## Death Penalty

*Everyone has the right to life, liberty and security of person.*

Article 3, Universal Declaration of Human Rights

The State Security Court began in mid-1995 to impose death sentences on people convicted of murder. However, the court did not take into account the safeguards guaranteeing protection of the rights of those facing the death penalty.

The process by which defendants were convicted and sentenced to death does not meet internationally recognized standards. The defendants were not given the chance to defend themselves in court. They did not have legal representation, and were not given time to prepare a defense.

Seven people have been convicted and sentenced to death by the State Security Court. The first was on 30 May, 1995, and the last on 15 December 1996. President Arafat decided to delay the implementation of the death sentence.

The Palestinian Human Rights Monitoring Group and B'Tselem consider resorting to capital punishment a violation of the most basic of all human rights - the right to life. We call on both the PNA and Israel to abolish the death penalty.

## Freedom of Expression:

*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 choice.*

Article 19 (2), the International Covenant on Civil and Political Rights

According to Article 2 of the Palestinian Press Law, adopted by the Constitutive Assembly in 1995:

Press and printing are free. Furthermore, freedom of opinion should be entitled to every Palestinian individual who attends the absolute right to express his opinion in a free manner either verbally, in writing, photography, or drawing, as a different means of expression and information.

During 1996, the PNA systematically violated the right to freedom of expression. Many journalists were arrested. Cameras and other equipment have been damaged or destroyed.

Many newspapers were closed. In March, the PNA shut down the weekly "Al-Istiklal," published in Gaza by the Islamic Jihad. It remains closed. In September, the PNA also shut down the weekly independent Jenin District newspaper "Jenin," allegedly because its editor criticized the policies of the Jenin Municipality and the local trade union organization. The

editor of the newspaper Imad Abu-Zahra was interrogated at the Jenin Police Station and the district prosecutor ordered him verbally to close the newspaper, while refusing to issue a written order.

Samir Hamato, a correspondent of Al-Nahar newspaper, was arrested in Gaza on March 17, 1996 and was released in September, 1996. He was not interrogated, charged or brought before the court.

## Restrictions Imposed on Human Rights Organizations

Human rights organizations working in the areas under the control of the Palestinian National Authority operate in a climate of fear. This fear is a direct result of actions directed against internationally known human rights activists, and comments made by senior representatives of the PNA. This fear has influenced the willingness of victims of human rights abuses to present their testimony to human rights groups, and the willingness of Palestinian journalists to publish information concerning human rights.

### **A. Detention of human rights activists**

Since the establishment of the Palestinian Authority in 1994, four recognized human rights activists have been arrested:

1. Raji Al-Sourani, Director of the Palestinian Center for Human Rights (Gaza) and former Director of the Gaza Center for Rights and Law.

Al-Sourani was arrested on February 14, 1995 by order of the head of the Palestinian Authority, Yasser Arafat. He was detained for 16 hours following his call to hold a conference to protest the implementation of the State Security Courts. He was released without charges.

2. Bassem Eid, human rights researcher (formerly of B'Tselem, today Director of the PHRMG)

While working on behalf of the Israeli human rights organization B'Tselem, he wrote a report on the human rights abuses committed by the Palestinian Preventative Security Service (PSS), and on tortured and mistreated Palestinian detainees. On January 2, 1996, following his criticism of Arafat's unwillingness to allow candidates access to Palestinian television and radio during the election campaign, Eid was arrested for 25 hours. He was released without charges.

3. Dr. Iyad Sarraj, the Commissioner-General of the Palestinian Independent Commission for Citizens' Rights and the Director of the Gaza Mental Health Center.

Dr. Sarraj was arrested 3 times in 1995-6 for his criticism of the PNA human rights record. His last detention was attributed to patently false drug charges, which were later dropped. At that time Dr. Sarraj was held for 17 days. He wrote a letter, smuggled out of prison, in which he detailed his mistreatment while in custody.

4. Mohammad Dahman, Director of Al-Damir Association in Gaza.

Arrested on August 12, 1996 by the Palestinian General Security Service (Muhabarat) after he issued a statement that called for an investigation into the suicide of Nahed Dahlan (see above). He was accused of inciting chaos and discord for publishing inaccurate and misleading information. His case was submitted to the State Security Court. He remained in custody for 15 days and was then released. All charges were dropped.

These arrests have contributed to a climate of fear among human rights organizations. Today, activists must hesitate before expressing themselves on human rights violations taking place within the PNA. Reports describing the human rights situation under the PNA are largely unavailable, despite the ongoing collection of testimonies by various organizations.

### **B. Lack of coverage of human rights in the Press**

When Amnesty International published its report in December 1996 on the PNA, much of the Palestinian press coverage addressed the anger of the PNA towards Amnesty, while the serious charges made in the report received little coverage and were left unanswered. Other reports and publications by human rights organization receive similar treatment, while the Palestinian press devotes much attention to allegations of human rights abuses by Israeli authorities.

### **C. Other Limitations on Human Rights Organizations**

1. Human rights organizations encounter difficulties visiting Palestinian detention centers. An officer is always present with the human rights researcher during visits, thus intimidating prisoners from voicing complaints. This creates the impression that the authorities have something to hide.

2. Human rights activists did not encounter special difficulties in their work during the first few months after the arrival of the PNA. Those who were arbitrarily arrested for political reasons were willing to file complaints against the PNA's various security apparatus, and to publish their names and testimonies. In the second half of 1996, however, the situation changed dramatically. Released detainees are no longer willing to file complaints against the PNA. Victims say that they are afraid of their names being published by human rights organizations. A 24 year old university student who was tortured while in the custody of the PNA said that he was afraid that his torturers will take revenge if he speaks openly about what happened to him, even if human rights organizations keep his name secret. Another victim refused to provide almost any details of his torture and imprisonment because of his fear that the PNA will harm him again (testimonies taken by Bassem Eid).

As a result of the increased level of intimidation exercised by the PNA, it is now very difficult to record testimonies, and those who give testimony are still afraid to allow their name to be used publicly.

3. There are no communication channels between the PNA and the human rights community. Human rights organizations are unable to verify the testimonies of victims, or receive the official versions of events and conditions reported by victims.

4. An interview with Attorney General Khaled Al-Qidra, entitle "A Campaign Against the PNA Launched in the Name of Human Rights," was published in Al-Ayyam on August 18,

1996. Al-Qidra said that the West supports human rights organizations for its own self interested motives. He explained that human rights activists are a fifth column. Such accusations of treason are in themselves a form of intimidation that carry the threat of more official harassment and violence from supporters of the PNA and its security branches. This is not the only example of virulent hostility to the work of human rights organizations by the PNA.

### Recommendations:

1. Guarantee that detainees have access to lawyers, have the right to contact their families and have the right to a fair trial.
2. Conduct a comprehensive, public and independent investigation into complaints of torture and cases of death in detention.
3. The PNA has to dismiss violators of human rights who misuse their authority. They must also be tried for their abuse of power, without enjoying special immunity.
4. Allow human rights organizations to work freely without obstacles; Cease the harassment and arrest of human rights activists.
5. Immediately cease arbitrary arrests on the basis of political affiliation and stop putting detainees in custody for long periods without charges or without bringing them before a court.
6. Remove pending court cases from the State Security Courts, and guarantee an impartial and independent judiciary in any case so that detainees can have fair trials that meet international standards.
7. The Legislative Council has to preserve its independence to guarantee that human rights standards are integrated with the new and existing legislation.