

# HUMAN RIGHTS MANUAL FOR PALESTINIAN LAWYERS

---

Identifying, Investigating and Prosecuting  
Human Rights Violations



BAR HUMAN RIGHTS COMMITTEE OF  
ENGLAND AND WALES

# **HUMAN RIGHTS MANUAL FOR PALESTINIAN LAWYERS**

---

Identifying, Investigating and Prosecuting  
Human Rights Violations

Theodora A Christou

BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

# Human Rights Manual for Palestinian Lawyers

---

Bar Human Rights Committee of England and Wales  
57-60 Lincoln's Inn Fields  
London WC2A 3LS  
[www.barhumanrights.org.uk](http://www.barhumanrights.org.uk)

Produced for BHRC by: Theodora A Christou

Funded by: Foreign and Commonwealth Office (FCO), UK

Copyright 2006 ©

---

# Table of Contents

## 1. HUMAN RIGHTS IN INTERNATIONAL AND DOMESTIC LAW 9

*This chapter first provides a general overview of international and human rights law. It then sets out the key human rights standards as established by international and regional human rights systems at the same time identifying provisions within Palestinian legislation which mirrors the relevant standards. Finally it briefly addresses international humanitarian law.*<sup>9</sup>

<b>1.1 International Human Rights Law Instruments</b>	<b>9</b>
<b>Treaties</b>	<b>9</b>
The right of access to international human rights bodies	9
<b>UN Treaties and Monitoring Bodies</b>	<b>10</b>
<b>Regional Treaties and Monitoring Bodies</b>	<b>10</b>
Arab	10
Africa	12
American	12
European	12
<b>Non-treaty Standards</b>	<b>12</b>
<b>1.2 Conflicts in Legal Systems: The status of international treaties in domestic law</b>	<b>13</b>
<b>Introduction</b>	<b>13</b>
<b>Interpretation</b>	<b>13</b>
<b>1.3 Human Rights Principles and Norms</b>	<b>14</b>
<b>Introduction</b>	<b>14</b>
International Standards	14
Palestinian Law	14
<b>Criminal Investigations</b>	<b>15</b>
Surveillance	15
Informers and undercover officers	15
Search and seizure	15
Fingerprints, samples and personal data	16
<b>Arrest and Pre-trial Issues</b>	<b>16</b>
Basic Provisions	16
Reasonable suspicion	17
Reasons	17
The use of force	17
Access to a lawyer	18
Questioning	18
The right to be brought promptly before a court	19
Bail	19
Conditions of detention and ill-treatment	20
Habeas Corpus	20
<b>Fair Trial</b>	<b>21</b>
Basic provisions	21
The right to be informed of the charge	21
Length of pre-trial detention	22
Adequate time and facilities for the defence	22
Legal aid and legal representation	22
Disclosure	23
An independent and impartial court	23

Military Courts	23
Public hearing	24
Presence of the accused	24
Interpretation and translation	24
The presumption of innocence	25
Equality of arms	25
Witnesses	25
Unlawfully obtained evidence	25
The right to silence	26
Children	26
Trial within a reasonable period	26
Retroactive offences	27
<b>Sentence</b>	<b>27</b>
Inhuman and degrading sentences	27
Fair trial guarantees	27
Retroactive penalties	28
Proportionality of Sentence	28
Corporal punishment	28
Extra-Judicial Executions	28
<b>Death Penalty</b>	<b>28</b>
Right to Life	28
Mandatory Death Penalty	29
Fair Trial	29
Torture, Cruel and Inhuman Treatment	30
Death Row Phenomenon	30
Mandatory Death Sentence	30
Sentencing Criteria/Guidelines	30
Juveniles	31
Mental Incapacity	31
Women	31
<b>Appeals</b>	<b>32</b>
Fair trial guarantees	32
Legal aid and representation	32
Presence of the appellant	32
<b>Prisoners</b>	<b>33</b>
Basic provisions	33
Prison conditions	33
Privacy and family life	34
Correspondence	34
Medical treatment	34
<b>1.4 International Humanitarian Law</b>	<b>35</b>
<b>Introduction</b>	<b>35</b>
<b>Grave Breaches</b>	<b>36</b>
<b>Universal Jurisdiction</b>	<b>37</b>

## **2. ENFORCEMENT PROCEDURES AND REMEDIES IN INTERNATIONAL LAW 38**

*This chapter lays out the enforcement procedures available for violations committed within the Palestinian Authority under the United Nations system.*

<b>United Nations</b>	<b>38</b>
<b>Introduction</b>	<b>38</b>
<b>Human Rights Law</b>	<b>39</b>
<b>UN Treaties</b>	<b>39</b>
<b>UN Human Rights System</b>	<b>39</b>
<b>Charter Bodies</b>	<b>39</b>
Commission on Human Rights	39
Human Rights Council	40
The Sub-Commission on Promotion and Protection of Human Rights	41

<b>Treaty Monitoring Bodies</b>	<b>41</b>
Shadow Reports	42
<b>Making an Application to a Committee</b>	<b>42</b>
Consideration of individual complaints or communications	42
Human Rights Committee	43
Other Committees	44
<b>The UN and the OPT</b>	<b>44</b>
Consideration of individual complaints or communications	44
<b>Special Rapporteurs</b>	<b>48</b>
Communications	48
Submitting a Complaint	49
Country Visits	50
Special Rapporteur on the situation of human rights in the Palestinian territory occupied by Israel since 1967	51
Working Group on Arbitrary Detention	52
Special Rapporteur on Torture	53
Working Group on Enforced or Involuntary Disappearances	54
Special Rapporteur on the Independence of Judges and Lawyers	54
Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions	55
<b>1503 and 1235 Procedures</b>	<b>58</b>
1503 Procedure	59
Submitting a complaint	59
Admissibility	59
1235 Procedures	59
<b>International Court of Justice</b>	<b>60</b>
Contentious cases between states	60
Jurisdiction	60
Sources of applicable law	60
Advisory Opinions	60
ICJ Advisory Opinion on the Legality of the Wall	60
 <b>3. CODE OF ETHICS</b>	 <b>62</b>
<i>This chapter details the recommended minimum standards of ethics for the legal profession.</i>	
<b>Code of Ethics – Experience from Abroad</b>	<b>62</b>
<b>Codes of Ethics for Lawyers</b>	<b>62</b>
<b>Key Principles</b>	<b>62</b>
<b>Basic Principles on the Role of Lawyers and Basic Principles on the Role of Prosecutors</b>	<b>63</b>
<b>Code of Ethics for Judges</b>	<b>64</b>
 <b>4. APPLICATION OF INTERNATIONAL NORMS AND THE PALESTINIAN DOMESTIC SYSTEM</b>	 <b>65</b>
<i>This chapter describes the Palestinian domestic legal system, considering legal pluralism, the combination of multiple layers of law and the developing court structure, attempting to establish the framework within which international and human rights can be applied within the domestic context.</i>	
<b>Palestinian Domestic System</b>	<b>65</b>
<b>Legal Pluralism in Palestine</b>	<b>65</b>
<b>Sources of Law</b>	<b>66</b>
Customary Law	66
Ottoman Law	66
British Law	66
Jordanian Law	66
Egyptian Law	67
The Intifada	67
Israeli Law – Military Administration	67

Defence (Emergency) Regulations 1945	69
Palestinian National Authority (PNA)	70
<b>Practical Responses to Conflicts in the Palestinian Legal System</b>	<b>70</b>
Priority of the Basic Law	70
<b>Domestic procedure – Court Structure</b>	<b>70</b>
Ordinary Courts	71
First Instance	71
Appellate Courts	71
The Supreme Court	72
Religious courts	72
Special Security Courts	72
Israeli Military Courts	73
<b>Using the domestic law</b>	<b>74</b>
<b>Complaints to the PICCR</b>	<b>74</b>
<b>Introduction</b>	<b>75</b>
<b>PICCR Establishment</b>	<b>75</b>
<b>Manual Objective</b>	<b>75</b>
Complaints followed up by PICCR	75
Complaints not followed up by PICCR	76
Source of complaints	76
Presenting the complaint	76
Rejection of complaints	77
PICCR mandate in complaint follow-up:	77
Complaints processing	77
<b>Phase I: (Field Investigation)</b>	<b>77</b>
<b>Phase II: (correspondence)</b>	<b>78</b>
Receiving Complaints	78
Recourse to legal action	79
Investigating complaints	79
Procedures that follow investigation and information gathering	79
Collecting evidence and documents on the violation	80
Correspondence manual	81
Registration procedures	82
<b>Phase III. Creating files</b>	<b>83</b>
Recording complaints in the Department's file	83
Referring file to follow up	83
<b>Phase VI. Notification letters</b>	<b>83</b>
Closing complaint and preparing follow up files:	84
<b>Reports issued by the Palestinian Legislative Council</b>	<b>85</b>
<b>Recommendation to commissions to make other decisions</b>	<b>85</b>
<b>Visits to Jails</b>	<b>86</b>
<b>General Data</b>	<b>86</b>
<b>PICCR Services</b>	<b>86</b>
Free of charge services	86
Form of information needed for some complaints:	86

## **5. IDENTIFYING HUMAN RIGHTS VIOLATIONS** **88**

*This chapter sets out where practical guidance for identifying, investigating and prosecuting human rights violations can be found.*

<b>Torture Reporting</b>	<b>88</b>
What is the Torture Reporting Handbook?	88
Who is the Torture Reporting Handbook for?	88
Why should you consider using the Torture Reporting Handbook?	88
Contents	89
<b>Combating Torture</b>	<b>92</b>
Who is this manual for?	92
Contents	96

<b>Human Rights and Pre-trial Detention</b>	<b>96</b>
Contents	97
<b>Fair Trial</b>	<b>97</b>
Contents	97
<b>Human Rights Monitoring</b>	<b>100</b>
Contents	100
<b>United Nations Training and Educational Material</b>	<b>101</b>

## **6. SOURCES AND LINKS 102**

*What follows is a non-exhaustive list of online links and sources used in the production of this manual.  
Most of these sites provide links to other useful sites.*

<b>Sources</b>	<b>102</b>
<b>Links</b>	<b>104</b>

<b>ANNEXES</b>	<b>110</b>
<b>The Amended Basic Law (Promulgated March 18, 2003)</b>	<b>110</b>
<b>Law No 1 of 2002 on the Judicial Authority</b>	<b>129</b>
<b>Law No 3 of 2001 on Penal Procedure</b>	<b>144</b>
<b>Law No 6 of 1998 on The Reform and Rehabilitation Centers “Prisons”</b>	<b>195</b>
<b>Israel Military Order No. 378</b>	<b>207</b>
<b>Defence (Emergency) Regulations 1945</b>	<b>230</b>



# Introduction

A viable state must have a legal system that is functional and reliable, based on respect for the rule of law including human rights norms.

The Bar Human Rights Committee of England and Wales (BHRC) is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards. The remit of the BHRC extends to all countries of the world.

The BHRC was set up by a group of barristers in 1991. The Committee has a Chair, Vice-Chair, Treasurer and an Executive Committee which meets monthly. The principal objectives of the BHRC are:

- III The support and protection of practising lawyers and judges who are threatened or oppressed in their work;
- III Upholding the rule of law and internationally recognised human rights standards;
- III Advising, supporting and co-operating with other organisations and individuals working for human rights;
- III Furthering interest in and knowledge of human rights and the laws relating to human rights;
- III Advising the General Council of the Bar of England & Wales in connection with any human rights issue.

This manual is produced as part of a project which seeks to build the capacity of Palestinian lawyers to identify, investigate and prosecute human rights violations committed in the Occupied Palestinian Territories (OPT).

The objectives and activities of the project include:

- III Strengthening the capacity of Palestinian lawyers, judges and activists to identify and document violations of human rights, and to prepare effective cases for domestic and international mechanisms;
- III To identify through a survey of the laws and procedures in force, the recognition given by the law in force to human rights and the possibilities for legal action against any violation of these;
- III To make proposals for changes in the law and procedure to enhance the possibility of legal remedies through the local courts of human rights violations;
- III To take test cases through the local court system;
- III To provide training in core practical legal skills and substantive law to target institutions which then flows down to other organisation.

Using this manual, key institutions and lawyers in Palestine will be able to access legal materials particularly relating to international human rights law. There will be increased awareness of human rights law and how international law is applied in a domestic context and improved access for those involved in the legal sector in Israel and the Occupied Palestinian Territories to contribute to the debate on reform and implementation of human rights norms. Where this manual and project differ from other general human rights training is that they seek to make use of the human rights

knowledge already possessed by Palestinian lawyers and to provide legal tools and skills to effectively identify, investigate and prosecute human rights violations.

Chapter 1 first provides a general overview of international and human rights law. It then sets out the key human rights standards as established by international and regional human rights systems at the same time identifying provisions within Palestinian legislation which mirrors the relevant standards. Finally it briefly addresses international humanitarian law.

Chapter 2 seeks to lay out the enforcement procedures available for violations committed within the Palestinian Authority under the United Nations system.

Chapter 3 details the recommended minimum standards of ethics for the legal profession.

Chapter 4 describes the Palestinian domestic legal system, considering legal pluralism, the combination of multiple layers of law and the developing court structure, attempting to establish the framework within which international and human rights can be applied within the domestic context.

Chapter 5 sets out where practical guidance for identifying, investigating and prosecuting human rights violations can be found.

Finally the sources and websites relied on for the production of the Manual are listed indicating if they contain information in Arabic.

Through training in human rights law and access to essential legal materials, those key individuals who are trained will go on to participate in the process of strengthening the judicial system at the local and national levels.

This project has been funded by The Foreign and Commonwealth Office (FCO), UK.

The Foreign and Commonwealth Office (FCO) promotes UK interests abroad and works with international bodies to support a strong world community. The FCO is responsible for the conduct of business with other governments and international organisations.

This training Manual was produced by Theodora A Christou. She is grateful to Dr Lynn Welchman and Naser Rayyes (of Al-Haq) for their assistance and clarification on Palestinian law. The section on International Humanitarian law was drafted together with Daniel Machover and Paul Troop. She is grateful to Catriona Vine for proof-reading the text and to Professor Bill Bowring and Naoimh Hughes for their comments on drafts of this Manual. Finally she would like to thank PICCR for their assistance in the preparation of the Arabic version.

# 1. Human Rights in International and Domestic Law

*This chapter first provides a general overview of international and human rights law. It then sets out the key human rights standards as established by international and regional human rights systems at the same time identifying provisions within Palestinian legislation which mirrors the relevant standards. Finally it briefly addresses international humanitarian law.*

## 1.1 International Human Rights Law Instruments<sup>1</sup>

- Treaties
- UN Treaties and Monitoring Bodies
- Regional Treaties and Monitoring Bodies
- Non-Treaty Standards

### Treaties

- The standards called Covenants, Conventions, Charters and Protocols are treaties which are legally binding (in international law) on the states that agreed to be bound by them.
- Some treaties such as the UN's International Covenant on Civil and Political Rights (ICCPR) are open to ratification by all states.
- Other treaties are open only to states that belong to a particular regional organisation: e.g. the African Charter on Human and People's Rights (AfCHPR) which is open to the member states of the Organisation of African Unity or the Arab Charter on Human Rights which is open to members of the Arab League.

### *The right of access to international human rights bodies*

- Anyone can request the determination of their right by an international human rights body provided that the applicable criteria are satisfied. The country against which the allegation is made must have ratified the relevant treaty and accepted the jurisdiction of the tribunal and the admissibility criteria must be fulfilled.

<sup>1</sup> IBA: Chapter 1 (2)

## UN Treaties and Monitoring Bodies<sup>2</sup>

---

- The relevant UN mechanisms are reviewed in greater detail at Chapter 2. What follows here is a brief summary of the system.
- The International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN General Assembly in 1966 and came into force in 1976. Its monitoring body is the UN Human Rights Committee (UN HRC), which gives guidance on the ICCPR by way of General Comments and can hear individual complaints against states which have ratified the First Optional Protocol.
- The UN Human Rights Committee examines State reports, which States parties must submit every five years on implementation of the rights recognized in the Covenant. The Committee considers communications from individuals in closed meetings. The findings of the Committee are always made public and are reproduced in the Committee's annual report to the General Assembly. When the Committee decides that there has been a violation, it sends its final views to the state and to the author of the complaint. In the event of failure by the State party to take appropriate steps, the case is referred to a member of the Committee, the Special Rapporteur on Follow-up of Views, for consideration of further measures to be taken.
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) was adopted by the UN General Assembly in 1984 and came into force in 1987. Its implementation is monitored by the Committee against Torture.
- The Convention on the Rights of the Child (CRC) was adopted by the UN General Assembly in 1989 and came into force in 1990. Its implementation is monitored by the Committee on the Rights of the Child.
- The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly in 1979 and came into force in 1981. Its implementation is monitored by the Committee on the Elimination of All Forms of Discrimination Against Women.
- The Convention on the Elimination of all forms of Racial Discrimination (CERD), which was adopted by the UN General Assembly in 1965 and came into force in 1969. Its implementation is monitored by the Committee on the Elimination of All Forms of Racial Discrimination.

## Regional Treaties and Monitoring Bodies<sup>3</sup>

---

### Arab

- The **Arab League of Nations** was founded on 1945 in Egypt where its headquarters are based. The other six founding members were Iraq, Lebanon, Saudi Arabia, Syria, Trans Jordan (Jordan, as of 1950), and Yemen. Countries that later joined were: Algeria (1962), Bahrain (1971), Comoros (1993), Djibouti (1977), Kuwait (1961), Libya (1953), Mauritania (1973), Morocco (1958), Oman (1971), Qatar (1971), Somalia (1974), Southern Yemen (1967), Sudan (1956), Tunisia (1958), and the United Arab Emirates (1971).
- The Alexandria Protocol (1944) which formed the basis for the establishment of the Arab League, states the following principles:
  - i. The establishment of the 'The League of Arab States', to be of independent Arab countries that accept accession to it, while at the same time forming a Council, in which all Member States enjoy equal rights.
  - ii. The Arab League Council would be entrusted with the implementation of agreements, the holding of periodical meetings, and enhancing the relations between various Members States.

---

<sup>2</sup> IBA: Chapter 2

<sup>3</sup> IBA: Chapter 3

- iii. The resolutions adopted by the Arab League Council are binding upon all states, save that in cases implying differences between two League Member States who will refer to the Council to settle conflicts between them. In such cases, the resolutions will be binding upon all parties.
- iv. It is illegal to use power to settle conflicts that may arise between two League Member States. It is also illegal to follow a foreign policy that would harm the policy followed by the League of Arab States or any of its member's policies.
- v. Declaring the sovereignty and independence of the organizing countries and their present borders, the Protocol implied two resolutions relating to the following items:
  - a. respect for Lebanon's independence and sovereignty;
  - b. to consider Palestine as an important element in the Arab countries and declaring its support of the cause of the Arabs of Palestine and its willingness to work for the achievement of their legitimate aims and the safeguarding of their just rights. The Protocol stated the formation of a subsidiary political committee, formed by members of the former Preparatory Committee, to draft an order and discuss political matters, where agreements can be concluded between Arab countries.
- This protocol was the principle document that laid the foundations of the League of Arab States.
- The Charter of the League of Arab States consisted of a preamble, 20 articles, three appendices. The first Appendix deals with Palestine. The second Appendix deals with cooperation with the non-independent countries, who, at the same time are non-Member States in the Council of the Arab League. The third Appendix deals with the assignment of Mr Abdual-Rahman Azam, in his capacity as Minister Plenipotentiary in the Egyptian Ministry of Foreign Affairs, to be the First Secretary General of the League of Arab States, for a period of two years.
- The preamble tackles the issue of membership of the league and how Member States must establish relations within a framework of respect, independence and sovereignty that would serve pan Arab interests.
- The Charter lays the foundations for the type of organizational and procedural membership provisions, the Council of the Arab League Headquarters and its General Secretariat, diplomatic privileges, withdrawal or dismissal from the Arab League, amendments to the Charter and ratification procedures and group objective rules relating to the commitments of Member States towards each other, implying every country's respect to the ruling system of the other country, as well as the peaceful settlement of inter-conflicts, and co-coordinating their foreign policies.
- Ever since its establishment, many attempts have been undertaken to develop the Charter so as to create stronger and deeper ties between the Member States and also establish an Arab Court of Justice. These included introducing the instrument for amending the Charter itself, by reference to Article 19 in the Charter, which states the possibility of amendment with a two-thirds consensus.
- Today the League of Arab States is an umbrella organization for 17 specialized agencies, dealing with functions such as maritime transport, civil aviation, economic and social development, educational, cultural, and scientific affairs, monetary policy, broadcasting, and telecommunications. There are also 15 permanent committees for matters concerning oil, human rights, and women. The League itself is a very small organization; it has around 400 employees in its secretariat and offices around the world, and 200–300 local employees in the Cairo Headquarters. The League's specialized agencies and permanent committees have contributed to functional integration within the Arab world, the League itself has done poorly on the political level. Its efforts to foster economic integration have been ineffectual, and its military and collective security functions, to date, have not materialized. However, the League has been more successful in organizing a common Arab stand on International issues. The most important of them, has been the question of Palestine and Israel.
- The **Arab Charter on Human Rights** was adopted by the Arab League on 15 September 1994 but has not had the required ratifications and so has not entered into force. Over a decade later it lacks ratifications and a new draft charter is currently under review<sup>4</sup>.

<sup>4</sup> Further details on the draft can be found at: <http://web.amnesty.org/library/index/engmdde010022004>

- The **Cairo Declaration on Human Rights and Islam** is seen as a counterpart to the Universal Declaration of Human Rights. Signed in 1990 by 46 Foreign Ministers at the 19<sup>th</sup> Islamic Conference of Foreign Ministers, it is meant as guidance for the application of human rights by the Member States. Despite reinforcing the applicability and importance of the UN Charter and fundamental human rights, many provisions are qualified by Islamic Shari'a. Reflecting the divided opinion of human rights in the Muslim world, the Cairo Declaration has not been embraced as a model approach to human rights. Muslim individuals, institutions and governments continue to accept and rely on international human rights standards to differing degrees.

### **Africa**

- The African Charter on Human and Peoples' Rights (AfCHPR) was adopted in 1981 by the Organisation of African Unity and entered into force in 1986. It is monitored by the African Commission on Human and Peoples' Rights (African Commission).
- The African Court on Human and Peoples' Rights was created under the Protocol to the African Charter on Human and Peoples' Rights adopted in 1998. Following the entry into force of the Protocol, on 25 January 2004, the way has been opened for the establishment of this body. The 11 Judges of the Court were elected in January 2006.

### **American**

- The American Declaration of the Rights and Duties of Man (American Declaration) was adopted in 1948, which also adopted the Charter of the Organisation of American States (OAS).
- The American Convention on Human Rights (AmCHR), was adopted in 1969 and came into force in 1978. It provides for the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights to have competence to hear cases and receive reports.

### **European**

- The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) entered into force in 1953. Ratification of or accession to the ECHR is a condition of joining the Council of Europe. It provides for the European Court of Human Rights to have competence to hear cases. Before its abolition, the European Commission of Human Rights also had competence to hear cases. Protocol No. 11, which came into force on 1 November 1998, replaced the existing, part-time Court and Commission by a single, full-time Court. Protocol 14 seeks to further increase the effectiveness of the Court by introducing a number of amendments to the Convention machinery in four main areas: The process for filtering out unmeritorious cases, a new admissibility criterion, measures for dealing with repetitive cases, and execution of judgments.

### **Non-treaty Standards<sup>5</sup>**

---

- Many human rights standards are not contained in treaties, but in international instruments such as Declarations, Principles, Rules etc.
- The most important is the UN's Universal Declaration of Human Rights, from which many treaties and non-treaties have drawn their inspiration.
- Other non-treaty standards include:
  - ✧ The Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (Body of Principles)
  - ✧ The Basic Principles for the Treatment of Prisoners
  - ✧ The UN Standard Minimum Rules for the Treatment of Prisoners
  - ✧ The Basic Principles on the Role of Lawyers

---

<sup>5</sup> IBA: Chapter 2 (2.3)

- ✧ The Guidelines on the Role of Prosecutors
- ✧ The UN Safeguards guaranteeing protection of the rights of those facing the death penalty
- ✧ Code of Conduct for Law Enforcement Officials
- ✧ Basic Principles on the Independence of the Judiciary
- ✧ Rules for the Protection of Juveniles Deprived of their Liberty
- ✧ The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
- Although non-treaty standards do not technically have the legal power of treaties, they have persuasive force having been negotiated by states over many years and having been adopted by bodies such as the UN General Assembly.

---

## 1.2 Conflicts in Legal Systems: The status of international treaties in domestic law <sup>6</sup>

---

- Introduction
- Interpretation

### Introduction

---

- The status of international treaties in domestic law is generally determined by domestic law itself.
- In states where the monist theory is followed, international treaties operate in domestic law.
- In states where the dualist theory is followed, international treaties are not binding in domestic law unless incorporated, but where constitutional provisions are based on or reflect international standards; they can also be used to resolve an ambiguity in the law and to develop the common law.
- Before an international human rights body, a state may not invoke domestic law as justification for not performing a treaty obligation (Vienna Convention on the Law of Treaties 1969, Art.27).
- The UN Treaties are superior to all domestic laws including military decrees.
- The Palestinian Basic Law is not clear on the whether international standards are superior to domestic law, Article 10 states that basic human rights and freedoms are considered binding and shall be respected and that the Palestinian National Authority shall work without delay to join regional and international instruments which protect human rights (which it cannot do until an internationally recognised Palestinian State is established). Article 4 of the Basic law states that the principles of Islamic Shari'a is the main source of legislation and many of the rights are qualified making them subject to restrictions of law or 'public morals'.

### Interpretation

---

- Human Rights treaties are living instruments which must be interpreted in light of present-day conditions.
- Constitutional human rights provisions require special interpretation and should be generously interpreted to give individuals the full measure of the fundamental rights and freedoms to which all persons are entitled.

---

<sup>6</sup> IBA: Chapter 1 (4)



- It is legitimate for a court to refer to international human rights instruments when interpreting constitutional human rights provisions including non-treaty human rights instruments.
  - All human rights instruments – international and domestic – should be interpreted in such a way as to make the rights they enshrine practical and effective.
- 

## **1.3 Human Rights Principles and Norms**

---

- Introduction
- Criminal Investigations
- Arrest and Pre-trial Issues
- Fair Trial
- Sentence
- Death Penalty
- Appeals
- Prisoners

### **Introduction**

---

- The following section seeks to clearly set out the relevant international standards firstly as they are interpreted by the international and regional human rights system, secondly as they are guaranteed by the Palestinian Basic Law and finally as they appear in domestic Palestinian legislation.
- The section adopts a chronological order, that is, it considers rights in the order they would be engaged procedurally. Therefore starting with criminal investigations and ending with conditions those convicted would face in prison.

### **International Standards**

- The international principles and norms are detailed in brief.
- For a fuller examination of the rights readers are referred to the relevant sections in the IBA/UN *Human Rights in the Administration of Justice: A manual on human rights for judges, prosecutors and lawyers* (IBA Manual). Reference is also made for the principles to leading cases.

### **Palestinian Law**

- The relevant provisions of the following Palestinian Laws have been referenced.
- Palestinian Basic Law – The Basic Law was signed in 2002 by Yasser Arafat. It is intended to be a transitional Constitution and guarantees basic rights. It was subsequently amended in 2003 (Amended Basic Law, 2003) and further amended in 2005 (Basic Law of 2005 Concerning the Amendment of Some of the Provisions of the Amended Basic Law of 2003).
- Penal Procedure Law No. 3 of 2001 – The Penal Procedure Law repealed a number of other laws including the Jordanian Penal Law.
- Judicial Authority Law No. 1 of 2002 – This law was subsequently repealed by the Judicial Authority Law 2005. An application was made to the High Court (in its capacity as Constitutional Court) stating that the 2005 law was incompatible with the Basic law. On 27 November 2005 the Court agreed declaring the 2005 law unconstitutional and therefore void (Case 5/2005). Judicial independence therefore remains under the protection of the Basic Law and the Judicial Authority Law of 2002.



- Reform and Rehabilitation Centres Law No. 6 of 1998 – This law lays out the structure of places of detention, the procedures, makes provision for inspections and sets the minimum standards of conditions and treatment detainees should receive. It was amended by Law 3 of 2005.
- PLO Revolutionary Code 1979 – This code has never been incorporated into Palestinian domestic law, however it has occasionally been applied by the State Security Court and continues to be used regularly in the Military Courts whose establishment is based on the Code.

## **Criminal Investigations<sup>7</sup>**

---

### ***Surveillance***

- Surveillance is an interference with privacy and therefore must be prescribed by law, necessary and proportionate<sup>8</sup>.
  - Intercepting telephone calls is a form of surveillance and therefore must also be prescribed by law, necessary and proportionate<sup>9</sup>.
  - The law on surveillance must be published and it must be clear<sup>10</sup>.
- Palestine Basic Law – Article 17 states that the home is inviolable and therefore cannot be subject to surveillance except in accordance with a valid judicial order and in accordance with the provisions of the law. It also provides for fair compensation if this right is violated.

### ***Informers and undercover officers***

- It is legitimate for the state to use informers and undercover officers in the investigation of crime<sup>11</sup>.
- But informers and undercover officers should not incite an individual to commit a crime s/he would not otherwise commit<sup>12</sup>.
- The right to silence cannot be invoked to exclude statements made voluntarily to informers or undercover officers, unless they deliberately manipulate the situation to elicit incriminating evidence<sup>13</sup>.

### ***Search and seizure<sup>14</sup>***

- Search and seizure interfere with privacy and therefore must be prescribed by law, necessary and proportionate<sup>15</sup>.
  - Search and seizure must be carried out in a reasonable manner.
  - The right to privacy can extend to business or work premises<sup>16</sup>.
  - Consent to search and seizure will not be valid unless it is genuine and informed.
- Palestine Basic Law – Article 17 states that the home is inviolable and therefore cannot be entered into or searched except in accordance with a valid judicial order and in accordance with the provisions of the law. It also provides for fair compensation if this right is violated.

<sup>7</sup> IBA: Chapter 6

<sup>8</sup> Kopp v Switzerland (ECHR 1998)

<sup>9</sup> Malone v UK (ECHR 1984); Halford v UK (ECHR 1997)

<sup>10</sup> Malone v UK (ECHR 1984); Kopp v Switzerland (ECHR 1998); Khan v UK (ECHR 2000)

<sup>11</sup> Ludi v Switzerland (ECHR 1992)

<sup>12</sup> Teixeira de Castro v Portugal (ECHR 1998)

<sup>13</sup> Allan v UK (ECHR 2002)

<sup>14</sup> IBA: Chapter 6 (6.1)

<sup>15</sup> Camenzind v Switzerland (ECHR 1997); Niemietz v Germany (ECHR 1992)

<sup>16</sup> Niemietz v Germany (ECHR 1992); Société Colas Est and Others v France (ECHR 2002)

- Penal Procedure Law – Article 39 states that entering homes and inspecting them constitutes part of the investigation procedure. It can only be conducted on the basis of an order from the Public Prosecution Department and under its supervision or presence. Inspection shall be based on an accusation levelled to a person residing in the house to be inspected for committing a crime or a misdemeanour, or for participating in either, or for the existence of strong evidence that the suspect possesses items related to the crime. The order for conducting an inspection shall be based on a valid justification. Article 41 provides for very limited exceptions when authorities can enter a person's home, these include where a criminal is caught in the act (as defined by Article 26), during the pursuit of a suspect in order to execute an arrest and when a person has escaped from detention.
- Penal Procedure Law – Articles 40-51 detail the procedure for impounding material related to a crime. Article 52 states that if the provisions are not complied with the investigation will be deemed invalid.

### ***Fingerprints, samples and personal data***

- Taking fingerprints, samples and personal data interfere with privacy and therefore must be prescribed by law, necessary and proportionate<sup>17</sup>.
  - Any consent to the taking of samples must be informed consent.
- Penal Procedure Law – Article 219 provides that as part of evidence fingerprints, palm- and foot-prints may be taken during investigation or trial.

## **Arrest and Pre-trial Issues<sup>18</sup>**

---

### ***Basic Provisions***

- Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention: ICCPR, Art.9(1); AmCHR Art.7; AfCHPR Art.6; ECHR Art.5(1); ArCHR, Arts.5 and 8.
  - Arrest and detention should be carried out strictly in accordance with the law: UN Body of Principles, Principle 2.
  - The unacknowledged detention of an individual is a breach of the right to liberty. Having assumed control over an individual it is incumbent on the authorities to account for his/her whereabouts<sup>19</sup>.
  - An arrest that is unlawful is arbitrary<sup>20</sup>.
  - Mass arrests on the basis of broad allegations are very likely to be arbitrary<sup>21</sup>.
  - Detention by the executive or by paramilitary groups with the consent or acquiescence of the security forces is arbitrary<sup>22</sup>.
- Palestine Basic Law – Article 11 states that any restriction of the freedom of an individual including their arrest, search and imprisonment shall be done only by judicial order in accordance with the principles of the law.

<sup>17</sup> Murray v UK (ECHR 1994)

<sup>18</sup> IBA: Chapters 5 & 6

<sup>19</sup> Kurt v Turkey (ECHR 1998)

<sup>20</sup> Casariego v Uruguay, UN HRC, Communication No.56/1979, HRC 1981 Report, Annex XX

<sup>21</sup> Krishna Achutan (for Aleke Banda) v Malawi (Eight Annual Report of the African Commission, 1994-5, ACHPR/RPT/8th/Rev.1)

<sup>22</sup> Inter-American Commission. OEA/Ser.L/V/II.49, doc.19 at 140

- Penal Procedure Law – Article 29 provides that no one is to be arrested or imprisoned without an order from a competent authority designated by law. Article 30 states that a judicial investigator may arrest without a subpoena someone who is caught in the crime, runs or tries to run away from detention.
- Penal Procedure Law – Articles 109, 110, 111 and 112 provide for the procedure to be followed for the issuance and implementation of a subpoena or arrest warrant.
- The Reform and Rehabilitation Centres Law – Article 5 provides for the requirement to keep a general register and keep a file for each inmate. Article 6 specifies that inmates are only to be admitted by a legal memo in accordance with law.

### ***Reasonable suspicion***<sup>23</sup>

- There must be a reasonable suspicion that an individual had committed a criminal offence before an arrest is made<sup>24</sup>.
  - Having a 'reasonable suspicion' presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence<sup>25</sup>.
  - The honesty and good faith of suspicion constitute indispensable elements of its reasonableness<sup>26</sup>.
- Penal Procedure Law – Article 116 states that where a person is arrested without a warrant the official in charge of the police station shall immediately investigate the causes of arrest.

### ***Reasons***<sup>27</sup>

- Everyone arrested should be informed, in a language s/he understands of the reasons for his/her arrest: ICCPR Art.9(2); ECHR Art.5(2); UN Body of Principles, Principle 10.
  - Notification should be at the time of arrest or as soon as practicable thereafter<sup>28</sup>.
  - Sufficient details should be given to enable the person arrested to know the basis upon which s/he is being held<sup>29</sup>.
- Palestine Basic Law – Article 12 states that when a person is arrested they must be promptly informed, in a language they understand, of the reasons for their arrest and of the nature of charges brought against them.
  - Penal Procedure Law – Article 112 provides that an official implementing the arrest warrant shall notify the person arrested of its contents and shall show it to him.

### ***The use of force***

- Force can be used to effect an arrest, but it must be necessary and proportionate<sup>30</sup>.
  - Torture, inhuman and degrading treatment is prohibited absolutely: ICCPR, Art 7; AfCHPR, Art 5; AmCHR, Art 5(2); ECHR, Art 3; ArCHR, Art.13.
- Palestine Basic Law – Article 13 states that everyone deprived of their freedom shall be treated properly and no one shall be tortured or subject to duress.

<sup>23</sup> IBA: Chapter 5 (4.5)

<sup>24</sup> Fox, Campbell and Hartley v UK (ECHR 1990)

<sup>25</sup> Fox, Campbell and Hartley v UK (ECHR 1990)

<sup>26</sup> Fox, Campbell and Hartley v UK (ECHR 1990)

<sup>27</sup> IBA: Chapter 5 (4.8)

<sup>28</sup> Fox, Campbell and Hartley v UK (ECHR 1990)

<sup>29</sup> Kelly v Jamaica (UN HRC, 253/1987, 8 April 1991, A/46/40)

<sup>30</sup> Raninen v Finland (ECHR 1997)

- The prohibition against torture, inhuman treatment, harsh, undignified and humiliating punishment is also contained in the draft Palestinian Constitution.
- Penal Procedure Law – Article 29 provides that a person who is arrested or imprisoned shall be treated with dignity and shall not be physically or morally injured.

### **Access to a lawyer<sup>31</sup>**

- |   |
|---|
| <ul style="list-style-type: none"> <li>▪ Everybody should be informed of the right to be assisted by a lawyer upon arrest: UN Basic Principles on the Role of Lawyers, Principle 5.</li> <li>▪ Access to a lawyer is fundamental and should not be delayed; UN Basic Principles on the Role of Lawyers, Principle 5<sup>32</sup>.</li> <li>▪ Communications between a suspect and his/her lawyer should be confidential<sup>33</sup>.</li> <li>▪ The right to counsel includes the right to consultations with counsel which are unsupervised by the authorities of places of detention. This right applies both to personal visits and to correspondence between a detained person and counsel<sup>34</sup>.</li> <li>▪ The right of access to a lawyer must be effective<sup>35</sup>.</li> </ul> |
|---|
- Palestine Basic Law – Article 12 states that when a person is arrested they have a right to contact a lawyer.
  - Penal Procedure Law – Article 96(1) states that when a suspect appears for the first time in court, during the interrogation session, the prosecutor shall notify him that he has a right to seek legal advice. Article 97(2) states that a suspect may postpone the interrogation period for 24 hours until his attorney arrives. If an attorney does not appear, or the suspect changes his mind, he may be immediately interrogated.
  - Article 98 provides that in the cases of catching a person in the act, or in cases of exigency, urgency or the possibility of losing evidence, the prosecutor may interrogate the suspect before calling his attorney. The attorney may, after interrogation is completed, request to review the minutes.
  - Article 103 states that even where a detained suspect is denied any contact for purposes of investigation, this does not apply to the suspect's attorney who may contact him anytime without any restriction or control.
  - Article 123 further states that an arrested person has the right to seek the help of an attorney.
  - The Reform and Rehabilitation Centres Law – Article 54 provides for the right of a detainee to meet in private with his lawyer.

### **Questioning<sup>36</sup>**

- |   |
|---|
| <ul style="list-style-type: none"> <li>▪ All suspects have the right to remain silent during questioning. But adverse inferences can be drawn from silence<sup>37</sup>.</li> <li>▪ Any force used during interrogation – e.g. slapping and kicking – is inhuman treatment<sup>38</sup>.</li> <li>▪ The time and place of all interrogations should be recorded; UN HRC, General Comment 20.</li> <li>▪ Registers should be kept of all those in custody, which should be accessible to relatives and friends: UN HRC, General Comment 20.</li> </ul> |
|---|

<sup>31</sup> IBA: Chapter 5 (7)

<sup>32</sup> Murray v UK (1996)

<sup>33</sup> S v Switzerland (ECHR 1991)

<sup>34</sup> Schönenberger and Durmaz v Switzerland (ECHR 1988)

<sup>35</sup> Golder v The United Kingdom (ECHR 1975)

<sup>36</sup> IBA: Chapter 6 (6.6 & 6.6)

<sup>37</sup> Murray v UK (ECHR 1996)

<sup>38</sup> Ribitsch v Austria (ECHR 1995); Tomasi v France (ECHR 1992)

- Penal Procedure Law – Article 97 states that a suspect has the right remain silent and not answer any questions.

### ***The right to be brought promptly before a court<sup>39</sup>***

- Everyone arrested for a criminal offence has the right to be brought promptly before a court<sup>40</sup>.
  - An assessment of 'promptness' has to be made in the light of the object and purpose of this requirement, which is to protect the individual against arbitrary interference by the state. Judicial control is intended to minimise the risk of arbitrariness. The degree of flexibility in interpreting and applying the notion of 'promptness' is therefore very limited<sup>41</sup>.
  - It implies a delay not exceeding a few days: UN HRC, General Comment 8.
  - A delay of over four days was found to be too long<sup>42</sup>; and where there is no basis for an arrest, overnight is too long.
  - The court before which a person is brought must have power to order release<sup>43</sup>.
  - An alternative is to bring the detained person before an officer authorised by law to exercise judicial power. If that is done, the officer must have some of the attributes of a judge: s/he must be independent, impartial and must consider the facts and have power to order release<sup>44</sup>.
- Penal Procedure Law – Article 107 states that questioning shall be conducted within 24 hours of the suspect being sent to the prosecutor, after which time the suspect shall be arrested or released. Following arrest, the suspect shall again be questioned within 24 hours (Article 108) and after questioning a suspect can be detained for a further 48 hours, after which time any extension of the detention period must be authorized by the court in accordance with the rule of law.
  - Article 119 further states that a period of detention following arrest shall not exceed 24 hours and that the Public Prosecution Department shall be notified immediately. Once notified the prosecutor will proceed to question the arrested person. If for reasons of investigation the detention of the arrested person needs to continue for a longer period, the prosecutor may ask the conciliation judge to extend the detention for a period not exceeding 15 days.
  - Under Article 120, the conciliation judge, after hearing the prosecutor and the person arrested, may either release or arrest him for a period not exceeding fifteen days. He may also renew the period of detention for other periods not exceeding forty-five days in total. No person may be arrested for a longer period unless the attorney general or one of his assistants submits a request to the court of first instance for detaining him a further period not exceeding three months, under no circumstances can this total exceed 6 months. In addition the total arrestee's detention may not continue for longer than the period of the penalty prescribed for the crime by reason of which he is detained.

### ***Bail<sup>45</sup>***

- The general presumption is that those awaiting trial should not be detained: ICCPR Art.9(3); UN HRC General Comment 8; UN Body of Principles, Principle 39; Tokyo Rules, Rule 6<sup>46</sup>.

<sup>39</sup> IBA: Chapter 5 (4.9 & 5)

<sup>40</sup> *Brogan v UK* (ECHR 1988)

<sup>41</sup> *TW v Malta* (ECHR 1999)

<sup>42</sup> *Brogan v UK* (ECHR 1988)

<sup>43</sup> *Ireland v UK* (ECHR 1978)

<sup>44</sup> *Schiesser v Switzerland* (ECHR 1979)

<sup>45</sup> IBA: Chapter 5 (5)

<sup>46</sup> *Wemhoff v Germany* (ECHR 1968)

- Bail may be refused if it is necessary and for a good reason such as fear of absconding, interference with the course of justice and protection of others, but the reasons must be relevant and sufficient<sup>47</sup>.
- Where it is not possible to apply for bail, or for the court to grant bail, the right to liberty will be breached.
- Bail may be conditional<sup>48</sup>.

- Penal Procedure Law – An arrested person may be detained or release by a bail bond. Articles 130-148 are the provisions relating to bail.

### ***Conditions of detention and ill-treatment<sup>49</sup>***

- Torture, inhuman and degrading treatment is prohibited absolutely: ICCPR, Art. 7; AmCHR, Art 5(1); AfCHPR, Art 5; ECHR, Art 3; ArCHR, Art.13; Convention Against Torture, Art 2 - even in the most difficult of circumstances, such as combating organised terrorism and crime<sup>50</sup>.
- No reason may be invoked to justify the prohibition on torture, inhuman and degrading treatment: UN HRC, General Comment 20) and the victim's conduct is irrelevant<sup>51</sup>.
- Any unnecessary and deliberate force against those in detention is inhuman<sup>52</sup>.
- Where an individual is taken into custody in good health and is later found to be injured, the relevant authorities must provide an explanation<sup>53</sup>.
- Evidence obtained by ill-treatment must be excluded at trial<sup>54</sup>.
- Allegations of ill-treatment must be properly investigated<sup>55</sup>.

- Palestine Basic Law – Article 13 provides that anyone deprived of their freedom shall receive proper treatment and that no one shall be subjected to either duress or torture.
- The Reform and Rehabilitation Centres Law – Article 37 lists the rights of inmates, including the prohibition against torture, degrading treatment. The same article also lays out the minimum conditions of detention.
- Part 5 (Articles 13-16), lay out the health care which should be given to inmates.

### ***Habeas Corpus***

- Anyone deprived of his/her liberty is entitled to take proceedings before a court to challenge his/her detention: ICCPR, Art 9(4); AmCHR, Art 7(6); ECHR, Art 5(4); ArCHR, Art.8.
- The court must have the power to order release if the detention is not lawful: ICCPR, Art 9(4); AmCHR, Art 7(6); ECHR, Art 5(4).
- The arrested or detained person is entitled to a court decision on the lawfulness of detention without delay: ICCPR, Art 9(4); AmCHR, Art 7(6); ECHR, Art 5(4); ArCHR, Art.8.
- The 'lawfulness' of an arrest or detention has to be determined in the light not only of domestic law but also of the general principles embodied in relevant international human rights instruments, including the prohibition on arbitrariness<sup>56</sup>.

<sup>47</sup> Van Alphen v Netherlands, UN HRC, Communication No.305/1988, HRC 1990 Report, Annex IX.M; Stogmuller v Austria (ECHR 1969); Neumeister v Austria (ECHR 1968); Tomasi v France (ECHR 1992).

<sup>48</sup> Wemhoff v Germany (ECHR 1968)

<sup>49</sup> IBA: Chapter 6 (6.2)

<sup>50</sup> Chahal v UK (ECHR 1996); Selcuk and Askar v Turkey (ECHR 1998)

<sup>51</sup> Chahal v UK (ECHR 1996)

<sup>52</sup> Ribitsch v Austria (ECHR 1995)

<sup>53</sup> Ribitsch v Austria (ECHR 1995)

<sup>54</sup> Austria v Italy (1963) 6 Yearbook 740, European Commission on Human Rights

<sup>55</sup> Assenov v Bulgaria (ECHR 1998)

<sup>56</sup> Weeks v UK (ECHR 1987)

- Penal Procedure Law – Articles 130-148 provide for the procedures to petition for release on bail.
- Ramallah High Court of Justice Case Law - 57/98 – the decision to arrest and detain must not violate the applicable legal procedure. This includes the requirement for charges to be substantiated by evidence; detention following arrest must be for a very limited time (as laid down by law) before a person is either charged or released; and a person must be brought before a court to review their detention.
- **33/98** – a) The High Court has jurisdiction to order the release of persons illegally detained; b) In the interests of justice others can lodge an application requesting the release of a person who claims to be illegally detained (refer also to cases 26/96 and 38/97); c) A detention order and arrest warrant must be issued in accordance with the arrest procedures laid down by law; d) Once a person is arrested the procedures relating to interrogation and detention must be followed as laid down by law.
- **40/98** – The High Court has jurisdiction to hear claims from individuals illegally detained, even if an administrative detention. Administrative decisions cannot be the basis for detention.

## **Fair Trial<sup>57</sup>**

### ***Basic provisions***

- Everyone is entitled to a fair and public hearing by an independent and impartial tribunal: ICCPR Art.14(1); AmCHR Art.8(1); AfCHPR Art.7(1) and 26; ECHR Art.6(1); ArCHR, Art.7.
- The rights relating to a fair trial apply to all courts and tribunals which determine criminal charges, whether ordinary or specialised, including military or special courts: UN HRC, General Comment 13.
- The prosecutor is bound by the fair trial guarantees and must conduct the case against an accused accordingly.

- Palestine Basic Law – Article 30 protects and guarantees for everyone the right to litigation and the right to find sanctuary in the legal system. It further states that litigation procedures shall be organized by law to guarantee the prompt settlement of cases. Article 98 further guarantees the independence of the Judicial Authority stating that the structure, jurisdiction and rulings of the courts shall be in accordance with the law.
- Penal Procedure Law – Articles 237 states that trials shall be public unless the court decides to keep it closed for purposes of safeguarding public order or morals. Minors or a specific category of people may, under all circumstances, be prevented from attending the trial. Generally Chapter 5 (Articles 237-271) deals with the procedures and provide safeguards for conducting trials.

### ***The right to be informed of the charge<sup>58</sup>***

- Everyone charged with a criminal offence has the right to know, in a language s/he understands, the details of the allegation against him/her: ICCPR Art.14(3)(a); ECHR Art.6(3)(a).
- Palestine Basic Law – Article 12 provides that a person arrested must be informed of the nature of the charges in a language they understand.

<sup>57</sup> IBA: Chapters 6 & 7

<sup>58</sup> IBA: Chapter 6 (6.3)

- Penal Procedure Law – Article 250 states that the prosecutor shall read the accusations contained in the indictment in the presence of the suspect.
- Article 250 states that the court shall tell the accused that he should listen to what is read to him. The prosecutor shall be entrusted with reading the accusation and the bill of indictment. After the prosecutor reads the accusation to the accused in a simple language that he can absorb and understand the court shall ask the accused what he has to say regarding the accusation levelled against him.

### ***Length of pre-trial detention<sup>59</sup>***

- A person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify the continued detention<sup>60</sup>.
- Pre-trial detention has to be based on relevant and sufficient grounds and it is very possible that after a certain lapse of time these grounds will no longer suffice. This means that further grounds may have to be established to continue pre-trial detention<sup>61</sup>.
- The reasonableness of the length of pre-trial detention should be assessed independently of the reasonableness of the delay before trial and, although the length of time before trial may be ‘reasonable’, pre-trial detention for that period may not be<sup>62</sup>.

- Palestine Basic Law – Article 12 provides that a person arrested and charged must be tried without delay.
- Penal Procedure Law – Article 120 states that the Public Prosecution Department shall refer the suspect, before the expiry of the three months mentioned in the same article, to a competent court for trial. The court may extend his detention for other periods until the trial is completed.

### ***Adequate time and facilities for the defence<sup>63</sup>***

- Everyone charged with a criminal offence has the right to adequate time and facilities for the preparation of his/her defence: ICCPR Art.14(3)(b); ECHR Art.6(3)(b).
- This must include access to documents and other evidence which the accused needs to prepare his/her defence: UN HRC, General Comment No.13, para.6.
- Penal Procedure Law – Article 102(3) states that the attorney may have access to the investigation conducted before questioning the suspect, unless the prosecutor decides otherwise. Article 242 states that the court office shall serve the accused a copy of the bill of indictment at least one week before the trial day, taking the distance into consideration.

### ***Legal aid and legal representation<sup>64</sup>***

- Legal aid should be provided when the interests of justice so require: ICCPR Art.14(3)(d); ECHR Art.6(3)(c).
- The complexity of the case and severity of the sentence are relevant factors in determining whether the interests of justice require the provision of legal aid<sup>65</sup>.
- The lawyer provided must be competent<sup>66</sup>.
- The right to counsel includes the right to consultations with counsel which are unsupervised by the authorities of places of detention. This right applies both to personal visits and to correspondence between a detained person and counsel<sup>67</sup>.

<sup>59</sup> IBA: Chapter 5 (5)

<sup>60</sup> Smirnova v Russia (ECHR 2003)

<sup>61</sup> Letellier v France (ECHR 1994)

<sup>62</sup> Matznetter v Austria (ECHR 1969)

<sup>63</sup> IBA: Chapter 6 (6.7)

<sup>64</sup> IBA: Chapter 6 (6.4)

<sup>65</sup> Granger v UK (ECHR 1990)

<sup>66</sup> Artico v Italy (ECHR 1980)



- Palestine Basic Law – Article 12 provides to a person arrested the right to contact a lawyer. Article 14 further states that any person accused in a criminal case shall be represented by a lawyer and that an accused has the right to defend himself.
- Penal Procedure Law – Article 244 states that the court shall ask the accused if he had chosen an attorney to defend him. If he had not done so because of financial reasons, the head of the court shall appoint an attorney for him. This attorney shall have at least five years experience in the profession, or must have worked in the attorney general's office or in the judiciary for at least two years before obtaining the permit to practice the law profession.

### ***Disclosure***

- The prosecuting authorities should disclose to the defence any material they have which may assist the defence<sup>68</sup>.
- Disclosure should take place in good time and before trial<sup>69</sup>.
- Any refusal to disclose material on the grounds of the public interest must be strictly controlled and subject to court supervision<sup>70</sup>.
- Any measures restricting the rights of the defence must be counter-balanced<sup>71</sup>.

### ***An independent and impartial court<sup>72</sup>***

- In the determination of any charge, everyone is entitled to an independent and impartial court: ICCPR Art.14(1); AmCHR Art.8(1); AfCHPR Art.7(1) and 26; ECHR Art.6(1)).
  - Independence depends on the manner of appointment and duration of office, protection from external influences and the appearance of independence<sup>73</sup>.
  - The right to an impartial court is intended to protect the accused from actual and presumed bias<sup>74</sup>.
  - Where a judge constantly interrupts defence counsel and virtually takes over the prosecution, impartiality may be lost.
- Palestine Basic Law – Articles 97 and 98 state that judges shall be independent and whilst exercising their duties will not be subject to any authority other than that of the law. Further no other authority is permitted to interfere with the judiciary or in justice affairs. Article 99 deals with the appointment, transfer, secondment, delegation, promotion and questioning of judges which is to be governed by the Independence of the Judiciary Law. This law will also stipulate the only grounds permitted for dismissing or terminating the services of a judge.
  - Penal Procedure Law – Articles 159-162 deal with when a judge must abstain or be recused, including instances of personal bias or other involvement in the case.
  - Judicial Authority Law – Articles 1 and 2 guarantee the independence of the judiciary.

### ***Military Courts***

- The practice of trying civilians in military courts, while not expressly prohibited by international standards, raises fair trial issues: UN HRC General Comment 13, paragraph 4<sup>75</sup>.

<sup>67</sup> Schönenberger and Durmaz v Switzerland (ECHR 1988)

<sup>68</sup> Edwards v UK (ECHR 1992)

<sup>69</sup> Krcmar v Czech Republic (ECHR 2001)

<sup>70</sup> Rowe and Davies v UK (ECHR 2000)

<sup>71</sup> Rowe and Davies v UK (ECHR 2000); Fitt v UK (ECHR 2000)

<sup>72</sup> IBA: Chapter 7 (3.1)

<sup>73</sup> Incal v Turkey (ECHR 1998)

<sup>74</sup> Piersach v Belgium (ECHR 1982); Hauschildt v Denmark (ECHR 1989)

<sup>75</sup> Lebanon: UN Doc. CCPR/C/79/Add.77, April 1997, at para 13; Inter-American Commission, Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.53 doc.22, 30 June 1981, at 222 and OEA/ Ser.L/V/II.84, doc 39, 1993, p. 108; Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.66, doc.A, 1985, p.183.

- Military courts are special and purely functional courts designed to maintain discipline in the military and police and ought therefore to apply exclusively to those forces<sup>76</sup>.
- Palestine Basic Law – Article 101(2) provides for Military Courts to be established by special law and states that such courts will not have jurisdiction beyond military affairs.

### ***Public hearing<sup>77</sup>***

- In the determination of any charge, everyone is entitled to a fair and public hearing: ICCPR Art.14(1); ECHR Art.6(1).
- Exceptions are permitted but only where strictly necessary to protect others; apart from these exceptional circumstances, a hearing must be open to the public in general, including members of the press, and may not be limited to a particular category of person: UN HRC, General Comment No.13, para.6; ECHR Art.6(1).
- The duty to hold hearings in public is not dependent on a request from the parties; the courts must make information on time and venue available to the public<sup>78</sup>.
- Palestine Basic Law – Article 105 states that court hearings shall be public unless a court decides otherwise, namely due to considerations related to public order or morals. In all cases, judgments will be pronounced in a public hearing.
- Penal Procedure Law – Article 237 states that a trial shall be public unless the court decides to keep it closed for purposes of safeguarding public order or morals. Minors or a specific category of people may, under all circumstances, be prevented from attending the trial. The ruling shall be issued in a public session even if the case was heard in a closed session (Article 273(3)).

### ***Presence of the accused<sup>79</sup>***

- A defendant has a right to be present at trial<sup>80</sup>.
- However, defendants can be excluded where strictly necessary: For example, where they are disruptive in court or refuse to attend<sup>81</sup>.
- Penal Procedure Law – Article 243 provides that the accused shall attend the trial without fetters or handcuffs but shall be carefully watched. He may not be dismissed from court during the hearing unless he creates disorder. In this case, he shall remain away until he is ready to sit quietly in court. The court shall inform him of any measures taken during his absence.

### ***Interpretation and translation<sup>82</sup>***

- Everyone must be provided with interpretation and translation if s/he cannot understand or speak the language used in court: ECHR Art.6(3)(a).
- Not all documents have to be fully translated<sup>83</sup>.
- Penal Procedure Law – Article 264 provides that if the accused, the witnesses, or anyone of them do not speak Arabic well, the head of the court shall appoint a translator not less than eighteen years old. He shall take an oath to translate the testimonies truthfully and faithfully.

<sup>76</sup> Annual Report of the Inter-American Commission, 1993, OEA/Ser.L/V/II.85 doc.9 rev.1994, at 507, (Peru); SH Liaquat Hussain & Ors v The Federation of Pakistan (Supreme Court of Pakistan, 28/10/99)

<sup>77</sup> IBA: Chapter 7 (3.3)

<sup>78</sup> Van Meurs v Netherlands, UN HRC, Communication No.215/1986, HRC 1990 Report, Annex IX.F.

<sup>79</sup> IBA: Chapter 7 (3.6)

<sup>80</sup> Ekbatani v Sweden (ECHR 1988); Botten v Norway (ECHR 1996)

<sup>81</sup> Barbera, Messegue and Jabardo v Spain (ECHR 1988)

<sup>82</sup> IBA: Chapter 7 (3.9)

<sup>83</sup> Luedicke v Germany (ECHR 1978)

### ***The presumption of innocence<sup>84</sup>***

- Everyone charged with a criminal charge has the right to be presumed innocent: ICCPR Art.14(6); ECHR Art.6(2); ArCHR, Art.7.
  - The burden of proof should therefore be on the prosecution to prove the case and any doubt should benefit the accused<sup>85</sup>.
  - A reverse onus of proof provision is incompatible with the right to fair trial and the presumption of innocence.
- 
- Palestine Basic Law – Article 14 states that the accused is presumed innocent until proven guilty in a court of law.
  - Penal Procedure Law – Article 206 states that an accused is innocent until proven guilty in a court of law. If no evidence can be proved, the judge shall pronounce the accused innocent.

### ***Equality of arms<sup>86</sup>***

- Equality of arms is fundamental to a fair trial: ICCPR Art.14(1)<sup>87</sup>.
  - The accused must have an effective opportunity to challenge the prosecution case and to present his/her case<sup>88</sup>.
  - Litigants in person should be allowed to address the court.
  - Prosecution witness statements should be disclosed to the defence<sup>89</sup>.
- 
- Palestine Basic Law – Article 14 guarantees the right of an accused to defend himself.
  - Penal Procedure Law – Article 207 the ruling shall only be based on evidence provided during the trial and discussed publicly in the presence of the litigants. However under Article 291 if an accused does not surrender within the period prescribed in Article 288 of this Law, the court shall try him in absentia and no counsel may represent him.

### ***Witnesses<sup>90</sup>***

- Everyone charged with a criminal offence has the right to call and examine witnesses: ICCPR Art.14(e)(3); ECHR Art.6(3)(d)).
- Reliance on hearsay evidence is not necessarily a breach of this rule so long as it is kept within strict limits and there is a good reason for it: e.g. illness, death, threats or to protect the vulnerable<sup>91</sup>.
- Measures can be taken to protect witnesses or victims, so long as any restrictions on the rights of the defence are counter-balanced<sup>92</sup>.

### ***Unlawfully obtained evidence<sup>93</sup>***

- Evidence obtained by torture must be excluded at trial: Convention Against Torture, Art.15<sup>94</sup>.
- In other cases the mere fact that evidence has been unlawfully obtained does not automatically mean it should be excluded at trial: relevant factors will be fairness, good faith

<sup>84</sup> IBA: Chapter 6 (5)

<sup>85</sup> Barbera, Messegue and Jabardo v Spain (ECHR 1988)

<sup>86</sup> IBA: Chapter 7 (3.2.2)

<sup>87</sup> Rowe and Davis v UK (ECHR 2000)

<sup>88</sup> Brandstetter v Austria (ECHR 1991)

<sup>89</sup> Rowe and Davis v UK (ECHR 2000)

<sup>90</sup> IBA: Chapter 7 (3.2.3 & 3.8)

<sup>91</sup> Doorson v The Netherlands (ECHR 1996); Van Mechelen v Netherlands (ECHR 1997)

<sup>92</sup> S.N. v Sweden (ECHR 2002); Rowe and Davis v UK (ECHR 2000)

<sup>93</sup> IBA: Chapter 6 (6.2)

<sup>94</sup> Austria v Italy (1963) 6 Yearbook 740, European Commission on Human Rights

and whether the admission of the evidence would bring the administration of justice into disrepute<sup>95</sup>.

- Statements obtained during illegal detention are inadmissible.
- The right to remain silent serves in principle to protect the freedom of a suspected person to choose whether to speak or to remain silent when questioned. Such freedom of choice is effectively undermined in a case in which, the suspect having elected to remain silent during questioning, the authorities are deceptive to elicit, from the suspect, confessions or other statements of an incriminatory nature, which they were unable to obtain during 'official' questioning but obtained through deception and where the confessions or statements thereby obtained are adduced in evidence at trial<sup>96</sup>.

- Palestine Basic Law – Article 13(2) states that all statements or confessions obtained by subjecting the person to any duress or torture shall be considered null and void.
- Penal Procedure Law – Article 273(2) states that a court may not base its ruling on any evidence which was arrived at illegally. Any statement proved to have been given by an accused or a witness under duress or threatening shall be disregarded and ignored.

### ***The right to silence<sup>97</sup>***

- Everyone has the right to silence: ICCPR, Art.14(3)(g)<sup>98</sup>.
- But inferences can be drawn from silence, so long as they are fair and legitimate<sup>99</sup>.
- Where a defendant exercises the right to silence he/she does not lose the right to call witnesses in their defence.

- Penal Procedure Law – Article 217 provides that the accused shall have the right to remain silent. Silence or refraining from giving answers shall not be interpreted as confession.

### ***Children<sup>100</sup>***

- Adaptations to the criminal justice system are needed where children are on trial<sup>101</sup>.
- The procedure should take account of the child's age and the need to promote their rehabilitation: ICCPR Art.14(4).
- Protecting a child's privacy is of paramount importance; ICCPR, Art.14(1); CRC, Art.40(2); Beijing Rules, rule 21.

- Palestine Basic Law – Article 29 provides that children sentenced shall be segregated from adults and treated in a manner which is appropriate to their age and rehabilitation.
- The Reform and Rehabilitation Centres Law – Article 24 states that juveniles are to be placed in special centres.

### ***Trial within a reasonable period<sup>102</sup>***

- Everyone has the right to trial within a reasonable period: ICCPR Art.14; ECHR Art.6(3).
- The reasonableness of the length of proceedings must be assessed in each case according to the particular circumstances, such as the complexity of the factual or legal issues raised by the case, the conduct of the applicants and the competent authorities and to what was at stake for the former<sup>103</sup>.

<sup>95</sup> Khan v UK (ECHR 2000); M.M. v The Netherlands (ECHR 2003)

<sup>96</sup> Allan v UK (ECHR 2002)

<sup>97</sup> IBA: Chapter 6 (6.5)

<sup>98</sup> Funke v France (ECHR 1993); Saunders v UK (ECHR 1996)

<sup>99</sup> Murray v UK (ECHR 1996)

<sup>100</sup> IBA: Chapter 10

<sup>101</sup> T v UK and V v UK (ECHR 1999)

<sup>102</sup> IBA: Chapter 5 (5)

<sup>103</sup> Zimmerman and Steiner v Switzerland (ECHR 1983)

- Time runs from when a person is charged until the completion of the proceedings, including appeals.
- Neither the workload of the court nor lack of resources justifies delay<sup>104</sup>.
- The state is not responsible for delays caused solely by the accused – but an accused person is not responsible for the time it takes to exercise legitimate avenues of appeal<sup>105</sup>.

- Palestine Basic Law – Article 12 states that a person must be tried without delay. Article 30 further guarantees prompt settlement of cases.

### ***Retroactive offences***

- No one should be convicted of a criminal offence which did not exist at the time the act in question was committed: ICCPR, Art 15; ECHR Art.7; ArCHR, Art.6.
- In certain circumstances Acts may be passed which retroactively introduce war crimes into a national system. A reason for this is the nature of war crimes, i.e. customary international law.
- Palestine Basic Law – Article 15 provides that crime and punishment shall only be determined by law. Punishment shall only be imposed by judicial order and shall only apply to actions committed after the entry into force of the law creating the crime at issue.

## **Sentence<sup>106</sup>**

---

### ***Inhuman and degrading sentences<sup>107</sup>***

- Inhuman and degrading sentences are prohibited: ICCPR, Art. 7; AmCHR, Art 5(1); AfCHPR, Art 5; ECHR, Art 3; ArCHR, Art.13; Convention Against Torture, Art 2.
- This is a relative concept and the sentence must encompass something over and beyond the mere fact of judicial punishment<sup>108</sup>.
- The assessment is, in the nature of things, relative: it depends on all the circumstances of the case and, in particular, on the nature and context of the punishment itself and the manner and method of its execution.
- Punishment does not lose its degrading character because it is believed to be, or actually is, an effective deterrent.
- Publicity may be a relevant factor.
- Whipping of juveniles is inhuman and degrading.
- Palestine Basic Law – Article 13 states that no one shall be subject to torture.

### ***Fair trial guarantees***

- Not all fair trial guarantees extend to the sentencing phase, but there must be procedural fairness<sup>109</sup>.
- Sentencing is an integral part of the administration of justice and should not be left to the executive.
- Palestine Basic Law – Article 15 states that punishment shall only be imposed by judicial order.

<sup>104</sup> Ledonne (No.2) v Italy (ECHR 1999); Fillastre v Bolivia, UN HRC, Communication No.336/1988, HRC 1992 Report, Annex IX.N

<sup>105</sup> König v Germany (ECHR 1978)

<sup>106</sup> IBA: Chapter 8

<sup>107</sup> IBA: Chapter 8 (2)

<sup>108</sup> Tyrer v UK (ECHR 1978)

<sup>109</sup> Engel v Netherlands (ECHR 1976)

### ***Retroactive penalties***

- No sentence that is more severe than that existing at the time of the offence should be imposed: ICCPR Art 15; AfCHPR Art 7(2); AMCHR Art 9; ECHR Art.7; ArCHR, Art.6.
- Palestine Basic Law – Article 15 punishment shall only be imposed by judicial order and shall only apply to actions committed after the entry into force of the of law creating the crime at issue.

### ***Proportionality of Sentence*<sup>110</sup>**

- Grossly disproportionate sentences are cruel and inhuman.
  - The imposition of a mandatory life sentence on an individual who poses no risk to the public is disproportionate.
  - Mandatory sentences can be disproportionate.
  - The mandatory death penalty is disproportionate no matter how tightly drawn the category of offence.
- 
- Penal Procedure Law – Article 284 states that when the court is a ruling in a serious crime or misdemeanour entailing the payment of a fine or the imprisonment for a period not exceeding one year, order in that same ruling the stay of execution. It may do that if it senses from the morals of the convicted person, his past history, his age, or the circumstances in which the crime was committed that he will not violate law again. The reasons for a stay of execution shall be explained in the ruling. The stay may entail any consequential penalty and all penal effects resulting from that ruling.

### ***Corporal punishment*<sup>111</sup>**

- Corporal punishment can constitute inhuman or degrading punishment because it assaults the dignity and physical integrity of the offender<sup>112</sup>.
- If corporal punishment is repeated and delayed, it is more likely to be inhuman or degrading.

### ***Extra-Judicial Executions***

- Extra-judicial, arbitrary and summary executions include: political assassinations; deaths resulting from torture or ill-treatment in prison or detention; death resulting from enforced disappearances; deaths resulting from the excessive use of force by law-enforcement personnel; executions without due process; and acts of genocide. All of these violate the right to life and other human rights standards.
- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989).

### ***Death Penalty*<sup>113</sup>**

---

#### ***Right to Life***

- Everyone has the right to life. No one shall be arbitrarily deprived of his life (ICCPR Art 6(1); AfCHPR Art 4; ACHR Art 4(1); ECHR Art 2(1)).
- The right to life is the supreme right of the human being (UN HRC, General Comment 6).

---

<sup>110</sup> IBA: Chapter 7 (5)

<sup>111</sup> IBA: Chapter 7 (4.2.1)

<sup>112</sup> *Tyrer v UK* (ECHR 1978)

<sup>113</sup> IBA: Chapter 7 (4.2.2)

- However, the only international human rights instrument to outlaw the death penalty absolutely is Protocol 13 to the ECHR which calls for the abolition of the death penalty in all circumstances. The protocol came into force on 1 July 2003.
- The other international human rights instruments merely place limits on the use of the death penalty.
- Article 2(1) of the Second Optional Protocol to the ICCPR provides 'No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.'
- The Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted by the General Assembly of the Organization of American States in 1990, provides for the total abolition of the death penalty but allows States Parties to retain the death penalty in wartime if they make a declaration to that effect at the time of ratifying or acceding to the Protocol. The Inter American Court and Commission have made clear that one of the underlying principles of both the ACHR and the ADHR is to restrict the scope of the death penalty to the point of abolition<sup>114</sup>.
- In countries which have not abolished the death penalty, sentences of death may be imposed only for the most serious crimes in accordance with the law in force at the time and in accordance with the provisions of the ICCPR (ICCPR Art 6(2); ACHR Art 4(2)).
- That means that the death penalty should be a quite exceptional measure (UN HRC, General Comment 6).
- See also, the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (1984) which elaborates further on the circumstances under which the death penalty can be imposed and the procedures to be followed.

### **Mandatory Death Penalty**

- The mandatory death penalty is an arbitrary deprivation of the right to life (ICCPR Art 6(1); AmCHR Art 4(1))<sup>115</sup>.

### **Fair Trial**

- Where fair trial guarantees are not observed, the right to life may be violated if the death penalty is imposed.
- The fair trial rights which must be strictly observed include:
  - Due process<sup>116</sup>;
  - Full disclosure<sup>117</sup>;
  - Sufficient time to prepare defence<sup>118</sup>;
  - Trial within a reasonable period<sup>119</sup>;
  - Presence of the accused<sup>120</sup>;
  - Effective and competent representation<sup>121</sup>;
  - Ensuring the attendance of witnesses<sup>122</sup>;
  - Fair interrogation<sup>123</sup>; and
  - Reasons for rejecting appeal<sup>124</sup>.
- A judge's instructions to the jury must meet particularly high standards of thoroughness and impartiality in a case where the sentence of death may be imposed<sup>125</sup>.

<sup>114</sup> Advisory Opinion of the Inter-American Court OC-3/83, 8 September 1983

<sup>115</sup> Patrick Reyes v The Queen [2002] UKPC 11

<sup>116</sup> Mbenge v Zaire, UN HRC, Communication No 16/1977, HRC 1983 Report, Annex X

<sup>117</sup> Wright v Jamaica, UN HRC, Communication No 349/1989, HRC 1992 Report, Annex IX.O; Peart and Peart v Jamaica UN HRC, Communication No 464/1991, HRC 1995 Report, Annex IX.D

<sup>118</sup> Little v Jamaica UN HRC, Communication No 283/1988, HRC 1992 Report, Annex IX.J

<sup>119</sup> Wight and Harvey v Jamaica UN HRC, Communication No 459/1991, HRC 1996 Report, Annex VIII.F

<sup>120</sup> Campbell v Jamaica UN HRC, Communication No 248/1987, HRC 1990 Report, Annex IX.H

<sup>121</sup> Pinto v Trinidad and Tobago, UN HRC, Communication No 232/1987, HRC 1990 Report, Annex IX.H

<sup>122</sup> Grant v Jamaica UN HRC, Communication No 353/1988; Burrell v Jamaica UN HRC, Communication No 546/1993, HRC 1996 Report, Annex R

<sup>123</sup> Berry v Jamaica, UN HRC, Communication No 330/1988, 7 April 1994

<sup>124</sup> Kelly v Jamaica, UN HRC, Communication No 253/1987, HRC 1991 Report, Annex XI.D

## ***Torture, Cruel and Inhuman Treatment***

- In South Africa the death sentence has been held to be inhuman and degrading and against the traditional African principle of humanity<sup>126</sup>.
- Exposure to the 'death row phenomenon' can amount to inhuman treatment<sup>127</sup>.
- The imposition of the death penalty following an unfair procedure which can not be considered compatible with the strict standards of fairness required in cases involving a capital sentence, can amount to inhuman treatment<sup>128</sup>.

## ***Death Row Phenomenon***

### *Delay*

- Delay in carrying out the death penalty can render it inhuman to execute, five years between imposition of death sentence and execution is too long and should lead to commutation<sup>129</sup>.
- Notice of execution and the execution warrant.
- Justice and humanity require that a prisoner under sentence of death should be given reasonable notice of the time of his execution. A practice of giving the condemned person at least four clear days between the reading of the death warrant and execution has been held to be reasonable.
- Such notice is required to give him time to arrange his affairs, to be visited by members of his family and to take spiritual advice.
- Notice also provides an opportunity to obtain legal advice and have resort to the courts for such relief as may be open.

### *Mercy*

- Anyone sentenced to death shall have the right to seek pardon or commutation of sentence (ICCPR Article 6(4); AmCHR, Article 4(6)).
- Anyone has the right to a fair hearing before a mercy committee where the death penalty has been imposed<sup>130</sup>.

## ***Mandatory Death Sentence***

- The mandatory imposition of a death sentence is cruel and inhuman because it fails to focus on the circumstances of the particular offence and the character and propensities of the offender.
- The failure to take into account individual circumstances in sentencing is a violation of the right to human dignity<sup>131</sup>.

## ***Sentencing Criteria/Guidelines***

- Where a court has the discretion either to impose the death penalty or a lesser sentence, the court should adopt a presumption in favour of life and against the death penalty.
- The death penalty should only be imposed in exceptional circumstances where the crime is of an especially aggravated character and there are no significant mitigating circumstances.

<sup>125</sup> Pinto v Trinidad and Tobago, UN HRC, Communication No 232/1987, HRC 1990 Report, Annex IX.H

<sup>126</sup> State v Makwanyane (1995) 1 LRC 269

<sup>127</sup> Soering v the United Kingdom (7 July 1989, ECtHR, App No 14038/88)

<sup>128</sup> Öcalan v Turkey (12 May 2005, ECtHR, App No 46221/99)

<sup>129</sup> Pratt and Morgan v AG Jamaica (1994) 2 AC 1

<sup>130</sup> Desmond McKenzie and others v Jamaica, Case No 12.023. Report No 41/00 of the Inter-American Commission

<sup>131</sup> Patrick Reyes v The Queen [2002] UKPC 11, 11 March 2002; Rawle Kennedy v Trinidad & Tobago (28 March 2002), CCPR/C/74/D/845//1998; Baptiste v Grenada, Report No 38/00 of the Inter-American Commission on Human Rights; Edwards v The Bahamas, Report No 48/2001 of the Inter-American Commission on Human Rights; Hilaire, Constantine Benjamin and Others v Trinidad & Tobago, Judgment of the Inter-American Court on Human Rights, 21 June 2002, Ser C No 94



## **Juveniles**

- Sentence of death shall not be imposed on those under the age of 18 (ICCPR Art 6(5); ACHR Art 4(5))<sup>132</sup>.
- The Inter-American Commission on Human Rights held that sentencing a juvenile offender to the death penalty violated an international norm of jus cogens. Execution of a juvenile would constitute a 'grave and irreparable violation' the right to life guaranteed by Article I of the American Declaration<sup>133</sup>.
- The US Supreme Court has declared the imposition of the death penalty on juveniles unconstitutional<sup>134</sup>.

## **Mental Incapacity**

- Sentence of death shall not be imposed or carried out on mentally incompetent persons (ECOSOC Resolutions 1984/50 and 1989/64); executions of mentally retarded criminals are 'cruel and unusual punishments' prohibited by the Eighth Amendment of the US Constitution<sup>135</sup>.
- To issue a warrant for the execution of a mentally incompetent person would amount to inhuman and degrading treatment or punishment (ICCPR Art 7)<sup>136</sup>.

## **Women**

- Sentence of death shall not be imposed on pregnant women (ICCPR Art 6(5); AmCHR Art 4(5)).

- Penal Procedure Law – Article 272, a judgment which hands down a death sentence must be rendered unanimously.
- Article 279, states that a person sentenced to death cannot be ordered to pay the costs of the trial and the expenses arising from the trial.
- Article 327, states that judgments imposing the death penalty or life imprisonment are appealed by operation of law, even if not appealed by the parties.
- Article 380, states that execution of a judgment imposing the death penalty will be stayed when an application for a retrial is made.
- Part 2 (Articles 408-419) deals with the procedures for implementing a death sentence which has become final.
- Article 414 states that if a pregnant woman gives birth to a live child the court will commute her sentence to life imprisonment.
- The Reform and Rehabilitation Centres Law – Part 16 (Articles 59-60) deal with the detention of those sentenced to death. This includes them being segregated from the other inmates, restricted visits (except for the Attorney-General, clergyman or physician who can visit at anytime). It also deals with the process of carrying out the sentence.
- Article 60(1) states that a pregnant woman sentenced to death will have her sentence commuted to life imprisonment if she delivers a living child while incarcerated<sup>137</sup>.

<sup>132</sup> Re Roach and Pinkerton, Inter-American Commission, resolution No 3/87, case 9647 (US), 27 March 1987

<sup>133</sup> Michael Domingues v USA, Inter-American Commission, Report No 62/02, Case No 12.285 (22 October 2002)

<sup>134</sup> Roper v Simmons (1 March 2005)

<sup>135</sup> Atkins v Virginia, 536 US 304 (2002)

<sup>136</sup> R v Trinidad and Tobago (2002) CCPR/C/74/D/684/1996

- Basic Law – the right to life is not absolutely guaranteed however commitment is made to respect human rights.
- The death sentence is still prescribed for crimes in the Gaza Strip and the West Bank, the courts have imposed the death sentence and a number of these sentences have been executed.
- In the West Bank the Penal Code provides for the possibility to impose the death penalty for 17 offences (15 offences in the Gaza Strip). The Penal Codes are applied by the ordinary courts. The PLO Revolutionary Code 1979 provides for 42 offences (applied by military and state security courts). These laws are not in conformity with international law since the death penalty is not reserved for the most serious crimes only.
- Most death sentences are issued by the state security courts often following rapid trials, taking only a few minutes and not allowing the accused time to either contact a lawyer or prepare their defence. In addition the sentences cannot be appealed but only altered by the President of the PA.

## Appeals<sup>138</sup>

---

### *Fair trial guarantees*

- Everyone convicted of a crime has the right to have his or her conviction and sentence reviewed by a higher court: ICCPR, Art.14(5); UN HRC General Comment No.13, para.17.
  - Where appeal procedures exist, they must be fair<sup>139</sup>.
  - It is legitimate to require leave to appeal before a full appeal hearing can take place<sup>140</sup>.
- Penal Procedure Law – Article 277 when delivering the ruling, the head of the court shall inform the convicted person that he has the right to appeal during the legally prescribed period.

### *Legal aid and representation*

- Legal aid should be provided for an appeal hearing where the interests of justice so require<sup>141</sup>.
- The more severe the penalty if the appeal fails, the greater the need for legal aid and representation<sup>142</sup>.
- Particularly in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer<sup>143</sup>.

### *Presence of the appellant*

- There is no absolute rule that an appellant be present at the hearing of his/her appeal<sup>144</sup>.

<sup>137</sup> Law No 3 2005, Amended Provisions Relating to Rehabilitation Centers No.6 1998. This law was amended pursuant to an Al-Haq memo submitted to the Legal Committee in August of 2004.

<sup>138</sup> IBA: Chapter 7 (5)

<sup>139</sup> Delcourt v Belgium (ECHR 1969)

<sup>140</sup> Monnell and Morris v UK (ECHR 1987)

<sup>141</sup> Granger v UK (ECHR 1990)

<sup>142</sup> Maxwell v UK (ECHR 1994)

<sup>143</sup> Aliev v Ukraine, HRC Communication 781/1997; Robinson v Jamaica, Communication No. 223/1987, Brown v Jamaica, HRC Communication No. 775/1997.

<sup>144</sup> Prinz v Austria (ECHR 2001)

- But where factual issues need to be resolved on appeal, the appellant should usually be present<sup>145</sup>.

## Prisoners<sup>146</sup>

### Basic provisions

- All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person: ICCPR Art.10(1); ArCHR, Art 15.
  - Accused persons shall be separated from convicted persons: ICCPR Art.10(2)(a); AmCHR Art.5(4).
  - Juveniles shall be separated from adults: ICCPR Art.10(2)(b); AmCHR Art.5(5)).
  - The Standard Minimum Rules for the Treatment of Prisoners (1955) set out in detail the minimum conditions which are acceptable for prisoners; they are not referred to in ICCPR Art.10, but are intended to be taken into account in its application<sup>147</sup>.
  - Other relevant UN standards include:
    - the Code of Conduct for Law Enforcement Officials (1978);
    - the Principles of Medical Ethics relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or punishment (1982);
    - the Body of Principles for the Protection of All Person under Any Form of Detention or Imprisonment (1988); and
    - UN HRC, General Comment 21.
  - Prisoners retain all rights not expressly, or by necessary implication, taken away and it is the responsibility of courts to enforce the constitutional rights of all prisoners.
- Palestine Basic Law – Article 13 states that all persons deprived of their liberty shall not be tortured and shall receive proper treatment.

### Prison conditions<sup>148</sup>

- Prisoners should not be subjected to inhuman and degrading treatment or punishment.
- Solitary confinement is not prohibited, but must be properly justified; prisoners should not be held incommunicado for any length of time<sup>149</sup>.
- Displaying a prisoner to the press in a cage is degrading<sup>150</sup>.
- Among the requirements in the Standard Minimum Rules for the Treatment of Prisoners are minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing which shall be in no manner degrading or humiliating, provision of a separate bed, and provision of food of nutritional value adequate for health and strength. They must always be observed, even where resources are scarce<sup>151</sup>.
- Lack of fresh air, sunlight and exercise can amount to inhuman treatment<sup>152</sup>.
- Withholding food or water is inhuman treatment<sup>153</sup>.

<sup>145</sup> Cooke v Austria (ECHR 2001)

<sup>146</sup> IBA: Chapter 8

<sup>147</sup> UN document A/4045, section 84

<sup>148</sup> IBA: Chapter 8 (4)

<sup>149</sup> Caldas v Uruguay, UN HRC, Communication No.43/1979, HRC 1983 Report, Annex XVIII

<sup>150</sup> Espinoza de Polay v Peru, UN HRC, Communication No.577/1994, HRC 1998 Report, Annex XI.F

<sup>151</sup> Mukong v Cameroon, UN HRC, Communication No.458/1991, HRC 1994 Report, Annex IX.AA

<sup>152</sup> Deidrick v Jamaica, UN HRC, Communication No.619/1995, HRC 1998 Report, Annex XI.K; Shaw v Jamaica, UN HRC, Communication No.794/1996, HRC 1998 Report, Annex XI.S; Siewpersaud, Sukhram, and Persaud v Trinidad and Tobago, UN HCR, Communication No. 938/2000, 19/08/2004; Dennis Lobban v Jamaica, UN HRC Communication No. 797/1998, 13/05/2004)

<sup>153</sup> Cyprus v Turkey (ECHR 1976); Linton v Jamaica, UN HRC, Communication NO.255/1987, 22 October 1992; Kurbanova v Tajikistan, UNHRC, Communication No. 1096/2002, 12/11/2003).

- As is overcrowding<sup>154</sup>; and keeping the lights on day and night<sup>155</sup> or only providing lighting for half an hour<sup>156</sup>.
- Repeated beatings inflicted on prisoners by wardens amount to inhuman treatment<sup>157</sup>.
- Solitary confinement for a period as long as 13 years, on the sole basis of presumed political opinion fails to protect the inherent dignity of a person<sup>158</sup>.
- Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused and to produce evidence casting doubt on the victim's allegations, particularly if those allegations are backed up by medical reports. Failing this, a clear issue arises under the prohibition against torture<sup>159</sup>.

- Reform and Rehabilitation Centres Law No. 6 of 1998– Article 37/2 states that it is prohibited to torture inmates or to use force against them.

### ***Privacy and family life*<sup>160</sup>**

- Prisoners have the right to be visited by a family member<sup>161</sup>.

### ***Correspondence***

- Prisoners have a right to correspond with the outside world<sup>162</sup>.
- However this is not an absolute right and restrictions can be imposed so long as they are necessary and proportionate, and the rules are published and clear<sup>163</sup>.
- Prisoners' correspondence with lawyers is privileged. It can be opened but not read, unless there are exceptional circumstances<sup>164</sup>.
- Prisoners should not be denied access to journalists without justification.

### ***Medical treatment*<sup>165</sup>**

- There is a general duty on the relevant authorities to safeguard the health and well-being of prisoners<sup>166</sup>.
- Where there is reasonable cause to fear for the health of a prisoner, reasonable steps should be taken to provide appropriate medical care.
- Where the authorities fail to take appropriate measures to safeguard the life of those in custody, the right to life is violated<sup>167</sup>.

- Palestine Basic Law – Article 13 states that those deprived of their liberty shall receive proper treatment.

<sup>154</sup> Massiotti v Uruguay, UN HRC, Communication No.R.6/25/1978, HRC 1982 Report, Annex XVIII

<sup>155</sup> Lluberas v Uruguay, UN HRC, Communication No.123/1982, HRC 1984 Report, Annex XII

<sup>156</sup> Espinoza de Polay v Peru, UN HRC, Communication No.577/1994, HRC 1998 Report, Annex XI.F

<sup>157</sup> McTaggart v. Jamaica, UN HRC, Communication No. 749/1997; Floyd Howell v Jamaica, UN HRC, Communication No. 798/1998, 07/11/2003

<sup>158</sup> Yong-Joo Kang v Republic of Korea, UN HRC, Communication No. 878/1999, 23/07/2003

<sup>159</sup> Yaman v. Turkey (ECHR 2004); Çelik and İmret v Turkey (ECHR 2004); Çolak and Filizer v Turkey (ECHR 2004); Selmouni v France (ECHR 1999); Aksoy v. Turkey (ECHR 1996); Ribitsch v. Austria (ECHR 1995).

<sup>160</sup> IBA: Chapter 8 (5)

<sup>161</sup> Ambrosini v Uruguay, UN HRC, Communication No. R.1/5 (15 February 1977), Doc A/34/40 p124

<sup>162</sup> Silver v UK (ECHR 1983); Espinoza de Polay v Peru, UN HRC, Communication No.577/1994, HRC 1998 Report, Annex XI.F

<sup>163</sup> Silver v UK (ECHR 1983)

<sup>164</sup> Campbell v UK (ECHR 1992)

<sup>165</sup> IBA: Chapter 8 (4.3)

<sup>166</sup> McFeeley v UK (ECHR 1981)

<sup>167</sup> Barbato v Uruguay, Communication No.84/1981, HRC 1983 Report, Annex IX

---

## 1.4 International Humanitarian Law<sup>168</sup>

---

- Introduction
- Grave Breaches
- Universal Jurisdiction

### Introduction

---

- The treaties which make up international humanitarian law (IHL) are the Regulations concerning the Laws and Customs of War on Land annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land 1907, the Four Geneva Conventions 1949 and two Additional Protocols 1977. In addition to the treaties there is an extensive body of customary international humanitarian laws.
- Whereas human rights law applies at all times, IHL applies in situations of armed conflicts and its norms have extra-territorial application.
- The Fourth Geneva Convention and the First Additional Protocol to the Geneva Conventions apply to the Occupied Palestinian Territories.<sup>169</sup>
- The Geneva Conventions distinguish between combatants and civilians. Combatants, protected by the First to Third Geneva Conventions, are those who are members of the armed forces or militias or volunteer corps, including such organized resistance movements who:
  - ✧ Are commanded by a person responsible for his subordinates;
  - ✧ Have a fixed distinctive sign recognisable at a distance;
  - ✧ Carry arms openly; and
  - ✧ Conduct their operations in accordance with the laws and customs of war.<sup>170</sup>
- Individuals not falling within the above definition are protected by the Fourth Geneva Convention and are known as civilians or “protected persons”.<sup>171</sup> They have protection unless and for such time as they take an active part in hostilities.<sup>172</sup>
- In addition to the war crimes detailed below, international Humanitarian law also provides for the protection of the rights of civilians, these fundamental guarantees include:

- Fair Trial guarantees (Fourth Geneva Convention Art 5)
- Access to a lawyer (Fourth Geneva Convention Art 72)
- Proportionate punishment following a finding of guilt after a fair trial guaranteeing judicial guarantees (Fourth Geneva Convention Art 3)
- Prohibition of violence, discrimination, coercion, corporal punishment and torture (Fourth Geneva Convention Arts 27-43)

---

<sup>168</sup> IBA: Chapter 1 (2.5)

<sup>169</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice 9 July 2004 General List No. 131, Paragraph 101.

<sup>170</sup> Third Geneva Convention, Article 4.

<sup>171</sup> Fourth Geneva Convention, Article 4.

<sup>172</sup> Common Article 3 to the Geneva Conventions and Additional Protocol I, Article 51(3).

## Grave Breaches

---

- Certain breaches of the Fourth Geneva Convention and the First Additional Protocol are known as “grave breaches” or war crimes. These include the following:<sup>173</sup>
  - ✘ Wilful killing;
  - ✘ Torture or inhuman treatment, including biological experiments;
  - ✘ Wilfully causing great suffering or serious injury to body or health;
  - ✘ Unlawful deportation or transfer or unlawful confinement of a protected person;
  - ✘ Compelling a protected person to serve in the forces of a hostile Power;
  - ✘ Wilfully depriving a protected person of the rights of fair and regular trial;
  - ✘ Taking of hostages; and
  - ✘ Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.
- They include the following, where committed wilfully, in breach of the Conventions, and causing death or serious injury to body or health:<sup>174</sup>
  - ✘ Making the civilian population or individual civilians the object of attack;
  - ✘ Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
  - ✘ launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
  - ✘ Making non-defended localities and demilitarized zones the object of attack;
  - ✘ Making a person the object of attack in the knowledge that he is hors de combat.<sup>175</sup>
  - ✘ The perfidious<sup>176</sup> use of the distinctive emblem of the Red Cross, Red Crescent or red lion and sun or of other recognised protective signs.
- They include the following when committed wilfully and in violation of the Conventions or the Protocol:<sup>177</sup>
  - ✘ The transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Geneva Convention;
  - ✘ Unjustifiable delay in the repatriation of prisoners of war or civilians;
  - ✘ Practices of “apartheid” and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;
  - ✘ Making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement the object of attack, causing as a result extensive destruction thereof, where there is no evidence these being used in support of the military effort<sup>178</sup> and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;
  - ✘ Depriving a protected person of the rights of fair and regular trial.

---

<sup>173</sup> Fourth Geneva Convention, Article 147.

<sup>174</sup> Additional Protocol I, Article 85(3).

<sup>175</sup> Out of action.

<sup>176</sup> Treacherous.

<sup>177</sup> Additional Protocol I, Article 85(4).

<sup>178</sup> Article 53(b).

## Universal Jurisdiction

---

- Traditionally national courts have only prosecuted people accused of crimes committed in their territory. However under international law states can enact national laws allowing their national courts to investigate and prosecute any person who enters their territory suspected of certain crimes, regardless of where the crime was committed and the nationality of the accused and the victim.<sup>179</sup>
- Thus, the difference between “ordinary” crimes and war crimes is that States are obliged to enact legislation to provide effective penal sanctions for persons committing them and to search for persons alleged to have committed war crimes and bring them before the courts, even if they are not nationals of that state.<sup>180</sup>
- War crimes can be prosecuted in a different state from the place where the alleged crime was committed and therefore they are known as crimes of universal jurisdiction.
- The authoritative commentary on the Fourth Geneva Convention published by the International Committee of the Red Cross (edited by Dr Jean Pictet) says as to the active duty to search for alleged offenders of all nationalities:-

“As soon as a contracting party realises that there is on its territory a person who has committed....a [grave] breach, its duty is to ensure that the person concerned is arrested and prosecuted with all speed. The necessary police action should be taken spontaneously, therefore, not merely in pursuance of a request from another State.”<sup>181</sup>
- Different states have enacted this obligation in different ways. The International Committee of the Red Cross maintains a database of the implementation by each country.<sup>182</sup>
- In the United Kingdom, the obligation is enshrined in the Geneva Conventions Act of 1957. A prosecution can be brought by or with the consent of the Attorney General. As the law currently stands, it is possible to apply to a court for an arrest warrant prior to the Attorney General's consent being obtained. This was what happened on the 10 September 2005 when a District Judge ordered the arrest of Major Almog for the war crime of Wanton Destruction of Property in Gaza.<sup>183</sup>
- Other Conventions also provide for universal jurisdiction. These include the Convention against Torture and the Convention against the Taking of Hostages 1979. Recently, an Afghani citizen was successfully prosecuted in the United Kingdom for hostage taking and torture committed in Afghanistan.<sup>184</sup>

---

<sup>179</sup> See: <http://web.amnesty.org/pages/uj-index-eng>

<sup>180</sup> Fourth Geneva Convention, Article 146.

<sup>181</sup> Volume IV Geneva Convention relative to the Protection of Civilian Persons in Time of War: commentary, ICRC, Geneva, 1958, 598. Although commonly referred to as ‘Pictet’s Commentary’ the commentary on IVGC was written mainly by Oscar Uhler and Henri Coursier, with the participation of F. Siordet, C. Pilloud, J.-P. Schoenholzer, R.-J. Wilhelm and R. Boppe.

<sup>182</sup> See: <http://www.icrc.org/ihl-nat>.

<sup>183</sup> See further: <http://www.timesonline.co.uk/article/0,,200-1806182,00.html>

<sup>184</sup> *R v Zardad*, Central Criminal Court, 2005.

## 2. Enforcement Procedures and Remedies in International Law

*This chapter lays out the enforcement procedures available for violations committed within the Palestinian Authority under the United Nations system.*

---

### United Nations<sup>185</sup>

---

- Introduction
- Human Rights Law
- UN Treaties
- UN Human Rights System
- Charter Bodies
- Treaty Monitoring Bodies
- Making an Application to a Committee
- The UN and the OPT
- Special Rapporteurs
- 1503 and 1235 Procedure
- International Court of Justice

### Introduction<sup>186</sup>

---

The United Nations has created a comprehensive body of human rights law which provides a universal and internationally protected code of human rights.

The United Nations has defined a broad range of internationally accepted rights and has also established mechanisms with which to promote and protect these rights and to assist governments in carrying out their responsibilities.

Whilst the principles and standards guaranteed are applicable to the Palestinian Territories, many of the mechanisms are not available since the Palestinian National Authority is not able to ratify the Treaties. However when the violations concern other States the relevant mechanisms may be applicable if the state in question has ratified the applicable treaty.<sup>187</sup>

---

<sup>185</sup> IBA: Chapter 2

<sup>186</sup> UN Human Rights Home Page: <http://www.un.org/rights/>

<sup>187</sup> Table of ratification of UN Treaties by all states can be found at: <http://www.unhchr.ch/pdf/report.pdf>.  
The Arab Human Rights Index at <http://www.arabhumanrights.org/en/>



## Human Rights Law

---

The foundations of this body of law are the United Nations Charter and the Universal Declaration of Human Rights, adopted by the General Assembly in 1948. Since then, the United Nations has gradually expanded human rights law to encompass specific standards for women, children, disabled persons, minorities, migrant workers and other vulnerable groups, who now possess rights that protect them from discriminatory practices that had long been common in many societies.

The United Nations High Commissioner for Human Rights works to strengthen and coordinate United Nations work for the protection and promotion of all human rights of all persons around the world.

## UN Treaties

---

The International Bill of Human Rights is made up of the following:

1. Universal Declaration of Human Rights (1948);
2. International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966);
3. International Covenant on Civil and Political Rights, (ICCPR) (1966) ;
4. First Optional Protocol to the ICCPR providing the right to individual petition(1966);
5. Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty (1989).

Other relevant treaties include<sup>188</sup>:

- UN Convention Against Torture (CAT) and Optional Protocol.
- Convention on the Rights of the Child (CRC).
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- International Convention on the Elimination of Racial Discrimination (CERD).

## UN Human Rights System

---

The United Nations system for the promotion and protection of human rights consists of two main types of body:

**Charter bodies** – created under the UN Charter;

**Treaty bodies** – created under the international human rights treaties.

In addition to these there are a number of special procedures, such as special rapporteurs, special representatives and independent experts with either thematic or country mandates<sup>189</sup>.

There is also the 1503 complaints procedure which was introduced by the Economic and Social Council to deal with the numerous complaints submitted to the UN alleging human rights violations.

## Charter Bodies

---

### *Commission on Human Rights*

The United Nations Commission on Human Rights was established in 1946. Composed of 53 States members, its brief expanded over time to allow it to respond to the whole range of human rights problems and it set standards to govern the conduct of States. It also acted as a forum where

---

<sup>188</sup> A full list of UN Instruments can be found at: <http://www.unhchr.ch/html/intlinst.htm>

<sup>189</sup> For further information see the UN Fact sheet: <http://www.ohchr.org/english/about/publications/docs/factsheet27.pdf>

countries large and small, non-governmental groups and human rights defenders from around the world voiced their concerns.

During its annual session in Geneva, at which over 3,000 delegates from member and observer States and from non-governmental organizations participated, the Commission adopted about a hundred resolutions, decisions and chairperson's statements on matters of relevance to individuals in all regions and circumstances. It was assisted in this work by the Sub-Commission on the Promotion and Protection of Human Rights, a number of working groups and a network of individual experts, representatives and rapporteurs mandated to report to it on specific issues.

On 27 March 2006, the Commission on Human Rights concluded its sixty-second and final session.

### ***Human Rights Council***

On 15 March 2006, the General Assembly adopted resolution A/RES/60/251 to establish the Human Rights Council. The draft resolution was adopted by 170 Member States. 4 Member States voted against the resolution (USA, Israel, the Marshall Islands and Palau) with 3 abstaining (Venezuela, Iran and Belarus).

The preambular paragraphs of the resolution acknowledge the three pillars of the UN: development; peace and security; and human rights; and reaffirm the important principle of the universality, indivisibility, interrelatedness, and interdependence of all human rights.

The Council is a subsidiary organ of the General Assembly and therefore has a higher institutional standing than the previous Commission on Human Rights.

Whilst recognizing and building upon the six decades of valuable work undertaken by the Commission on Human Rights, the criticisms of the Commission are also noted, in particular the importance of eliminating double standards and politicization is also reflected upon.

From the operative paragraphs, there are three issues worthy of specific mention. First, the universal periodic review, a mechanism which will ensure equal treatment with respect to all Member States and will address the issues of double standards and selectivity. The parameters of this mechanism are to be set by the Council itself but it is accepted that it will not create a burden of new or redundant reporting obligations, nor duplicate the work of treaty bodies and the time allocated to the review should be limited.

The important role of non-governmental organizations in the promotion and protection of human rights at the national, regional and international level is also noted.

Secondly, the Council shall consist of 47 Member States, which shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly; the membership shall be based on equitable geographical distribution and seats shall be distributed as follows among regional groups: African Group, thirteen; Asian Group, thirteen; Eastern European Group, six; Latin American and Caribbean Group, eight; and Western European and Others Group, seven.

A new power which is of particular interest is that the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights.

Finally, unlike the Commission which it replaces, the Council shall meet regularly throughout the year and schedule not fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and shall be able to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council.

The Council will have a year to review the current system. This review will examine ways to rationalize and strengthen the special procedures and mechanisms including the Sub-Commission of Commission on the Promotion and Protection of Human Rights.

### ***The Sub-Commission on Promotion and Protection of Human Rights***

The Sub-Commission was the main subsidiary body of the Commission on Human Rights. It was established by the Commission at its first session in 1947 under the authority of the Economic and Social Council (ECOSOC). In 1999 the Economic and Social Council changed its title from Sub-Commission on Prevention of Discrimination and Protection of Minorities to Sub-Commission on the Promotion and Protection of Human Rights. Its functions are: to undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious, and linguistic minorities; and to perform any other functions which may be entrusted to it by the Council or the Commission.

The Sub-Commission is composed of 26 experts who act in their personal capacity and are elected by the Commission with due regard to equitable geographical distribution. The present membership consists of seven experts from African States, five from Asian States, five from Latin American States, three from Eastern European States and six from Western European and other States. Each member has one alternate. Half the members and their alternates are elected every two years and each serves for a term of four years.

The Sub-Commission holds an annual session in Geneva, which ran for four weeks until 1999 and has been reduced to three weeks since 2000. In addition to the members and alternates, it is attended by the observers from States, United Nations bodies and specialized agencies, other intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council.

## **Treaty Monitoring Bodies**

---

The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties<sup>190</sup>. They are created in accordance with the provisions of the treaty that they monitor.

There are seven human rights treaty bodies:

- Human Rights Committee (HRC);
- Committee on Economic, Social and Cultural Rights (CESCR);
- Committee on the Elimination of Racial Discrimination (CERD);
- Committee on the Elimination of Discrimination Against Women (CEDAW);
- Committee against Torture (CAT); and
- Committee on the Rights of the Child (CRC).

The treaty bodies perform a number of functions in accordance with the provisions of the treaties that created them. These include:

- consideration of State parties' reports; and
- consideration of individual complaints or communications.

They also publish general comments on the treaties and organize discussions on related themes.

When a country ratifies one of these treaties, it assumes a legal obligation to implement the rights recognized in that treaty. The country incurs an additional obligation to submit regular reports to the monitoring committee set up under that treaty on how the rights are being implemented.

---

<sup>190</sup> More information can be found at: <http://www.unhchr.ch/html/menu2/convmech.htm>

To meet their reporting obligation, States must submit an initial report usually one year after joining (two years in the case of the CRC) and then periodically in accordance with the provisions of the treaty (usually every four or five years).

In addition to the government report, the treaty bodies may receive information on a country's human rights situation from other sources, including non-governmental organizations, UN agencies, other intergovernmental organizations, academic institutions and the press. These are commonly known as 'shadow reports'.

In light of all the information available, the Committee examines the report together with government representatives. Based on this dialogue, the Committee publishes its concerns and recommendations, referred to as 'concluding observations'.

The Committees also publish their interpretation of the content of human rights provisions, known as general comments on thematic issues or methods of work. The treaty bodies coordinate their activities through an annual meeting of chairpersons of human rights treaty bodies and through the inter-committee meeting.

### ***Shadow Reports***

In addition to the government report, the treaty bodies may receive information on a country's human rights situation from other sources, including non-governmental organizations, UN agencies, other intergovernmental organizations, academic institutions and the press. These are commonly known as 'shadow reports'.

These shadow reports are submitted at the same time as the government reports. The information provided is taken into account by the treaty body when examining the government report and drafting its concluding observations.

Submitting a shadow report is both important and informative as it provides the treaty body with a different perspective of the human rights situation under review, then that of the government, and leads to a balanced view.

### ***The International Court of Justice***

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. Its seat is at the Peace Palace in The Hague (Netherlands). It began work in 1946, when it replaced the Permanent Court of International Justice which had functioned in the Peace Palace since 1922. It operates under a Statute largely similar to that of its predecessor, which is an integral part of the Charter of the United Nations.

The Court has a dual role: to settle in accordance with international law the legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies.

## **Making an Application to a Committee**

---

### ***Consideration of individual complaints or communications***

In addition to the reporting procedure, some of the treaty bodies may perform additional monitoring functions through three other mechanisms: the inquiry procedure, the examination of interstate complaints and the examination of individual complaints. Four of the committees (HRC, CERD, CAT, and CEDAW) can, under certain conditions, receive petitions from individuals who claim that their rights under the treaties have been violated.<sup>191</sup>

---

<sup>191</sup> See the UN Fact Sheet No.7 on the Complaint Procedures found at: <http://www.unhchr.ch/html/menu6/2/fs7.htm>

Under one of the four following treaties:

- the International Covenant on Civil and Political Rights,
- the Convention against Torture,
- the International Convention on the Elimination of Racial Discrimination and
- the Convention on the Elimination of All Forms of Discrimination against Women.

A complaint can be brought only against a State that satisfies two conditions:

1. It must be a party to the treaty in question, having ratified or otherwise accepted it.
2. It must have recognized the competence of the committee established under the relevant treaty to consider complaints from individuals.

### ***Human Rights Committee***

Complaints can only be made against States which are party to the First Optional Protocol to the ICCPR and thereby recognize the competence of the Human Rights Committee.

The HRC has a 'Model Application Form'<sup>192</sup> which should be used as a guide. This form can also be used for applications to other UN bodies, such as the Committee Against Torture in relation to a violation of the Convention Against Torture.

Complaints should contain the following information:

- The complainant's name, date of birth, nationality and address.
- The name, address and occupation of anyone acting as their representative.
- The respondent country and the Article/s of the ICCPR alleged to have been violated.
- Details of exhaustion of domestic remedies and applications to any other international procedures (for example the African Commission).
- Statement of facts.
- The judgments, decisions and any other documents relating to the complaint.

Complaints are referred to the Committee's Special Rapporteur on New Communications, who decides whether the case should be registered under the Optional Protocol and issues any pertinent instructions.

If the case is registered, the Committee usually considers the admissibility and merits of the case simultaneously. The State party has six months to present its submissions on the admissibility and merits of the case. The complainant then has two months to comment on the State's submissions.

If the State party fails to respond, the State party receives two reminders after the six-month deadline has passed. If there is still no reply, the Committee considers the complaint on the basis of the information initially supplied by the complainant.

Given the large number of cases brought under the Optional Protocol, there may be a delay of several years between the initial submission and the Committee's final decision.

In situations of urgency requiring immediate action, the Committee's Special Rapporteur on New Communications may issue a request to the State Party for interim measures with a view to averting irreparable harm (Rules of Procedure, Rule 86).

### ***Admissibility criteria***

- Complaints must not be anonymous.
- The complaint may be sent in by the victim of the violation or by a third party who can prove that they are acting on the victim's behalf.
- The complaint cannot be considered if the same problem is being investigated under another international procedure (but this does not include options before the UN Commission on Human Rights such as the '1503 procedure').
- All domestic remedies must be exhausted.

<sup>192</sup> The Model Complaints Form can be found at: <http://www.unhchr.ch/html/menu6/2/annex1.pdf>

Inasmuch as the ICCPR provides greater protection in some respects than is available under other international instruments, facts that have already been submitted to another international mechanism can be brought before the Committee if broader protections in the Covenant are invoked.

In the Committee's view, complaints dismissed by other international mechanisms on procedural grounds have not been substantively examined and thus the same facts may therefore be brought before the Committee. It takes about 12 to 18 months to declare a case admissible or inadmissible.

The findings of the Committee - its views on communications that have been declared admissible and examined on their merits, and its decisions declaring other communications inadmissible - are always made public immediately after the session at which the findings are adopted and are reproduced in the Committee's annual report to the General Assembly.

## **Other Committees**

### *Committee on Economic, Social, and Cultural Rights*

It cannot consider individual complaints, although it may be possible for another committee with competence to consider individual communications to consider issues related to economic, social and cultural rights in the context of its treaty.

### *Committee on the Elimination of Racial Discrimination*

In addition to the reporting procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: the early-warning procedure, the examination of interstate complaints and the examination of individual complaints.

### *Committee on the Rights of the Child*

It cannot consider individual complaints, although child rights may be raised before other committees with competence to consider individual complaints.

## **The UN and the OPT**

---

### ***Consideration of individual complaints or communications***

As already stated Palestine is not able to sign treaties and so neither the reporting nor the complaints procedures are available for violations committed by the Palestinian Authority.

On the other hand Israel is able to sign and ratify the treaties and so some of these procedures are available for violations committed by them<sup>193</sup>.

### ***Human Rights Committee***<sup>194</sup>

The Human Rights Committee (HRC) is the body that monitors implementation of the International Covenant on Civil and Political Rights by its State Parties. The full competence of the Committee extends to the Second Optional Protocol to the Covenant on the abolition of the death penalty with regard to States that have accepted the Protocol.

#### **ICCPR**

Israel signed: 18 December 1966, entered into force 3 January 1992.

Reservations: "With reference to Article 23 of the Covenant, and any other provision thereof to which the present reservation may be relevant, matters of personal status are governed in Israel by the religious law of

---

<sup>193</sup> All documents concerning Israel including reports of the General Assembly, Special Rapporteurs and written statements by NGOs: [http://ap.ohchr.org/documents/dpage\\_e.aspx?c=89&su=95](http://ap.ohchr.org/documents/dpage_e.aspx?c=89&su=95)

<sup>194</sup> IBA: Chapter 2 (2.1)



the parties concerned. To the extent that such law is inconsistent with its obligations under the Covenant, Israel reserves the right to apply that law.”

Israel has not ratified either the First (individual petition) and Second (abolition of the death penalty) Optional Protocols.

Last report submitted: Submitted 4 December 2001

Concluding Observations of HRC, 21 August 2003 (CCPR/CO/78/ISR). The Committee stated:

“11. The Committee has noted the State party's position that the Covenant does not apply beyond its own territory, notably in the West Bank and in Gaza, especially as long as there is a situation of armed conflict in these areas. The Committee reiterates the view, previously spelled out in paragraph 10 of its concluding observations on Israel's initial report (CCPR/C/79/Add.93 of 18 August 1998), that the applicability of the regime of international humanitarian law during an armed conflict does not preclude the application of the Covenant, including article 4 which covers situations of public emergency which threaten the life of the nation. Nor does the applicability of the regime of international humanitarian law preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of their authorities outside their own territories, including in occupied territories. The Committee therefore reiterates that, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law.

The State party should reconsider its position and to include in its third periodic report all relevant information regarding the application of the Covenant in the Occupied Territories resulting from its activities therein.

“12. ...the Committee remains concerned about the sweeping nature of measures during the state of emergency, that appear to derogate from Covenant provisions other than article 9, derogation from which was notified by the State party upon ratification. In the Committee's opinion, these derogations extend beyond what would be permissible under those provisions of the Covenant which allow for the limitation of rights (e.g. articles 12, paragraph 3; 19, paragraph 3 and; 21, paragraph 3). As to measures derogating from article 9 itself, the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and to the disclose of full reasons of the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment...

“15. ...The State party should not use "targeted killings" as a deterrent or punishment. The State party should ensure that the utmost consideration is given to the principle of proportionality in all its responses to terrorist threats and activities. State policy in this respect should be spelled out clearly in guidelines to regional military commanders, and complaints about disproportionate use of force should be investigated promptly by an independent body. Before resorting to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted.”<sup>195</sup>

Next report due: 1 August 2007

### ***Committee on Economic, Social and Cultural Rights<sup>196</sup>***

The Committee on Economic, Social and Cultural Rights is the body that monitors implementation of the ICESCR by its State parties. The Committee was created in 1987 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.

#### **ICESCR**

Israel signed: 19 December 1966, entered into force 3 January 1992

Last report submitted: 16 October 2001

Concluding Observations: 23 May 2003 (E/C.12/1/Add.90)<sup>197</sup>

<sup>195</sup> The full Report can be found at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/7121cbf0578c594ec1256da5004b25e8?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/7121cbf0578c594ec1256da5004b25e8?Opendocument)

<sup>196</sup> IBA: Chapter 2 (2.2)

<sup>197</sup> The full Report can be found at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/b313a3503107f1e6c1256d33002cea38?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/b313a3503107f1e6c1256d33002cea38?Opendocument)

### ***Committee on the Elimination of Racial Discrimination***<sup>198</sup>

The Committee on the Elimination of Racial Discrimination is the body that monitors implementation of the CERD by its State parties.

#### **CERD**

Israel signed: 7 March 1966, entered into force 2 February 1979

Reservations: "The State of Israel does not consider itself bound by the provisions of article 22 of the said Convention."

Last report submitted: Due in 2004, submitted 1 September 2005

Concluding Observations: 30 March 1998 (CERD/C/304/Add.45)

Next report under consideration.

### ***Committee on the Elimination of Discrimination against Women***<sup>199</sup>

The CEDAW, adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

#### **CEDAW**

Israel signed: 17 July 1980, entered into force 2 November 1991

Reservations: "The State of Israel hereby expresses its reservation with regard to article 7 (b) of the Convention concerning the appointment of women to serve as judges of religious courts where this is prohibited by the laws of any of the religious communities in Israel. Otherwise, the said article is fully implemented in Israel, in view of the fact that women take a prominent part in all aspect of public life."

"The State of Israel hereby expresses its reservation with regard to article 16 of the Convention, to the extent that the laws on personal status which are binding on the various religious communities in Israel do not conform with the provisions of that article."

Declaration: "In accordance with paragraph 2 of article 29 of the Convention, the State of Israel hereby declares that it does not consider itself bound by paragraph 1 of that article."

Israel has not signed the Optional Protocol.

Last report: Due 2 November 2004, submitted 1 June 2005.

Concluding Observations: 12 August 1997 (A/52/38/Rev.1,PartII paras.132-183)<sup>200</sup>

### ***Committee against Torture***<sup>201</sup>

The Committee against Torture is the body that monitors implementation of the CAT by its State Parties, monitoring the prevention of torture and other cruel, inhuman or degrading treatment. The Optional Protocol (adopted December 2002), established a complementary dual system of regular visits to places of detention in order to prevent torture and ill-treatment. The first of these is an international visiting mechanism, or a 'Sub-Committee' of ten independent experts who will conduct periodic visits to places of detention. The second involves an obligation on states parties to set up, designate or maintain one or several national visiting mechanisms, which can conduct more regular visits. The international and national mechanisms will make recommendations to the authorities concerned with a view to improving the treatment of persons deprived of their liberty and the conditions of detention.

#### **CAT**

Israel signed: 22 October 1986, entered into force 2 November 1991

<sup>198</sup> IBA: Chapter 2 (2.5)

<sup>199</sup> IBA: Chapter 2 (2.7)

<sup>200</sup> The full Report can be found at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e0068b55fc0ad80e80256500005b094d?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e0068b55fc0ad80e80256500005b094d?Opendocument)

<sup>201</sup> IBA: Chapter 2 (2.6)



Reservations: "In accordance with article 28 of the Convention, the State of Israel hereby declares that it does not recognize the competence of the Committee provided for in article 20. In accordance with paragraph 2 of article 30, the State of Israel hereby declares that it does not consider itself bound by paragraph 1 of that article."

Last report submitted: Due 1 November 2000, received 15 March 2001

Concluding Observations 25 September 2002 (A/57/44, paras. 47-53)<sup>202</sup>. The Committee stated,

"6. ... (b) Despite the Israeli argument that all acts of torture, as defined in article 1 of the Convention, are criminal offences under Israeli law, the Committee remains unconvinced and reiterates its concern that torture as defined by the Convention has not yet been incorporated into domestic legislation;

(c) Allegations continue to be received concerning the use of interrogation methods by the ISA against Palestinian detainees that were prohibited by the September 1999 ruling of the Supreme Court;

(d) Torture and ill-treatment of Palestinian minors is alleged, in particular of those detained in the Gush Etzion police station. The difference in the definition of a child in Israel and in the Occupied Territories is also a matter of concern. While under Israeli law majority is attained at the age of 18, military order No. 132 defines a minor as someone under the age of 16. (In Israel, including the Occupied Territories, no minors under the age of 12 years can be held criminally responsible);

(e) While noting a substantial decrease since the examination of its previous report in the number of persons held in administrative detention, the Committee continues to be concerned that administrative detention does not conform with article 16 of the Convention;

(f) The continued use of incommunicado detention, even in the case of children, is a matter of grave concern to the Committee;

(g) Despite the numerous allegations of torture and ill-treatment by law enforcement officials received by the Committee, very few prosecutions have been initiated against alleged perpetrators;

(h) While noting that according to the delegation any allegation of physical violence against a detainee is always treated and investigated as a criminal offence, the Committee is concerned that the Department for the Investigation of Police Misconduct (DIPM) may decide that a police officer or ISA investigator should only be subject to disciplinary action, in lieu of criminal proceedings. This may amount to a violation of article 7, paragraph 1, of the Convention;

(i) Israeli policies on closure may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (article 16 of the Convention);

(j) Israeli policies on house demolitions may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (article 16 of the Convention);

(k) The judicial practice of admitting objective evidence derived from an inadmissible confession is of concern to the Committee;

(l) The Committee is also concerned at instances of "extrajudicial killings" drawn to its attention.

Next report due: 1 November 2004 (overdue).

### ***Committee on the Rights of the Child***<sup>203</sup>

The Committee on the Rights of the Child is the body that monitors implementation of the CRC by its State Parties. The Committee reviews additional reports which must be submitted by States who have acceded to the two Optional Protocols to the Convention, on involvement of children in armed conflict and on sale of children, child prostitution, and child pornography.

#### **CRC**

Israel signed: 3 July 1990, entered into force 2 November 1991

Last report: Due 1993, submitted 27 February 2002.

Concluding Observations: 9 October 2002 (CRC/C/15/Add.195)<sup>204</sup>. The Committee stated,

"31. The Committee deeply regrets the killing and injuring of all children in the State party committed by all actors prior to and during the present armed conflict. It is extremely concerned about the consequences of the climate of terror which seriously harms the development of children.

"32. The Committee strongly urges the State party and all relevant non-State actors:  
To take immediate and all necessary measures to end the violence;

<sup>202</sup> The full Report can be found at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3260e70453995e8fc1256e4000501519?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3260e70453995e8fc1256e4000501519?Opendocument)

<sup>203</sup> IBA: Chapter 2 (2.3)

<sup>204</sup> The full Report can be found at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/7b3bc74d6890921bc1256c7f0033e856?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/7b3bc74d6890921bc1256c7f0033e856?Opendocument)

To take immediate and all necessary measures to ensure that children are not recruited and do not participate in the conflict;  
To investigate immediately and effectively all killings of children and bring the perpetrators to justice;  
To take all necessary measures to provide child victims of these human rights violations with possibilities for adequate compensation, recovery and social reintegration.”

Next report due: 1 November 2008.

The first optional protocol was ratified 14 November 2001, entered into force 17 August 2005. Israel has signed (14 November 2001) but not yet ratified the second optional protocol.

Next report due: 18 August 2007.

## Special Rapporteurs<sup>205</sup>

---

Since 1979, special mechanisms have been created to examine specific country situations and specific themes from a human rights perspective. The United Nations Commission on Human Rights mandated experts to work in this regard. These independent experts have different titles, such as special rapporteur, special representative or independent expert and each is appointed to monitor either geographic or thematic human rights situations for a maximum of 6 years. There are currently mandates to investigate 28 thematic topics<sup>206</sup> and 13 specific countries<sup>207</sup>, including the Occupied Palestinian Territories. For some issues a group of expert individuals is constituted known as a Working Group.

These experts are prominent human rights figures who come from a variety of different backgrounds and regions. They do not receive any form of financial remuneration for their work.

Whilst there is some uniformity in the methods of work for all mandate holders, the resolutions establishing the mandates detail the exact terms of reference for each expert. The work of the rapporteurs mainly concerns; receiving and drafting communications on alleged human rights violations; writing periodic reports to intergovernmental bodies, such as the former Commission on Human Rights, the now Human Rights Council, and the United Nations General Assembly; meeting with members of civil society; and carrying out country visits on the request of governments.

Special Procedures have sent and continue to send communications to the Palestinian Authority therefore this is a procedure which can be used to report human rights violations.

### **Communications**

Special Rapporteurs regularly send communications of alleged human rights violations to governments urging them to take all appropriate action to investigate the alleged events and to communicate the results of its investigation and actions. They also ask for criminal prosecutions of those responsible, if the allegations are found to be true, and to make adequate reparation to the victim. Communications can be sent by one rapporteur or by several rapporteurs acting together, in which case they are referred to as joint urgent appeals or joint allegation letters.

All communications are strictly confidential until they are published as part of the periodic reporting procedure. It is therefore not possible to receive information on whether or not a special rapporteur has acted upon a communication until the annual report is published. In this report all communications sent to governments are detailed. Although the special rapporteurs need to know the name of the victim, it is possible to request that an individual's name be omitted or initialised in the communications report in order to protect their identity. If a complaint about a human rights

---

<sup>205</sup> IBA: Chapter 2 (5.1)

<sup>206</sup> A list of all UN thematic mandates can be found at <http://www.ohchr.org/english/bodies/chr/special/themes.htm>

<sup>207</sup> A list of all UN country specific mandates can be found at <http://www.ohchr.org/english/bodies/chr/special/countries.htm>

violation is submitted to the Special Rapporteur, it is at his or her discretion whether or not to intervene.

There are three types of communication:

### 1. Urgent appeals

These are letters of intervention sent on behalf of an individual/organisation that is at imminent risk of a human rights violation being committed against them or who is at grave risk of danger. For example, death threats against a person, disappearances, denial of medical treatment in prison etc.

### 2. Allegation Letters

These are letters of intervention sent on behalf of an individual/organisation that has already suffered an alleged human rights violation and who is no longer at risk. For example, killings.

### 3. Letters of Concern

These are letters which are generally sent to report on a general deterioration in the human rights situation of a particular country.

## ***Submitting a Complaint***

Complaints to any of the Special Rapporteurs on thematic issues can be sent to a generic email address or by post or fax to the address below:

OCHR-UNOG  
8-14 Avenue de la Paix  
1211 Geneva 10, Switzerland  
Fax: +41 22 917 90 06  
Email: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

It is helpful if complainants specify the Special Rapporteur to whom the allegation is addressed.

Some Special Rapporteurs require specific information as part of a complaint, or ask that complaints are submitted on particular forms<sup>208</sup>.

## ***Minimal Information for Communications to Special Rapporteurs***

- The mandate holder or mandate to which the communication is addressed. It might be that the alleged violation relates to another mandate or several mandates, if so, this decision will be taken at the OHCHR and the communication will reach the relevant mandate holders and their staff.
- Information about the **author** of the communication or the **organization**, including the objectives and working methods of the organization. Also include the full address, telephone, fax and e-mail details of the organization (including dialling codes) so that the staff of the special rapporteur may contact you if more information is needed.
- If the violation concerns an **individual case**, provide details about the name, age, sex and occupation of the victim. Please state at this stage whether the victim's name should be initialised or omitted in public reports. It is important to provide detailed information about the alleged violation, including the date and place of the incident, the identity of the alleged perpetrator(s) or whether this is unknown, and precise details about the actual violation (instruments used, parts of the body affected and injuries suffered, or if the treatment is psychological, what it consisted of, how the victim has been affected). In the case of a physical violation, provide details of any medical reports.

---

<sup>208</sup> Details of these requirements are available from the website of the United Nations Office of the High Commissioner for Human Rights ([www.unhchr.ch](http://www.unhchr.ch)).

- If the communication relates to **general circumstances**, you should begin by providing contextual information in a clear chronological order. In presenting your findings, it is suggested that you present all of the patterns identified, then explain each proposition in general terms, supported with as many examples as possible.
- With regard to all types of communication, provide copies of **supporting documentation**.
- Indicate which, if any, aspects of the communication are **confidential**.
- Remember to inform the mechanism if there is any change in the situation (for example, a person who is arbitrarily detained is subsequently released).

### *Next Steps*

When a complaint reaches a Special Rapporteur, it is assessed to determine whether it falls within a certain mandate or mandates, additional research is carried out by the rapporteurs and their staff to verify the information received and the reliability of the source.

If it is decided to intervene in the matter described in the complaint, the Special Rapporteur will make contact with the government concerned in one of the ways outlined above.

The Special Rapporteur will then await a response from the government concerned detailing steps taken to investigate and remedy the situation. All communications sent to governments as well as all responses received from governments are published in an annual report. If a government does not reply to a communication this is also documented.

### **Country Visits**

Rapporteurs carry out on average three to four country visits per year, depending on their mandate. This is an essential part of the work of a Rapporteur as it allows them to gather first hand information from civil society, victims of violations and governmental bodies and to then provide the government and the United Nations with a list of recommendations to improve the situation.

If denied access, rapporteurs may travel to other countries, including the neighbouring countries, to interview refugees and other relevant actors. They do not go on mission to any country without having received an invitation from the relevant government. As part of the special rapporteur's terms of reference, they require freedom of inquiry, access to relevant facilities, such as prisons and detention centres, and contact with representatives of non-governmental organizations. It is standard procedure for the experts to request assurances from the Government that no persons, official or private, who have been in contact with them will be subjected to threats, harassment, punishment or judicial proceedings. Media coverage of the country visits often places the human rights issue at the centre of the public debate.

A number of Special Rapporteurs have carried out visits to Palestine and the occupied territories in recent years.

<b>Visits to Palestine and the Occupied Palestinian Territories by UN Special Procedures<sup>209</sup></b>	
<b>1</b>	SR on the situation of human rights in the Palestinian territories occupied since 1967 (October 1997 & January 1998). Report E/CN.4/1998/17
<b>2</b>	SR on the situation of human rights in the Palestinian territories occupied since 1967 (3-12/1/1999). Report E/CN.4/1999/24
<b>3</b>	SR on the situation of human rights in the Palestinian territories occupied since 1967 (2000). Report E/CN.4/2000/25, E/CN.4/S-5/3
<b>4</b>	SR on the situation of human rights in the Palestinian territories occupied since 1967 (11-15/10/2000). Report E/CN.4/2001/30
<b>5</b>	SR on the situation of human rights in the Palestinian territories occupied since 1967 (August 2001 & February 2002). Report E/CN.4/2002/32, A/57/366 and Add.1
<b>6</b>	SR on the situation of human rights in the Palestinian territories occupied since 1967 (22-

<sup>209</sup> For access to reports please see: <http://www.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm>

	<u>29/6/2003). Report E/CN.4/2004/6</u>
<b>7</b>	<u>SR on adequate housing (...). (5-10/01/2002). Report E/CN.4/2003/5/Add.1</u>
<b>8</b>	<u>SR on the right to food (3-12/07/2003). Report E/CN.4/2004/10/Add.2</u>
<b>9</b>	<u>Visit of the SR on Violence against women (13-18 June 2004). E/CN.4/2005/72/Add.4</u>
<b>10</b>	<u>SR on the human rights situation in the Palestinian Territories occupied since 1967 (February 2005). Report E/CN.4/2005/29/Add.1</u>
<b>11</b>	<u>SR on the situation in the OPT (25 June to 3 July 2005). A/60/271</u>
<b>12</b>	<u>SRSG on human rights defenders(4-11 October 2005) E/CN.4/2006/95/Add.3</u>

**Follow-up:** The experts hold dialogues with governments on their findings and recommendations. The effectiveness of the system rests on adequate follow-up of the experts' conclusions and recommendations.

The experts do not only address states. Several mandates require their holders to deal with non-state entities. International, regional and national non-governmental organizations provide invaluable support to the special procedures system. Human rights NGOs have been at the forefront of the advocacy for the creation of specific mandates. They provide essential analysis and information on the human rights situation in many countries and with regard to many thematic issues.

### **Further information on specific mandates of interest to those working in the Palestinian territory occupied by Israel**

#### ***Special Rapporteur on the situation of human rights in the Palestinian territory occupied by Israel since 1967<sup>210</sup>***

Mandate: Established by Resolution 1993/2<sup>211</sup> A until the end of the Israeli occupation.

Details of current Special Rapporteur: Appointed in 2001, Professor John Dugard (South Africa), Law Professor at the University of Austria.

Contact Details: United Nations Office at Geneva, 8-14 avenue de la Paix, 1211 Geneva 10, Switzerland. E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

The appointment of the Special Rapporteur is by paragraph 4 of Resolution 1993/2 A, dated 19 February 1993 and entitled "Question of the violation of human rights in the occupied Arab territories, including Palestine". This paragraph also sets out the mandate:

(a) To **investigate** Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War,

of 12 August 1949, in the Palestinian territories occupied by Israel since 1967;

(b) To **receive communications**, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate;

(c) To **report**, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories.

Whilst the Special Rapporteur's mandate does not extend to human rights violations committed by the Palestinian Authority, it has in its last report condemned the use of the death penalty by the Palestinian Authorities.

The last report was on the 18 August 2005 (A/60/271)<sup>212</sup>. The report considers the consequences of Israel's withdrawal from Gaza and states that it seems clear Gaza will remain occupied territory subject to the provisions of the Fourth Geneva Convention) as a result of Israel's continued control of the borders of Gaza. The Special Rapporteur considers the consequences of the ICJs Advisory

<sup>210</sup> Further details at: <http://www.ohchr.org/english/countries/ps/mandate/index.htm>

<sup>211</sup> For full text of resolution see:

[http://www.unhcr.ch/Huridocda/Huridocda.nsf/\(symbol\)/E.CN.4.RES.1993.2.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridocda.nsf/(symbol)/E.CN.4.RES.1993.2.En?Opendocument)

<sup>212</sup> Full Report at: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/464/90/PDF/N0546490.pdf?OpenElement>



Opinion on the Wall which held that the construction of the wall should cease and that those sections of the wall that had been completed in the Occupied Palestinian Territory should be dismantled. He notes that Israel has paid no attention to the advisory opinion and continues with the construction of the wall.

He also considers the effect the construction of the Wall has on the lives of Palestinians, stating that, “the right of the Palestinian people to self-determination and the need to create a Palestinian State living side by side in peace and security with Israel is unattainable without a viable Palestinian territory. The construction of the wall, the expansion of settlements and the de-Palestinization of Jerusalem threaten the viability of a Palestinian State.” Finally he comments on the major violations of human rights which result from the continued occupation of the Occupied Palestinian Territory.

### ***Working Group on Arbitrary Detention***<sup>213</sup>

The Commission on Human Rights, under resolution 1991/42, has entrusted the Working Group with the following mandate:

- (a) To investigate cases of deprivation of liberty imposed arbitrarily, provided that no final decision has been taken in such cases by domestic courts in conformity with domestic law, with the relevant international standards set forth in the Universal Declaration of Human Rights and with the relevant international instruments accepted by the States concerned;
- (b) To seek and receive information from Government and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives;
- (c) To present a comprehensive report to the Commission at its annual session.

In the discharge of the functions entrusted to it:

(a) The Working Group acts on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals and communications to concerned Governments to clarify and/or bring to their attention these cases. The Working Group also considers individual complaints. It is the only non-treaty-based mechanism whose mandate expressly provides for consideration of individual complaints. This means that its actions are based on the right of petition of individuals anywhere in the world.

(b) The Working Group conducts country visits (also called field-missions) upon the invitation of the Government, in order to understand better the situation prevailing in that country, as well as the underlying reasons for instances of arbitrary deprivation of liberty. The Working Group submits a report of the visit to the Commission on Human Rights, presenting its findings, conclusions and recommendations.

(c) Each year the Working Group reports to the Commission on its activities. In the annual report, the Working Group will express its observations on the different institutions, (legal) insufficiencies, policies, judicial practices which, in its opinion, are the cause for arbitrary deprivation of liberty. The report, includes the following annexes or addenda: opinions adopted on individual cases; reports on field visits.

Current Members: Ms. Leila ZERROUGUI (Algeria); Mr. Tamás BÁN (Hungary); Ms. Manuela Carmena CASTRILLO (Spain); Mr. Seyyed Mohammad HASHEMI (Islamic Republic of Iran); Ms. Soledad VILLAGRA DE BIEDERMANN (Paraguay).

### Contact Details:

Working Group on arbitrary detention,  
Office of the High Commissioner for Human Rights,  
United Nations Office at Geneva,  
8-14 avenue de la Paix,  
1211 Geneva 10, Switzerland,  
Fax No: 917 90 06.

E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

<sup>213</sup> Further details at: <http://www.ohchr.org/english/issues/detention/index.htm>

## ***Special Rapporteur on Torture***<sup>214</sup>

The United Nations Commission on Human Rights, in resolution 1985/33 and extended by Resolution 2004/41, decided to appoint an expert, a special rapporteur, to examine questions relevant to torture. The mandate of the Special Rapporteur covers all countries, irrespective of whether a State has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The mandate comprises three main activities:

- (a) transmitting **urgent appeals** to States with regard to individuals reported to be at risk of torture, as well as communications on past alleged cases of torture;
- (b) undertaking **fact-finding country visits**; and
- (c) submitting **annual reports** on activities, the mandate and methods of work to the Commission and the General Assembly.

Unlike the complaints mechanisms of the human rights treaty monitoring bodies, the Special Rapporteur does not require the exhaustion of domestic remedies to act. When the facts in question come within the scope of more than one mandate of the Commission, the Special Rapporteur may decide to approach other thematic mechanisms and country rapporteurs with a view to sending joint communications or seeking joint missions.

As with most of the other Special Rapporteurs, a **model questionnaire** can be found on the website<sup>215</sup>. Furthermore, a fact sheet on Combating torture, Fact sheet Number 4, is available on the OHCHR website in both English and Arabic<sup>216</sup>

In addition to instances where credible information is provided that an individual or a group of individuals is at risk of torture at the hands, consent, or acquiescence of public officials, the Special Rapporteur also takes action when persons are feared to be at risk of:

- corporal punishment;
- means of restraint contrary to international standards;
- prolonged incommunicado detention;
- solitary confinement;
- "torturous" conditions of detention;
- the denial of medical treatment and adequate nutrition;
- imminent deportation to a country where there is a risk of torture, and the threatened use or excessive use of force by law enforcement officials.

Urgent appeals are also transmitted concerning the enactment of legislation that will allegedly undermine the prohibition of torture (e.g. providing impunity for acts of torture).

A visit request to Israel is pending since 2002.

Special Rapporteur: Professor Manfred NOWAK (Austria), Professor of Law and Human Rights, University of Vienna and Director of the Ludwig Boltzmann Institute of Human Rights.

### Contact details:

Special Rapporteur on Torture,  
c/o Office of the High Commissioner for Human Rights  
United Nations Office at Geneva,  
CH-1211 Geneva 10, Switzerland  
E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

<sup>214</sup> Further details at: <http://www.ohchr.org/english/issues/torture/rapporteur/index.htm>

<sup>215</sup> Questionnaire available at: <http://www.ohchr.org/english/issues/torture/rapporteur/model.htm>

<sup>216</sup> Fact Sheet on Combating Torture in English - <http://www.ohchr.org/english/about/publications/docs/fs4rev1.pdf>  
Fact Sheet on Combating Torture in Arabic - [http://www.ohchr.org/english/about/publications/docs/fs4rev1\\_a.pdf](http://www.ohchr.org/english/about/publications/docs/fs4rev1_a.pdf)

### ***Working Group on Enforced or Involuntary Disappearances<sup>217</sup>***

Mandate: Established by Resolution 20 (XXXVI) and extended by Resolution 2004/40.

The Working Group on Enforced and Involuntary Disappearances (WGEID) was established in 1980 by Commission on Human Rights resolution 20 (XXXVI) and its mandate was extended for 3 years in 2004 by Commission on Human Rights resolution 2004/40.

The WGEID's mandate is to assist families in determining the fate and whereabouts of their relatives who, having disappeared, are placed outside the protection of the law.

The WGEID endeavours to establish a channel of communication between the families and the Governments concerned, to ensure that individual cases which families have brought to the Group's attention are investigated with the objective of clarifying the whereabouts of disappeared persons. Clarification occurs when the fate or whereabouts of the disappeared person is clearly established, irrespective of whether the person is alive or dead. The WGEID continues working on cases of disappearance until such time as they are clarified.

The WGEID is made up of five independent experts. Current members are: Mr. Stephen J. Toope, (Canada), (Chairperson-Rapporteur); Mr. Joel Adebayo Adekanye, (Nigeria), (Vice-Chairman); Mr. Saied Rajaie Khorasani, (Islamic Republic of Iran); Mr. Darko Götlicher, (Croatia); Mr. Santiago Corcuera, (Mexico).

Enforced disappearances occur when persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law. Enforced disappearance when "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" has been defined as a crime against humanity in Article 7(1)(i) of the Rome Statute of the International Criminal Court.

The WGEID holds three sessions during the year. The first three days of the session, the WGEID normally holds individual meetings with interested NGO and Government representatives.

Details of how to report a case of enforced or involuntary disappearance are available on the OHCHR website<sup>218</sup>.

Contact details:

Working Group on Enforced or Involuntary Disappearances,  
c/o OHCHR-UNOG  
CH-1211 Geneva 10,  
Switzerland Telephone: (41-22) 917 9176  
Fax: (+41-22) 917 90 06  
E-mail: [wgeid@ohchr.org](mailto:wgeid@ohchr.org)

### ***Special Rapporteur on the Independence of Judges and Lawyers<sup>219</sup>***

At its fiftieth session, the Commission on Human Rights, in resolution 1994/41, noting both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the weakening of safeguards for the judiciary and lawyers and the gravity

<sup>217</sup> Further details at: <http://www.ohchr.org/english/issues/disappear/index.htm>

<sup>218</sup> Further details at: <http://www.ohchr.org/english/issues/disappear/communications.htm>

<sup>219</sup> Further details at: <http://www.ohchr.org/english/issues/judiciary/index.htm>



and frequency of violations of human rights, requested the Chairman of the Commission to appoint, for a period of three years, a special rapporteur whose mandate would consist of the following tasks:

- (a) To inquire into any substantial allegations transmitted to him and to report his conclusions thereon;
- (b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make concrete recommendations including the provision of advisory services or technical assistance when they were requested by the State concerned;
- (c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers.

In the discharge of these functions:

- (a) The Special Rapporteur acts on information submitted to his attention regarding alleged violations regarding the independence and impartiality of the judiciary and the independence of the legal profession by sending allegation letters and urgent appeals to concerned Governments to clarify and/or bring to their attention these cases.
- (b) The Special Rapporteur conducts country visits upon the invitation of the Government. The Special Rapporteur submits a report of the visit to the Commission on Human Rights, presenting his findings, conclusions and recommendations.
- (c) Annually, the Special Rapporteur, reports to the Commission on Human Rights about the activities undertaken by the Special Rapporteur during the year, highlighting important issues or areas of concern, summarizing the communications sent to, and received from, Governments and including comments by the Special Rapporteur on various country situations.

#### Contact Details:

Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers,

c/o Office of the High Commissioner for Human Rights,  
United Nations Office at Geneva, 8-14 Avenue de la Paix,  
1211 Geneva 10 Switzerland

Fax: +41 22 917 9003

E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

#### ***Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions<sup>220</sup>***

The Commission on Human Rights, by its resolution 1982/29 of 11 March 1982, recommended that the Economic and Social Council request the Chairman of the Commission to appoint an individual of recognized international standing as special rapporteur to submit a report to the Commission on the occurrence and extent of the practice of summary or arbitrary executions. This resolution was subsequently adopted by the Economic and Social Council as resolution 1982/35 and established the mandate of the Special Rapporteur.

The Commission on Human Rights, in its resolution 1992/72, renewed the mandate of the Special Rapporteur and widened the title of the mandate to include "extrajudicial" as well as "summary or arbitrary" executions.

The mandate of the Special Rapporteur covers all countries, irrespective of whether a State has ratified relevant international Conventions.

The Special Rapporteur undertakes action in the following cases:

- (a) Violations of the right to life in connection with the **death penalty**. The Special Rapporteur intervenes when capital punishment is imposed after an unfair trial, or in case of a breach of the right to appeal or the right to seek pardon or commutation of sentence. He also intervenes if the convicted is a minor, a mentally retarded or insane person, a pregnant woman or a recent mother;

<sup>220</sup> Further details at: <http://www.ohchr.org/english/issues/executions/index.htm>

- (b) Death threats and fear of imminent **extrajudicial executions** by state officials, paramilitary groups, private individuals or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above;
- (c) Deaths in custody owing to torture, neglect or the use of force, or life-threatening conditions of detention;
- (d) Deaths owing to the use of force by law enforcement officials, or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality;
- (e) Deaths owing to attacks by security forces of the State, by paramilitary groups, death squads or other private forces cooperating with or tolerated by the Government;
- (f) Violations of the right to life during armed conflicts, especially of the civilian population, contrary to humanitarian law;
- (g) Expulsion or refoulement of persons to a country where their lives are in danger;
- (h) Genocide;
- (i) Breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice;
- (j) Breach of the obligation to provide adequate compensation to victims of violations of the right to life.

A model questionnaire is available on the OHCHR website<sup>221</sup>.

Detail of current Special Rapporteur: Philip Alston (Australia), Professor of Law, New York University School of Law.

#### Contact Details:

Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions,  
c/o OHCHR-UNOG,  
1211 Geneva 10, Switzerland  
Fax: (+41 22) 917 90 06  
E-mail: urgent-action@ohchr.org

#### ***Special Representative on Human Rights Defenders***

In its resolution 2000/61 of 26 April 2000, the Commission on Human Rights requested the Secretary-General to appoint a special representative on human rights defenders. The Commission's intention was to provide support to the implementation of the Declaration and to gather information on the situation of human rights defenders around the world. In August 2000, Ms. Hina Jilani was appointed by the Secretary-General as the first holder of this office. The Special Representative carried out a mission to Israel and the Occupied Palestinian Territory in October 2005<sup>222</sup>.

The mandate calls upon the Special Representative to gather information on the situation of human rights defenders, to enter into dialogue with Governments and other interested actors, and to make recommendations to improve the protection of defenders. Actions taken under the mandate include conducting country visits, taking up individual cases of concern with governments and reporting to the Commission and to the General Assembly.

There is no specific definition of who is or can be a human rights defender. The Declaration on human rights defenders<sup>223</sup> refers to "individuals, groups and associations...contributing to...the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals" (fourth preambular paragraph). In accordance with this broad categorization, human rights defenders can be any person or group of persons working to promote human rights, ranging from intergovernmental organizations based in the world's largest cities to individuals working within their local communities. Defenders can be of any gender, of varying ages, from any part of the world and from all sorts of professional or other backgrounds. In particular, it is important to note that

<sup>221</sup> For further information refer to: <http://www.ohchr.org/english/issues/executions/model.htm>

<sup>222</sup> To refer to the Mission report of the SRSG on Human Rights Defenders see: UN Document E/CN.4/2006/95/Add.3

<sup>223</sup> For full Declaration on Human Rights Defenders see: <http://www.ohchr.org/english/issues/defenders/declaration.htm>

human rights defenders are not only found within NGOs and intergovernmental organizations but might also, in some instances, be government officials, civil servants or members of the private sector.

The Special Representative is concerned about the situation of human rights defenders in all countries, including both emerging democracies and countries with long-established democratic institutions, practices and traditions. Nevertheless, special emphasis has been placed on countries where: (a) internal armed conflict or severe civil unrest exists; b) the legal and institutional protections and guarantees of human rights are not fully assured or do not exist at all.

Violations faced by human rights defenders include, inter alia; killings, death threats, raids of offices and homes, organisations being closed down, passing of restrictive legislation impeding their work , defamation, harassment and many others.

The Special Representative undertakes activities in complete independence of any State. The Special Representative's mandate, as set out in paragraph 3 of Commission on Human Rights resolution 2000/61, is to conduct the following main activities:

- (a) To seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;
- (b) To establish cooperation and conduct dialogue with Governments and other interested actors on the promotion and effective implementation of the Declaration;
- (c) To recommend effective strategies better to protect human rights defenders and follow up on these recommendations.

#### **Guidelines for submitting allegations of violations of the Declaration on human rights defenders to the Special Representative**

<b>A. Essential information</b>	<b>B. Useful information</b>	<b>C. Sample letter to the SRSG</b>
<b>1. Name of alleged victim/s</b>  Take care to give first and family names and to spell names correctly. Victims can be individuals, groups or organizations.	If the victim is an individual, please provide information on gender, age, nationality and profession. If the victim is an individual or an organization, please provide contact details. Contact details are treated as confidential.	Ms. Aabb Ddee, a lawyer, lives in [name of city/town and country].
<b>2. Status of the victim as a human rights defender</b>  In what human rights activity is the victim (person/s, organization) engaged?	Where relevant, please also indicate the city and country in which the victim (person/s, organization) conducts this human rights work.	Aabb Ddee takes up legal cases supporting the right to adequate housing on behalf of ethnic minorities. She is also a member of the National Commission for Human Rights.
<b>3. Alleged violation/s committed against the victim</b>  What happened? Where? When? What is the current situation?	If an initial violation leads to other events, please describe them chronologically. E.g. if the initial concern is that a human rights defender has been arrested, details should be provided. But if he or she is later detained, other useful information would include: the place of detention; the person's access to a lawyer; conditions of detention; the charges; etc.	Aabb Ddee received an anonymous threat to her safety. On [day/month/year] Ms. Ddee received a letter at her office in [name of town]. The letter was addressed to her and contained only the words "Be careful". In addition, the following day Ms. Ddee was followed closely while driving home from her office by two men in a white car.
<b>4. Perpetrators</b>  Give available information on who allegedly committed the violation: e.g. two men	<b>Witnesses</b>  Were there any witnesses to the alleged violation? Were there any other victims?	Aabb Ddee was unable to identify the two men following her or their vehicle. A friend accompanying Ms. Ddee in her

(in uniform?); rank, unit or other identification or title.		car also saw the vehicle following them.
<b>5. Action by authorities</b> Has the matter been reported to the relevant authorities? What action has been taken?	<b>Action taken by the victim or by human rights organizations</b> Has the alleged violation been made public? Has this information been sent to others?	Aabb Ddee reported both incidents to the police [name/address of police office] the same days they occurred. The police have opened an investigation. She also reported the incidents to a local newspaper [name].
<b>6. Link between the violation and human rights work</b> Why do you think the alleged violation is a response to the human rights work of the victim?	<b>Previous incidents</b> If there have been previous incidents which are relevant, please give details.	A year ago [date], another lawyer representing the same ethnic group as Aabb Ddee received a threatening letter similar to Ms. Ddee's and was later [date] killed by unknown persons.
<b>7. Who is submitting this information? (Confidential)</b> Give name, contact details and professional role (if relevant).	Submissions may be made by organizations or individuals.	This letter is submitted by the National Commission for Human Rights, with which Aabb Ddee works.

#### Updates

Please send any updated information you have as soon as possible. It is especially important to know if there has been any change in the situation of the victim. Updates might be given where: 1) additional information becomes known (e.g. the identity of the perpetrator of the violation); or 2) new events occur (e.g. the victim's release from detention).	[two months later] We learned today [date] that the police investigation was closed yesterday. Two men have been arrested and detained on charges of sending a threatening letter to Aabb Ddee on [date] and of following her in their car when she left work the next day. The men are due to appear in court in two weeks. While pleased with the arrests, Ms. Ddee believes that the person who ordered these acts to be committed remains at liberty. She has asked that the police investigation be continued.
---	---

A fact sheet is available on the OHCHR website which gives further information about human rights defenders and the mandate Special Representative of the Secretary General on Human Rights Defenders<sup>224</sup>.

#### Contact Details:

Special Representative of the Secretary General for human rights defenders, Ms. Hina Jilani  
OHCHR, Palais des Nations  
CH-1211 Geneva 10  
Fax: (+41 22) 917 90 06  
E-mail: urgent-action@ohchr.org

#### 1503 and 1235 Procedures<sup>225</sup>

Both these procedures were previously overseen by the Human Rights Committee which has now been replaced with the Human Rights Council. It is not yet clear what procedures the Council will retain, however it is likely that both these procedures will be retained in some form even if slightly reformed to increase their effectiveness.

<sup>224</sup> For further information see <http://www.ohchr.org/english/about/publications/docs/fs29.pdf>

<sup>225</sup> IBA: Chapter 2 (5.2)

### **1503 Procedure**

The 1503 Procedure (named after ECOSOC Resolution 1503 of 1970 and amended by Resolution 2000/3) is an established means for individuals to bring systematic patterns of human rights violations to the attention of the Sub-Commission on Human Rights. Any person, group or NGO may submit a complaint if they have reliable knowledge of such human rights violations. Once a complaint is submitted they play no further role in the procedure which is confidential at every stage. This procedure relates to country situations not individual cases.

The communication cannot be anonymous although complainants can retain their anonymity and, as such, their names and their identities will not be revealed to the government in question. The 1503 Procedure is not limited to UN members and may be used by any country in the world and does not require the permission of the state concerned. During the discussion with the state concerned the Human Rights Council decides on the recourse it will take.

It is activated by a communication to the Council about situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Council.

#### ***Submitting a complaint***

A complaint lodged must include the following information:

- The name of the person making the complaint;
- The relevant facts, including names of alleged victims, dates, locations and other evidence;
- An outline of the rights alleged to have been violated.

The complaint should be sent to:

Commission/Sub-Commission Team (1503 Procedure)  
Support Services Branch, Office of the High Commissioner for Human Rights  
United Nations Office at Geneva, 1211 Geneva 10, Switzerland  
Email: [1503.hchr@unog.ch](mailto:1503.hchr@unog.ch)  
Fax: +31 22 9179011

#### ***Admissibility***

For the Commission to consider a complaint, there must be reasonable grounds to infer that the pattern of gross human rights violations being alleged does exist. The complaint should be submitted within a reasonable time following the exhaustion of available domestic remedies. The complaint must not contain abusive or insulting language, be politically motivated, or run counter to the principles of the United Nations<sup>226</sup>.

The Working Group on Communications considers whether there is reasonable evidence of a consistent pattern of gross violations of human rights, if there is, the matter is then referred to the Working Group on Situations. The sub-commission then presents recommendations to ECOSOC.

The 1503 Procedure is a reporting system. However if a state continues to violate human rights on a mass scale and is not cooperating with the Council, the Council has the option of using the 1235 Procedure.

### **1235 Procedures**

Under the 1235 Procedure (named after Resolution 1235 of 1967) the Council holds an annual public debate on gross human rights violations committed by given states identified by NGOs (not individuals). The Council can study and use whatever method it deems appropriate. It can also adopt resolutions or appoint a Country or Thematic Special Rapporteurs, Representatives, Experts and Working Groups.

The effectiveness of both these procedures depends on the input of NGOs who are rich sources of information about human rights in a country. In turn, the comments, observations and recommendations support the work of NGOs.

---

<sup>226</sup> Further information can be found in the UN Fact Sheet on the 1503 Procedure:  
[www.ohchr.org/english/about/publications/docs/fs7.htm#1503](http://www.ohchr.org/english/about/publications/docs/fs7.htm#1503)



## International Court of Justice

---

### ***Contentious cases between states***

Only states may apply to and appear before the Court in contentious cases.

### ***Jurisdiction***

The Court is competent to entertain a dispute only if the states concerned have accepted its jurisdiction. In cases of doubt as to whether the Court has jurisdiction, it is the Court itself which decides.

Whilst in 1956, Israel accepted the Court's compulsory jurisdiction it withdrew its declaration in November 1985. The Palestinian Authority is not able to accept its jurisdiction or to make complaints to it, since only internationally recognised states are able to do so.

### ***Sources of applicable law***

The Court decides in accordance with international treaties and conventions in force, international custom, general principles of law and, as subsidiary means, judicial decisions and the teachings of the most highly qualified publicists.

### ***Advisory Opinions***

Five organs of the United Nations and 16 specialized agencies of the United Nations family are able to apply for an Advisory Opinion, i.e. United Nations Security Council and General Assembly, all the UN specialized agencies<sup>227</sup> and other bodies such as the United Nations Trusteeship Council.

On receiving a request, the Court decides which States and organizations might provide useful information and gives them an opportunity of presenting written or oral statements. The Court's advisory procedure is otherwise modelled on that for contentious proceedings, and the sources of applicable law are the same.

In principle the Court's advisory opinions are consultative in character and are therefore not binding as such on the requesting bodies. In certain cases the advisory opinion may be binding. Since 1946 the Court has given 24 Advisory Opinions.

### ***ICJ Advisory Opinion on the Legality of the Wall***<sup>228</sup>

In December 2003, the UN General Assembly asked the International Court of Justice (ICJ),

What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949 and relevant Security Council and General Assembly Resolutions?

Exceptionally, the Court gave Palestine observer status and permitted it to co-sponsor the request. Forty-seven nations and international organizations submitted statements to the ICJ.

---

<sup>227</sup> International Labour Organisation (ILO) ; Food and Agriculture Organization of the United Nations (FAO); United Nations Educational, Scientific and Cultural Organization (UNESCO); Economic and Social Council (ECOSOC); World Health Organization (WHO); International Bank for Reconstruction and Development (IBRD); International Finance Corporation (IFC); International Development Association (IDA); International Monetary Fund (IMF); International Civil Aviation Organization (ICAO); International Telecommunication Union (ITU); World Meteorological Organization (WMO); International Maritime Organization (IMO); World Intellectual Property Organization (WIPO); International Fund for Agricultural Development (IFAD); United Nations Industrial Development Organization (UNIDO); International Atomic Energy Agency (IAEA).

<sup>228</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice 9 July 2004 General List No. 131.

Full text at: <http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>

In 2004 it delivered its advisory opinion in which it condemned as illegal not only the construction of the wall but many features of the Israeli administration of the Occupied Palestinian Territory.

Firstly the Court established its competence in the case, dismissing opposition from a number of states to it giving its opinion in the matter. Arguments in opposition were based on fairness, competence and legality of the question asked. It found no “compelling reason” to use its discretionary power not to give an advisory opinion.

In answering the question the Court considered the following issues. Firstly it established that the request for opinion was limited to the legal consequences of the construction of those parts of the wall situated in **Occupied Palestinian Territory, including in and around East Jerusalem**.

The Court next laid out the **applicable principles of international law**<sup>229</sup>, the relationship between international humanitarian law and human rights law, applicability of human rights instruments outside a national territory and applicability of those instruments in the Occupied Palestinian Territory.

The Court noted that the **settlements** established by Israel in the Occupied Palestinian Territory are in breach of international law. The construction of the wall and its associated regime create a “fait accompli” on the ground that could well become permanent. In addition there is a risk of the situation being considered tantamount to **de facto annexation**.

Further, it observed that the construction of the wall severely impedes the exercise by the Palestinian people of its right to **self-determination** and is therefore a breach of Israel’s obligation to respect that right.

The Court also considered the applicable provisions of **international humanitarian law and human rights** instruments relevant to the present case relating to the destruction and requisition of properties, restrictions on freedom of movement of inhabitants of the Occupied Palestinian Territory, impediments to the exercise by those concerned of the right to work, to health, to education and to an adequate standard of living. The construction of the wall and its associated regime cannot be justified by military exigencies or by the requirements of national security or public order. Therefore the Court found that there was a breach by Israel of various of its obligations under the applicable provisions of international humanitarian law and human rights instruments.

The Court did consider Israel’s arguments based on **self-defence** (Article 51 of the Charter), it noted that attacks against Israel are not imputable to a foreign State, the threat invoked to justify the construction of the wall originating within a territory over which Israel exercises control, therefore Article 51 is not relevant in the present case. It also considered the whether a **state of necessity** under customary international law justified the construction of the wall, it found that the wall was not the only means to safeguard Israel’s interests against the peril invoked.

The Court concluded that **the construction of the wall and its associated regime are contrary to international law**. In the Court’s view the **legal consequences of the violation** by Israel of its obligations mean that Israel’s international responsibility and obligation is **to comply with the international obligations** it has breached by the construction of the wall. Israel is obliged to put an end to the violation of its international obligations by ceasing immediately the works of construction of the wall, to dismantle it and to repeal or render ineffective the legislative and regulatory acts relating to its construction, save where relevant for compliance by Israel with its obligation to make reparation for the damage caused. Israel is also obliged to make reparation for the damage caused to all natural or legal persons affected by construction of the wall.

The advisory opinion was endorsed by the General Assembly on 20 July 2004 in resolution ES-10/15. Israel and the USA have disregarded the Advisory Opinion, citing its non-binding nature. However, many of the States who objected to the submission of the matter to the ICJ have endorsed the position that the construction of the Wall in the OPT is unlawful.

---

<sup>229</sup> United Nations Charter, General Assembly resolution 2625 (XXV) [Illegality of any territorial acquisition resulting from the threat or use of force; Right of peoples to self-determination]. International humanitarian law [Regulations annexed to the Fourth Hague Convention of 1907, Fourth Geneva Convention of 1949]. Human rights law [International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child].

## 3. Code of Ethics

*This chapter details the recommended minimum standards of ethics for the legal profession.*

### Code of Ethics – Experience from Abroad<sup>230</sup>

- Code of Ethics for Lawyers
- Key Principles
- Basic Principles on the Role of Lawyers and Basic Principles on the Role of Prosecutors
- Code of Ethics for Judges

### Codes of Ethics for Lawyers<sup>231</sup>

The *Code of Conduct for Lawyers in the European Union (2002)* describes the fundamental importance of the lawyer's function:

“In a society founded on respect for the rule of law the lawyer fulfils a special role. His duties do not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he is trusted to assert and defence and it is his duty not only to plead his client's cause but to be his adviser.”

National codes of professional conduct are designed to ensure that lawyers fulfil this role. Although there may be differences between the codes in place in different countries, they are based on the same fundamental professional and ethical principles.

### Key Principles

The European *Code of Conduct* and the International Bar Association *International Code of Ethics* (1988) set out some of the most important of the principles by which lawyers must be bound:

**Independence:** The duties of a lawyer require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. This means that lawyers must be careful not to compromise their professional standards in order to please their clients, the Court or third

<sup>230</sup> IBA: Chapter 4

<sup>231</sup> IBA: Chapter 4 (5 & 6)



parties. They must also be careful that their conduct does not lead other people to make inferences that their independence may be compromised.

**Integrity:** Lawyers shall defend the interests of their clients without fear and without regard to any unpleasant consequences to themselves or to any other person. The requirement of integrity also means that lawyers must always maintain due respect towards the Court. They must never knowingly give the Court incorrect information or advice.

**Honour and dignity:** Lawyers shall at all times maintain the honour and dignity of their profession. They must abstain from any behaviour which may discredit their profession, both in practice and in private life.

**Confidentiality:** Confidentiality is a primary duty of the lawyer. A lawyer must respect the confidentiality of all information that becomes known to him in the course of his professional activity.

**Honesty and Diligence:** Lawyers shall at all times give clients a candid opinion on any case. They shall render assistance with scrupulous care and diligence. This applies regardless of the identity or financial situation of the client. A lawyer must not handle any matter which he knows or ought to know he is not competent to handle without cooperating with a lawyer who is competent to handle it.

**Fair conduct:** A lawyer must always have due regard for the fair conduct of proceedings. He must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side, unless such steps are permitted under national law.

## **Basic Principles on the Role of Lawyers and Basic Principles on the Role of Prosecutors**

---

The United Nations developed a set of *Basic Principles on the Role of Lawyers* and *Basic Principles on the Role of Prosecutors* in 1990. These documents describe a relationship of mutual responsibility between lawyers and the states in which they practise. Lawyers and prosecutors have a duty to uphold the honour and dignity of their profession, to act within the law and to uphold established international human rights principles. At the same time, their government must ensure that they can act without hindrance, and that no lawyer or prosecutor shall be refused audience unless they have been formally disqualified.

**Training and qualifications:** governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and must be done without discrimination.

**Duties and responsibilities:** lawyers shall at all times maintain the honour and dignity of the profession, and diligently assist their clients in accordance with the recognised standards and ethics of the profession.

**Guarantees for the functioning of lawyers:** governments shall ensure that lawyers are able to perform their functions without intimidation or harassment, and shall not suffer, or be threatened with, any sanctions because of actions they have properly undertaken in accordance with recognised professional duties, standards and ethics.

**Freedom of association:** lawyers are entitled to freedom of expression and association. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. A bar association must cooperate with government to ensure that everyone has effective and equal access to legal services and that lawyers are able to assist their clients without interference.

**Disciplinary proceedings:** codes of professional conduct for lawyers shall be established by the legal profession through its professional associations, or by legislation. Complaints against lawyers should be processed expeditiously and fairly and disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the bar association or before a court or independent statutory authority. These proceedings shall be determined in accordance with the code of professional conduct.

An independent and impartial judiciary is fundamental to the rule of law and the protection of human rights.

The *Bangalore Principles of Judicial Conduct (2002)* were developed by Chief Justices from a variety of countries worldwide with the support of the United Nations. They aim to set out the minimum standards of judicial conduct, applicable in every country in the world:

**Independence:** Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial.

- A judge must uphold and exemplify judicial independence in both its individual and institutional aspects. A judge shall be independent in relation to society in general and to the particular parties to a dispute. He or she must be free from inappropriate connections with the other branches of government.
- *IBA Manual, sections 4.3, 4.4 and 4.5.*

**Impartiality:** Impartiality is essential to the proper discharge of the judicial office. It applies both to the decision itself and to the process by which the decision is made.

- A judge shall perform his or her judicial duties without favour, bias or prejudice. His or her conduct must maintain the confidence of the public, the legal profession and litigants in the impartiality of the judiciary.
- A judge shall disqualify him or herself from participating in proceedings in which he might seem to a reasonable observer to be unable to decide the matter impartially.
- *IBA Manual, section 4.6.*

**Integrity:** Integrity is essential to the proper discharge of the judicial office.

- A judge's conduct must be above reproach in the view of a reasonable observer and must reaffirm the people's faith in the integrity of the judiciary.

**Propriety:** Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

- A judge must avoid impropriety and the appearance of impropriety in all of his or her activities. He must avoid situations which might reasonably give rise to the appearance of favouritism or partiality.

**Equality:** Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

- A judge must not by words or conduct manifest bias or prejudice towards any person or group on irrelevant grounds, and must require lawyers in proceedings before the court to refrain from manifesting such bias or prejudice.

**Competence and Diligence:** Competence and diligence are prerequisites to the due performance of judicial office.

- The judicial duties of a judge take precedence over all other activities. A judge must also keep himself or herself informed about recent developments in national and international law, including international conventions and other instruments establishing human rights norms.

---

<sup>232</sup> IBA: Chapter 2 (4)

## 4. Application of International Norms and the Palestinian Domestic System

*This chapter describes the Palestinian domestic legal system, considering legal pluralism, the combination of multiple layers of law and the developing court structure, attempting to establish the framework within which international and human rights can be applied within the domestic context.*

---

### Palestinian Domestic System

---

- Legal Pluralism in Palestine
- Sources of Law
- Practical Responses to Conflicts in the Palestinian Legal System
- Domestic procedure – Court Structure
- Using the Domestic Law
- Making a Complaint to the PICCR

---

### Legal Pluralism in Palestine

---

Legal pluralism refers to the interaction of two or more laws within a legal system.

Official laws are sanctioned by the legitimate authority of the country and are often referred to as black letter law. Ethnic and cultural practices are reflected in non-official laws that are not explicitly sanctioned by the state although sometimes they influence the formulation of official state laws and may also be recognised in court processes. As in most complex systems law Palestine has various levels of legal pluralism, both official and unofficially.

Generations of foreign control and occupation have left Palestinian people with a multi-layered legal system. The law applied in different parts of the West Bank and Gaza strip is a combination of all the various laws imposed on Palestine at various periods during the past century. Many of these laws remain in effect in the territories, therefore requiring knowledge of multiple laws and systems to determine the law in one particular area.

The plurality of laws currently existing in the Palestinian territories are based on Ottoman, British Mandate, Egyptian, Jordanian, Israeli and Palestinian laws with three different legal systems, Common law (Gaza), Civil law (West Bank) and Religious law, not to mention the lack of

territorial and jurisdictional unity between Gaza and the West Bank and the West Bank's further division into zones A, B and C.

This is the context in which the PA and the Palestinian Legislative Council are working to unify, update and centralize the laws and legal system. There are already a number of significant Palestinian laws, for example concerning the judiciary and penal law.

## **Sources of Law**

---

### ***Customary Law***

Alongside every formal legal system in Palestinian history, there exists a traditional system of customary law known as "Urf" and including clan-based processes (al-qada' al-'ashai'ri) and also Bedouin law. This is a system of rules outside the court system, which handles disputes based on traditional oral customs. This system stressed conciliation, mediation, and family honour. It covers disputes such as contracts, family disputes, personal injury, and land matters. In contemporary Palestine, it may also include a variety of 'informal' (extra-judicial) dispute resolution processes mostly outside but impacting on the central legal system.

### ***Ottoman Law***

In 1517, Palestine came under the rule of the Ottoman empire for the next four hundred years. The Ottomans are responsible for the Islamic legal heritage. The Ottomans gave autonomy to local Islamic judges to rule in many matters. In 1839 the Ottoman Sultan initiated the Tanzimat legal reform adopting European style legal codes of law to govern Palestine which incorporated elements of European law, especially that of France. For instance in 1840 the French model Penal Code is adopted and in 1874 a French model criminal procedure code is adopted. At the same time certain issues were left to be governed by Shari'a law, which at the end of Ottoman rule was mainly pious endowments (awqaf), family law and succession. Parts of the Ottoman Codes are still in force in Palestine.

### ***British Law***

In 1918, with the World War I defeat of the Ottomans (German allies), Great Britain was mandated by the League of Nations to administer Palestine. The British reformed the Palestinian legal system and established a new judiciary to replace the Islamic judges. They kept the Ottoman statutes in place, but supplemented them with English common law and equity to determine how that law would progress (Article 46 Order of the Council for Palestine). The British introduced legal education in Palestine leading to a significant number of trained lawyers and jurists. The British also granted the judiciary independence and allowed the courts to review the actions of the High Commissioner. This system gave way to British Emergency Regulations which gave the High Commissioner substantial powers. The British Mandate Emergency Regulations continue to constitute an impediment to democratisation.

### ***Jordanian Law***

In 1950 Jordan incorporated the West Bank, including West Bank representatives in the Jordanian Parliament. The new Jordanian Constitution then replaced Palestinian law with Jordanian law, however not all laws were replaced and so many stayed in effect. For example, Jordan retained much Ottoman law. Jordanian civil law like the Ottoman Code was outdated and Palestinian lawyers viewed the Jordanian legal administration as a step back in comparison with previous law. The civil courts in the West Bank soon lost legitimacy with the people. Although Jordanian law continued to evolve after 1967, the new legislation could be applied in the West Bank. Of course there are exceptions, most notably the 1976 Jordanian Law of Personal Status which was applied in the West Bank by the Shari'a Courts.

## ***Egyptian Law***

- Also in 1948, the Gaza Strip came under Egyptian governance. Egypt never annexed the Gaza Strip and so did not apply its own law in Gaza, instead it upheld the law already in effect at the time. In 1962, Egypt adopted a constitution for Gaza stating that it was “an indivisible part of Palestine.” Egypt applied laws carried over from the British mandate, and supplemented them with Egyptian governor decrees issued in the name of “the people of Palestine.” Previous judges retained their positions and enjoyed broad autonomy, including the ability to void administrative orders that conflicted with legislation.

## ***The Intifada***

- The Intifada of 1987 shook the traditional structures and constituted an attempt by the people to gain control over their society. Intifada leaders formed popular committees with underground leadership. This can be seen as a quasi system of laws and tribunals.

## ***Israeli Law – Military Administration***<sup>233</sup>

- In 1967, Israel occupied the West Bank and Gaza as a belligerent occupant and was therefore obliged to leave in place the existing laws and judicial institutions. However, the system superimposed by Israel rested on two pillars, military orders and military courts. Israel's military administration has issued over 2000 orders of a legislative effect that substantially displaced the significance and practical effect of previous law. Israel's occupation impaired judicial autonomy, including the seizure of the power to appoint and remove judges. Israeli military authorities displaced the Palestinian courts on many issues, including the right to move any trial or hearing to a military court. Within the military courts, military orders always take precedence over Israeli and International law. Israeli military courts refuse to apply international laws and conventions.
- Appointing Israeli military committees, officers, or agents to take over **licensing** and permit processing of a wide range of commercial and private activities, creating a web of military control over practically every aspect of Arab life in the occupied territories<sup>234</sup>.
- Military order #297 concerning registering population by religion & nationality of origin, establishes an **I.D. card** system. I.D. cards are required by authorities for all business transactions. It gives Israeli Military right to confiscate I.D. cards for any reason. Israeli military are not required to give a receipt when confiscating I.D. cards.
- Creating separate judicial system for Israeli settlers residing in the occupied territories<sup>235</sup>.
- Censoring freedom of speech & expression<sup>236</sup>.
- Military orders allowing government confiscation of privately owned land & property<sup>237</sup>.
- **Military orders appointing Israeli military committees, officers, or agents to replace local non-Israeli government agencies and courts**<sup>238</sup>:

**Military Order #30** (1967) - gives Israeli Military Courts jurisdiction over all criminal Military Courts in the West Bank.

**Military Order #310** (2/16/69) - (repeals M.O. 129) creates special Israeli Military Judicial Committee, and gives it powers usually held by the Judicial Council defined by Jordanian law, and effectively replaces

<sup>233</sup> Much of the information on Military Orders are taken from the Israeli Law Resource Centre.

<sup>234</sup> Also Military Orders #7, 8, 13, 18, 25, 26, 33, 40, 41, 42, 45, 47, 49, 50, 56, 65, 67, 79, 89, 92, 93, 96, 101, 103, 110, 114, 124, 134, 267, 361, 362, 379, 395, 398, 418, 450, 451, 514, 528, 537, 555, 569, 745, 768, 780, 825, 854, 936, 947, 950, 952, 973, 974, 998, 1002, 1010, 1015, 1070, 1103, 1198

<sup>235</sup> Also Military orders #164, 614, 561, 783, 892, 981, 1057, 1058, 1080

<sup>236</sup> Also Military orders #50, 101, 107, 1079

<sup>237</sup> Military Orders # 58, 59, 291, 321, 348, 364, 569, 1060, 1091

<sup>238</sup> Also Military Proclamation #2, & Military Orders #3, 17, 21, 22, 23, 31, 32, 36, 37, 39, 45, 53, 54, 57, 68, 73, 78, 80, 82, 83, 87, 88, 89, 91, 92, 93, 94, 95, 113, 118, 119, 120, 129, 135, 164, 172, 271, 348, 783, 841, 847, 892, 981, 1025, 1031, 1036, 1057, 1058, 1060, 1083, 1101.

the Jordanian Courts of Cassation and Appeals reducing possible steps of appeal from 3 to 2. **Military Order #378** (4/20/70) - empowers Military Area Commanders to establish military courts (Article 3) with prosecutors (Article 8), officials and judges (Article 4) all appointed by same Area Commanders with jurisdiction "to try a crime specified in any security provision or other legislation without prejudice to the provisions of the security legislation" (Article 7). In addition, these courts can diverge from rules of evidence (Article 9) and regular procedures (Article 10), or hold hearings in secret (Article 11) when needed. Anyone disobeying or resisting the court may be immediately sentenced and jailed for up to 2 years (Article 17). If the Area Commander does not approve of the results of a trial, he has the right to cancel its proceedings and call for a new trial in front of a new judge (Article 42.4), or change the sentence (Articles 44 & 50.C.5.b). No appeal is allowed on jurisdictional grounds, but is allowed against the findings of guilty or the sentence (Article 43). Allows the court to order the detention of a person for 6 month periods without trial (using an "arrest warrant"). The person can then be kept in jail longer with issuance of a new arrest warrant. Detention without trial is called, "administrative detention" (Articles 78.F & 87). States that the Military Area Commander has the right to restrict any movements and activities of any persons (Article 85) including confinement to a specific area including his home (Article 86). In addition, Area Commanders have the right to restrict or control the use of any vehicle for any purpose (Article 88), have the right to impose curfews on any area (Article 89), and have the right to close off any area or building or business or institution to any person prohibiting either entrance or exit (Article 90 & 91). In addition, the burden of proof is on the defendant to prove his innocence (Article 94). **Military Order #412** - transfers powers of Jordanian Minister of Justice over to Israeli Military Judicial Committee, and orders this committee to proceed justly. **Military Order #1229** (1998) – administrative detention.

▪ **Military orders limiting other civil rights of Palestinians residing in the occupied territories<sup>239</sup>:**

**Military Order #29** (6/23/67) - concerns operations of **prisons**. Establishes registration system for tracking prisoners while they are in the prison system. Rules that prisoners can be denied access to a lawyer at any time at the discretion of the Israeli Military Commander.

**Military Order #144** (10/22/67) - repeals Military Proclamation 3, Article 35 concerning protection of civilians as per the Geneva Conventions.

**Military Order #224** (1967) - declares that the Emergency Regulations installed by the British Mandate Authorities in 1945 are in effect in the West Bank until specifically declared invalid by name. These Regulations gave the military powers to violate civil rights and international laws because a security emergency had been declared in the West Bank.

**Military Order #284** (7/26/68) - prohibits training or contact with any "**hostile organization**" which includes any organization with aims to endanger the security of the public, or the Israeli Defence Force (IDF), or public order in Israel, or other areas under control of the Israeli Military.

**Military Order #329** - adds to **deportation** procedures and rules used in the West Bank, and described in the 1945 Emergency Regulations of the British Mandate Authorities. Orders are issued by the Area Commander. Deportees can be detained in prison until deportation occurs. Appeal can be made to a Israeli Military Court of Objections who hears the case in secret (even from the accused), and can only issue non-binding recommendations. Appeal also can be made to the Israeli High Court, who also hears the case in secret, and in practice only reviews the jurisdiction of the issuing officer, and not the details of the case itself.

**Military Order #815** - (amends M.O.378) changes procedures for **administrative detentions** (imprisonment without charges or trial). Initially, Area Commander can issue an order for administrative detention for up to 6 months, and a regional commander can issue such an order for up to 96 hours. This can then be renewed indefinitely in increments of 6 months. Orders must be reviewed by a Military Committee within 96 hours, and then every 3 months thereafter. The prisoner can request an appeal, but if granted, is conducted in secret not even heard by the prisoner. Appeals heard by a Military Court of Objections can only result in a non-binding recommendation, appeals to the Israeli High Court by practice only leads to a judgement concerning the proper jurisdiction of the officer issuing the order, and not concerning the details of the case itself.

<sup>239</sup> Also: General regulations – Military Proclamation #3, M.O.52, 144; Association – Military Order #117; Censorship – Military Orders #50, 107, 110; Curfew – Military Proclamation #1, & Military Orders #5, 34, 60, 61, 62, 63, 64, 69, 77, 97, 98, 123, 138, 146; Deportation – Military Order #125.

Due process – Military Order #157; Political action – Military Orders #71, 101, 132; Privacy – Military Orders #9, 84, 85, 90, 100, 139; Private property rights – Military Orders #2, 33, 100, 128, 133, 139.

- Many of the activities of the Israeli military authorities have been characterised as “grave breaches” of the Fourth Geneva Convention, i.e. the curfews, expulsions, home demolitions, torture, and a wide variety of human rights violations. Palestinians are afforded no due process rights when arrested, interrogated, or convicted. In contrast, Jewish settlers in the occupied territories enjoy all civil liberty protections embodied in Israeli law. As a result, public confidence in the Palestinian judiciary fell. Courts had no real power or credibility. At the same time Israel effectively froze legal development institutionally and doctrinally and by the time of the Oslo accords the law did not in any way reflect the changing needs of the society it served.

### ***Defence (Emergency) Regulations 1945***

- In 1945 the British Government passed the Defence (Emergency) Regulations. In 1948, when Britain’s mandate came to an end, it repealed these regulations and accordingly published a notice to this effect in the official gazette in London, the British Government has also subsequently confirmed this. In addition, during its administration of the West Bank, Jordan made Jordanian Defence Law and Regulations applicable to the West Bank which repealed the British Defence (Emergency) Regulations. Despite this, Israel continues to rely on the emergency regulations on the basis that the British had not correctly repealed the regulations since they had not published a notice in the local newspapers.
- In particular, the following provisions are contrary to human rights and international humanitarian law, the full text can be found on the Al-Muqtafi Database:

**Regulation 84** - The power to declare organizations **unlawful associations**.

**Regulation 94** - The requirement that **newspaper publishers** acquire a **license** which can be refused and revoked with no reason given.

**Regulation 110** - The power to **restrict people to a limited area** without trial or charge.

**Regulation 111** - The power to imprison a person for 6 months without trial or charge. After 6 months the **administrative detention** is reviewed and can be renewed.

**Regulation 112** - The power to **deport** people from their area of residence without trial or charge.

**Regulation 119** - The power to **destroy, seize and occupy private property** without trial or formal charge.

**Regulation 124** - The power to impose **curfews** confining people either inside or outside their homes and offices for an undetermined length of time.

**Regulation 125** - The power to **declare an area closed**, thereby requiring individuals to obtain permission to go in or out of the area.

- The Regulations provide for the establishment of a military tribunal to try civilians without granting the right of appeal. A person can appeal against the administrative detention or deportation order to the military advisory committee that can issue only non-binding recommendations. Their recommendations can be appealed before the Israeli Supreme Court. Evidence can be kept from the individual and his lawyer for security reasons. In addition the discretionary powers on which the orders are based are so wide that it is almost impossible to successfully appeal.
- Article 105 of the Palestinian Basic Law provides, “All provisions which regulate the emergency states implemented in Palestine prior the implementation of this Basic Law shall be cancelled, to include the [emergency] mandate civil defence regulations issued in 1945.”

### ***Palestinian National Authority (PNA)***

- In 1994, the Palestine Liberation Organisation (PLO) began administering parts of the West Bank and Gaza Strip. Free elections were held in 1996.
- Under the PNA, Order No 1 of 1994 decreed that “all laws and regulations and orders that were in force prior to June 5, 1967 shall remain valid.”
- Under Oslo II, signed on 28 September 1995, the West Bank is divided into three zones. Zone A is under the civil and security of the Palestinian Authority subject to Israeli power of legislative veto and the ability to re-impose direct occupation and control at any time, under the same conditions, Zone B is under the civil jurisdiction of the Palestinian Authority, except where issues of security are concerned when it is under Israeli control. Zone C is under Israeli control. Under the Hebron Protocol, Hebron was also divided into zones. The PNA is responsible for H1 (under the close security monitoring of Israel) and Israel retained full security control over the Israeli settlement enclaves in downtown Hebron (H2). East Jerusalem remains under the control of Israel.

### **Practical Responses to Conflicts in the Palestinian Legal System**

---

- This situation in the Palestinian Territories is perhaps unprecedented in modern history. The establishment of a Palestinian Authority has provided the opportunity to reform and harmonize the legal heritage.

### ***Priority of the Basic Law***

- Until a Palestinian Constitution enters into force, the Basic Law is the supreme law. Articles in the Basic Law state that the state is obliged to create a prosperous and progressive society based on social justice, by protecting human dignity and human rights, realising democracy, and ensuring national unity and equality.
- Article 10 states that,
  1. Basic human rights and freedoms shall be binding and respected.
  2. The Palestinian National Authority shall work without delay to implement regional and international declarations and covenants which protect human rights.
- The relationship between national laws and international laws is evident in the state's commitment to be bound by human rights, its express commitment to join international treaties and official statements that it will abide by international standards.
- Further, the fact that Israel exercises effective control over the OPT and still has legal obligations as an occupying power does not negate the responsibility of the Palestinian Authority who may be held domestically accountable for human rights violations committed by its organs, in addition to other spheres as identified in Chapter 2.
- According to the Oslo Accords, the PNA exercises self-government functions in the West Bank and Gaza Strip and as such the police force, judiciary, penal system and other structures have a duty to respect human rights in the areas under its jurisdiction and sphere of authority.

### **Domestic procedure – Court Structure**

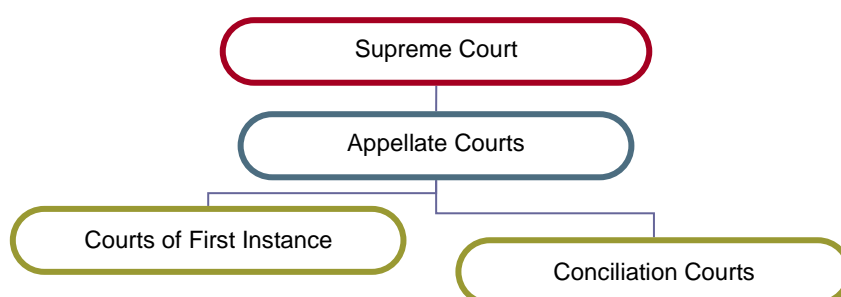
---

- The different types of courts which exist in the areas under the jurisdiction of the Palestinian Authority (PA) include ordinary courts, military courts and religious courts.



- As detailed above in the West Bank and Gaza there are multiple layers of legislation in force which are not always the same.
- Under the terms of the Basic Law and the Judicial Authority Law of 2002, a High Judiciary Council was established with responsibility for the technical administration of the courts. The Council is composed of a number of judges, the Attorney General and a representative from the Ministry of Justice.
- Until 2001 the structure of ordinary courts in the West Bank differed significantly from those in Gaza. The Basic Law, Formation of Civil Courts Law No 5 of 2001 and Judicial Authority Law in 2002 unified and amended the structure of courts.

### **Ordinary Courts**



### **First Instance**

- First Instance courts in the West Bank and the Gaza Strip consist of:

#### **(a) Conciliation Courts**

- Conciliation courts have territorial jurisdiction over nearby towns and villages. These courts have initial subject matter jurisdiction for minor criminal and civil matters, as specified in the Criminal Procedures Law and several other laws. The laws specify which types of conciliation court judgments may be appealed to the Court of First Instance in each area, and which go first to the Court of Appeal.

#### **(b) Courts of First Instance**

- These can be either a trial court (first degree) having general jurisdiction in all criminal and civil matters, except those assigned by statute to conciliation courts. These courts also act as an appellate court (second degree) with respect to certain types of judgments issued by conciliations courts.

### **Appellate Courts**

- The High Appellate Court has been in place in the West Bank since 1952, when Jordan passed its Law on the Formation of Courts, but the Gaza Strip has known these only since 2001, when the Palestinian Law on Court Formation took effect. There are three such courts: one in the Gaza Strip, another in the West Bank, and a third which is designated by law to sit in Jerusalem but is not functioning.
- Appellate Courts have jurisdiction over judgments in all civil and criminal cases issued by courts of first instance and certain types of judgments issued by conciliation courts, as specified in various statutes.

## ***The Supreme Court***

- The Supreme Court consists of the High Court of Justice and the Court of Cassation for the PA. The High Court has existed in the Gaza Strip since the days of the British Mandate. However, its history in the West Bank has been more complicated. The pre-1967 Jordanian court structure did not have a separate High Court, but its Court of Cassation, as the highest court in Jordan, also sat as a High Court of Justice for the West Bank and Jerusalem. Israel, following its occupation of the West Bank and Gaza in 1967, banned the appeal of West Bank and Jerusalem court cases to the Court of Cassation, and changed the laws in force in this area and the Ramallah Court of Appeal assumed the role of a High Court of Justice.
- Currently, the High Court panels sit in Gaza City for Gaza Strip cases, and in Ramallah for West Bank cases. Palestinian law names Jerusalem as the permanent seat of this court.

### ***(a) Constitutional Court***

- In accordance with Article 95 of the Basic Law, the High Court also acts as a Constitutional Court until a law creating a Constitutional Court is passed.
- The Supreme Constitutional Court Law 4/2006 has been passed, paving the way for the establishment of the Court and the appointment of judges.

### ***(b) The Court of Cassation***

- In this role, the High Court acts as the court of last resort for most cases. It has jurisdiction to review appeals on civil and criminal cases brought to it from the appellate court.

### ***(c) The High Court of Justice: Administrative jurisdiction***

- In this capacity, the High Court does not review decisions of any other courts, and its judgments are not subject to review by any other body. The High Court has original jurisdiction over disputes involving elections. It also has original jurisdiction for matters which are handled by administrative courts in many countries: it will handle these cases only until administrative courts are established under future legislation. This administrative jurisdiction of the High Court currently includes decisions issued by public agencies, public employment, and petitions for repeal of regulations and rules.
- Finally, the High Court of Justice considers any other matters referred to it by statute, and matters which do not fall within the jurisdiction of any other court.

## ***Religious courts***

- In addition to the regular courts there are also religious courts including various Christian court and Islamic courts. For example, the Shari'a Islamic court system consists of courts of first instance, appellate courts, the High Shari'a Court, and the High Shari'a Judicial Council. Shari'a courts in the West Bank and Gaza Strip have jurisdiction over the personal status cases of Muslims, as well as cases involving indemnity for murder (Diya-blood money) if both sides in a dispute are Muslim or if one side is not Muslim but agrees to adjudication through the Shari'a courts.

## ***Special Security Courts***

- These courts include the military Courts and the state security courts.

### ***Military Courts***

- Military courts have jurisdiction over review of crimes and misdemeanours committed by members of the Palestinian security forces. They simultaneously serve as penal and disciplinary courts, and review crimes committed by military personnel against civilians, as well as those in which military personnel collaborate with civilians. The military courts apply the (Military) Revolutionary Penal Code and derive their jurisdiction from the Palestinian

Revolutionary Criminal Procedures Act, both of which were issued by the PLO in 1979. The military courts are divided into district courts, permanent courts, and special courts.

- Decisions taken by special military courts can not be appealed. Decisions taken by central and permanent military courts can be appealed before the Director General of the Public Security and Police Judicial branch, who has the power to abrogate the appealed ruling and to form a special court to review it. This special court can even be the same court that already issued the ruling. The period allowed for appeal is short, ten days for the central court rulings, and fifteen days for the permanent court rulings.
- The special military courts continue to review civilian cases where crimes have been committed against military personnel.

### *State Security Courts*

- The Supreme State Security Court was formed by presidential decree based on Order No. 55 of 1964, issued by the Egyptian Governor General of the Gaza Strip. This order, in turn, was based on the British Emergency Regulations of 1945. Article 105 of the Basic Law repeals all provisions regulating the emergency states implemented in Palestine prior the implementation of this Basic Law including the British Emergency Regulations.
- According to the Law of Judicial Organization No. 5 of 2001, Article 1 states that all courts are to be established pursuant to the Judicial Authority Law and of the present law. Article 2 states that these courts have jurisdiction over all disputes and crimes except those that are exempted by special legislative text. As far as can be seen there are no such special legislative texts. Article 39 annuls any laws that are in conflict with this law. Article 33(3) states that the High Court can exercise jurisdiction over all applications opposing imprisonment and requesting the issuance of orders to release persons who are illegally detained.
- According to the Palestinian Independent Commission for Citizens' Rights (PICCR), for the past three years no cases have been referred to the state security courts, which supports the understanding that these courts were abolished from the Palestinian legal system. They are seen as being incompatible with the Basic Law, in particular since they do not provide a judicial process and are not independent rights which are guaranteed by the Basic Law.

### *Israeli Military Courts*

- As stated above, military commanders have issued over 2000 Military Orders, they are vested with the power to enact, cancel and suspend laws which effect all spectrums of Palestinian life. Military Order 378 established the military courts. Palestinians accused by Israel of security offences in the occupied territories are tried in Israeli military courts. Security offences are defined broadly and may include charges as varied as stone-throwing or membership in outlawed organizations. In addition to security offences, all Palestinians from the Occupied Palestinian Territories are submitted to Israeli military courts, even in the case of civil incidents, such as a car accident involving an Israeli.
- As an example, administrative detention in the West Bank is currently based on Military Order 1229. The first paragraph of this order states that, "If a Military Commander deems the detention of a person necessary for security reasons he may do so for a period not in excess of 6 months, after which he has the right to extend the detention period for a further six months according to the original order. The detention order can be passed without the presence of the detainee..."
- Thus this Order empowers military commanders in the West Bank to detain an individual for up to six months which can be extended for additional periods of up to six months. The Order does not define a maximum cumulative period of administrative detention, and, consequently,

the detention can be extended indefinitely. The terms "security of the area" and "public security" are not defined, their interpretation being left to the military commanders.

- The Order directs that the detainee be brought before a judge within eight days. The judge may approve, shorten, or cancel the order. The hearing is not open to the public, and the judge makes his decision based on confidential material pursuant to which the order was issued. The confidential material is not provided to the detainee or his attorney. In the past, the orders required that the order be reviewed three months after the judge made his ruling approving the detention. This requirement was eliminated in April 2002. The detainee has the right to appeal the judge's decision. The appeal is heard by a military appeals court judge. Like the previous hearing, the appeal is held behind closed doors and the decision is based on confidential material.
- Military courts of appeal are the last instance.

## Using the domestic law

---

- Arguments on the basis of a violation of Basic Law can be brought before the Courts of First Instance, Appellate Courts and Supreme Court.
- Over the years, the High Court of Justice has sought to protect Palestinian citizens from arbitrariness of the Executive Authority and its administration. Rejecting the Attorney-General's arguments, the High Court has held that it has jurisdiction to hear complaints and to order the release of persons who claim to be illegally detained. This is also the case even where the detention has been ordered by the military prosecutor general.
- A criticism of the High Court is the delay in reviewing and making final decisions, especially about claims of illegal detention. Even once the High Court has made a decision it is not always enforced<sup>240</sup>.

## Complaints to the PICCR

---

- This section was drafted by Musa Abu Dheim, Head of Complaints of the PICCR based in Ramallah<sup>241</sup>.
  - Introduction
  - PICCR Establishment
  - Manual Objective
  - Complaints followed up by PICCR
  - Complaints not followed up by PICCR
  - Source of complaints
  - Presenting the complaint
  - Rejection of complaints
  - PICCR mandate in complaint follow-up
  - Complaints processing
  - Phase I: (Field Investigation)
  - Phase II: (correspondence)
  - Receiving Complaints
  - Recourse to legal action
  - Investigating complaints
  - Procedures that follow investigation and information gathering
  - Collecting evidence and documents on the violation
  - Correspondence manual
  - Registration procedures
  - Phase III. Creating files
  - Recording complaints in the Department's file
  - Referring file to follow up
  - Phase VI. Notification letters
  - Closing complaint and preparing follow up files
  - Reports issued by the Palestinian Legislative Council
  - Recommendation to commissions to make other decisions

---

<sup>240</sup> PHRMG has tables detailing the length of proceedings in Arabic and English: <http://www.phrmg.org>

<sup>241</sup> The original text is in Arabic.

- Visits to Jails
- General Data
- PICCR Services
- Free of charge services
- Form of information needed for some complaints

## **Introduction**

The Palestinian Independent Commission for Citizens' Rights (PICCR) seeks advanced mechanisms and procedures to counter the violations suffered by citizens due to acts by public or quasi-public institutions, especially that basic rights which constitute an integral part of the interests of all citizens. Freedoms, the right to organize, the right to personal safety, the right to freedom of opinion and expression and other civic, social, economic and cultural rights represent a core interest for citizens and part of their daily life and sufferings.

In such a context, PICCR attempts to develop protection mechanisms bearing in mind the necessity to remain updated of the best means that ensure development of its activities in the Palestinian society and defence of human rights as well as comprehensive public awareness in order to preserve and safeguard citizens' rights and freedoms.

## **PICCR Establishment**

PICCR was established by a Presidential Decree issued by President Yasser Arafat, in his capacity as President of the State of Palestine and Chair of the Palestine Liberation Organization (PLO) on 30 September 1993. The decree establishing the Commission was later on published in the Palestinian Official Gazette, specifying its mandate and functions as follows, 'Preserve and ensure that human rights are respected in all Palestinian laws, regulations and legislation and in the work of different departments, agencies and institutions within the State of Palestine and PLO.' The Decree entrusted PICCR with the formulation of its internal by-laws so as to ensure its independence and effectiveness. The Commission started its activities early 1994. Moreover, Article 31 of the Palestinian Basic Law prescribes for the creation of PICCR. The purpose thereof is to protect citizens' rights and freedoms, which are enshrined in the Basic Law and to defend such rights against any illegal or improper acts of government and its staff as a result of maltreatment, arbitrary decisions, discrimination, omission, shortfalls or mistakes.

## **Manual Objective**

Ten years following to the establishment and start of PICCR activities in the area of complaints follow-up, it became necessary to devise specific and documented bases in a manual that prescribes complaints follow-up from A to Z to achieve the following results:

- Constitute a professional reference for the ombudsman work on theoretical and practical bases to follow-up and solve citizens' complaints and present PICCR working mechanisms.
- Introduce the manner of organizing and managing citizens' complaints files and the procedures to follow up on violations they are subjected to.
- Provide staff of the ombudsman at PICCR with most of the information they need to develop their skills.
- Put forth specific and documented rules for future work at the ombudsman.

## ***Complaints followed up by PICCR***

- PICCR specializes in complaints related to violations of citizens' rights committed by public and quasi-public authorities in the following areas:
  - ✧ Unlawful arrest or detention;
  - ✧ Torture or mistreatment in detention;
  - ✧ Death in jails and detention centres;
  - ✧ Delay in subpoenaing detained persons to trial or laying charges against them;
  - ✧ Prohibiting detainees' families from visiting them;
  - ✧ Search without legal warranty;
  - ✧ Recruitment and appointment without applying proper legal procedures and fair treatment;

- ✧ Arbitrary dismissal of public posts and lack of application of staff rights including promotion, affectation and financial rights;
- ✧ Referral of staff to retirement before attaining legal age;
- ✧ Delay by executive authority in providing legally prescribed services including the right to education, housing or health or unjustified delay in performing public procedures;
- ✧ Discrimination in application of the law on the basis of gender, religion, ethnicity, colour or political affiliation;
- ✧ Violations resulting from misuse of public position or arbitrary use of authority;
- ✧ Failure to justify a decision or delay in the implementation thereof as well as improper application of the law or provision of false or misleading information with failure to inform citizens of their right to challenge or appeal to decisions;
- ✧ Lack of abidance by decisions made by judicial authority;
- ✧ Attacks by the Executive Authority against citizens' property;
- ✧ Violation of the right to life as a result of use of power or negligence;
- ✧ Mal-performance by security apparatuses in holding violators of the law accountable.

### ***Complaints not followed up by PICCR***

- PICCR shall not follow up complaints in the following cases:
  - ✧ If one year or more elapsed since it came to the knowledge of person submitting the complaint that such a violation took place, unless the violation in question is still ongoing;
  - ✧ If the subject matter of the complaint is being dealt with by a judicial agency or in litigation and that a ruling has been issued unless the complaint is related to the lack of enforcement of such ruling by the Executive Authority;
  - ✧ If the same complaint had already been submitted to PICCR and that it refused to follow it up unless new evidence appeared;
  - ✧ Complaints regarding conflicts among individuals or private institutions;
  - ✧ Complaints related to humanitarian assistance unless the reason for failure to present such assistance is discrimination or favouritism;
  - ✧ If the person submitting the complaint has an interest therein unless he/she is a member of the council who may submit complaints related to matters of public interest;
  - ✧ Complaints related to Israeli violations of citizens' rights;
  - ✧ Administrative decisions whose legal term of appeal has elapsed.

### ***Source of complaints***

Complaints may stem from any of the following sources:

- Public complaints upon PICCR initiative:
  - ✧ PICCR may take the initiative to follow up on cases related to public interest and order or to basic rights and freedoms including violation of the right to life and attacks on freedom of press, academic freedom as well as arbitrary detention.
- Inspections conducted by PICCR upon its own initiative:
  - ✧ Inspections conducted by PICCR upon its own initiative: Field researchers in different Palestinian governorates are the most successful and effective way to monitor violations and reach out to complainants. The presence of field researchers all over different governorates makes it easier for citizens to outreach to PICCR offices.
  - ✧ Through the person submitting the complaint or any of his/ her relatives either by coming personally to PICCR offices or via telephone, fax or mail.

### ***Presenting the complaint***

Any person who suffered a violation by any official agency of any of his/ her basic rights and freedoms guaranteed by constitutional provisions may file a claim with PICCR.

Complaints may be filed by the complainant in person or by a proxy or any of his/ her relatives or via an organization representing him/ her.

Citizens or proxies thereof may file their complaints within PICCR by filling in the complaint form.

The complaint shall be documented in a special register (complaints register) and shall be given a serial number; complainant shall be provided with a receipt acknowledging reception of his/ her complaint and stating a date for follow-up.

### ***Rejection of complaints***

Within one week from the date of submission of a complaint, PICCR may examine it to study its form and subject matter in order to make a decision whether to accept it or not. In case PICCR decides not to follow up on the complaint, it shall notify the complainant with its reasoned decision. Cases for rejection of complaints include:

- Complaints that do not fall within PICCR jurisdiction;
- If the complainant or any proxy thereof has already undertaken procedures related to the same complaint before any court or judicial agency;
- If the complaint is illogical, unfair or false;
- If the person submitting the complaint has not applied all possible measures to remedy such complaint before filing such complaint with PICCR (Internal By-Laws)
- If the person submitting the complaint is not fully attentive thereto and does not provide any evidence or documents requested by PICCR.
- If the person submitting the complaint does not wish to follow up examining such complaint.

### ***PICCR mandate in complaint follow-up:***

- In examining a complaint, PICCR shall have the right to request and review any files, data or documents and to obtain photocopies thereof from official agencies;
- All agencies concerned with the complaint shall provide PICCR with all documents related to the complaint's subject matter and shall provide all assistance necessary;
- Summon and hear witnesses including government employees;
- Summon any person it deems necessary to witness in court about any matter related to the investigations it is undertaking;
- Search or enter any public institution or company or any place with public servants, which falls within its jurisdiction;
- Cooperation by any employee with PICCR shall not constitute a cause to submit such employee to disciplinary measures;
- Conclusions and reports made by PICCR during its examination of any case or issue shall not constitute a final official testimony in any legal or judicial procedures, but may be used on consultative basis.

### ***Complaints processing***

Complaints shall be processed in four phases, as follows:

1. Field Investigation
2. Correspondence
3. Creating Files
4. Notification

### ***Phase I: (Field Investigation)***

In this stage, the complaint is examined to make sure it falls within PICCR mandate as regards the defendant and subject matter; additionally necessary information and documents are obtained. After examination of claims, information and documents, one of the following results may be concluded:

- There is no violation;
- There is violation but it did not entail unfair treatment vis-à-vis the complainant
- There is violation that entailed violation of complainant's right; in which case, the defendant party is contacted to set a meeting to discuss and settle the conflict in a friendly way. In

case of failure to reach a solution to the complaint, the next stage shall be communication (correspondence)

## **Phase II: (correspondence)**

Follow up in this stage is ensured as follows:

1. Writing directly to officials in charge about the person submitting the complaint or the department being subject of the complaint.  
In these letters, questions are asked about accuracy of claims made by complainant and competent agencies are requested to take proper measures either by asking the agency in question to stop the violation in case of sufficient evidence of such violation (like arresting a citizen without applying legal procedures)
2. PICCR awaits reply for two or three weeks, where a number of options are available:
  - No response is received;
  - Convincing response is given to PICCR queries;
  - Dissatisfactory answer is received, but it does not answer PICCR questions.
3. In the first case, lack of response, a reminder is sent to the same agency.
4. In the second case, positive response, the complainant is contacted and informed of the answer of such agency; a copy of response is sent to complainant.
5. In the third case, dissatisfactory response, the relevant agency is requested to provide more explanation/ clarification.
6. In case of absence of response to both letters sent by PICCR (original letter and reminder), a higher administrative agency is addressed after consultation with the Director General.
7. PICCR waits for two to three weeks until the more senior agency responds, afterwards any of the following measures is applied:
  - Initiate contact with the higher agency and setting an appointment with the Director General or Commissioner General to discuss the outstanding complaint/s
  - Legal action with the approval of the Commissioner General.

## ***Receiving Complaints***

1. Complaints may be submitted to PICCR by concerned citizens either directly or via telephone, fax or e-mail.
2. A complainant who appears at any of PICCR offices is given a special form to fill in to present his/ her complaint or specialized personnel in the reception area or offices may help him/ her fill in the form.
3. Before receiving the complainant and dealing with his/ her complaint, the following material must be prepared:
  - PICCR brochure;
  - Copy of the Palestinian Basic Law;
  - Copy of the Law on PICCR;
  - Special forms to receive and record complaints.
4. Before the details of complaint are taken or assisting complainant to write it, the following issues must be considered:
  - Complainant is able to fill in the complaint form on his/ her own.
  - Any obstacles that impede complainant from filling in the complaint form.
  - Complainant educational attainment and if he/ she is illiterate.

## ***Registering complaints into the database by the PICCR***

- All new complaints and incoming mail must be entered to the database in order to be kept and registered to the department's database;
- All incoming mail and complaints must be examined as regards the existence of precedents already recorded and related to the same subject matter;
- The file must be given a serial number and title, which shall be registered on top of the file.



- All files and cases must be transferred to the archives and data entry staff for registration and entry into the database in order to be preserved.
- In case a complaint is registered electronically and on paper, it shall be given a serial number and referred to specialized staff for follow up.

### ***Recourse to legal action***

After completing all of the means of challenge and appeal available regarding the complaint or matter under investigation, PICCR shall have the right to sue agencies responsible for the violation in any of the following cases:

- If the violation causes public harm and necessitates legal intervention;
- If no other party is handling the matter in question;
- Decision to resort to legal action shall be made by the Commissioner General.

### ***Investigating complaints***

Prior to commencement of the investigation, PICCR staff will follow the following procedures:

- Obtaining a permission from direct supervisor
- Preparing a summary of the complaint
- Notifying the defendant by telephone or by writing of the date set for meeting for discussion of the complaint
- Take reference material including PICCR brochure, PICCR law, international conventions and other PICCR publications
- Every investigation undertaken by the complaints department must start with a brief contact with the defendant whether it is an individual, institution, or governmental department or company (official or semi-official) in order to notify the defendant of the complaint regarding human rights abuses reported against the defendant to PICCR.
- All questions and correspondence on the abuse of human rights directed to official or semi-official agencies must be addressed to the chair of relevant department (head of agency in question, director general); letters must shed light on legal matters and international conventions articles that have been violated.
- Complaint form completed by complainant and any other letters received thereafter by PICCR; no copies or originals of such forms or letter may be delivered to the defendant all through the follow-up phase.
- The defendant shall be given a period of two weeks to respond to PICCR queries, which shall be followed by another letter and another two-week grace period for response.
- Reports on investigation and information gather and any responses thereto received from defendant must be notified to the complainant in order to receive the complainant comment if such response is sufficient.
- Complaints staff must hand in a brief letter summarizing all answers and abstain from handing the original response to complainant.
- In leading any investigation, PICCR shall be compelled to apply any specific rules, evidence or procedures in all times and shall act in a fair and just way without showing any compassion or bias towards any of the parties to the complaint.
- The Complaints Department may listen to or acquire information from any person or persons who can help in running the investigation and may rely on any kind of examination or data that match the nature of the complaint in question.

### ***Procedures that follow investigation and information gathering***

1. Upon completion of the investigation and information gathering, the complaints staff in charge shall prepare a report to his/ her direct supervisor; the report shall include summary of the complaint and all meetings that took place in the field follow-up in addition to his/ her opinion:
  - the complaint is unjustified and will not be followed up;
  - The complaint is justified and needs follow up and there might be a chance for settlement or conciliation between the parties.

2. If PICCR accepts the recommendation of its staff member that the complaint is justified or unjustified and in case it cannot verify this matter, and if it is possible to reach a settlement with the parties, it must organize a conciliation/ settlement meeting between the parties through its complaints department.
3. PICCR must explain to the complainant the motives that made it apply such a procedure as well as his/ her right to file a civil action in courts.

### ***Collecting evidence and documents on the violation***

1. Listening to the "victim" citizen who suffered the violation and recording the testimony in a protocol or a form, asking him/ her to sign it so that he/she would not change his/ her word in the future under certain threat or temptations; receipt of documents or copies thereof that the complainant has (medical certificates, photographs, official documents, etc.)
2. Hearing witness(es) of the violation and writing down their testimony in a protocol form which he/she (they) shall sign for the same reason set forth as regards the registration of the complainant's protocol.
3. In case of initiation of search or investigation by PICCR about the violation in question, and to the best extent possible, the necessary evidence needs to be gathered, for without such evidence it will be difficult to follow up on the case.
4. Collecting all strong and complementary proof and evidence indicating the commitment of the violation and the executor thereof.
5. Reliable evidence is different and numerous and it may include statements by press or media. Other human rights abuses affecting the right to life and personal security may require additional measures of proof.
  - Examples of abuses to the right to life include deaths in police centres and jails as a result of physical or moral torture, negligence or poisoning or death outside such centres in public roads and spaces because of shooting bullets, severe beating, serious injuries in sensitive parts of human body or by unknown persons or by security apparatuses.
  - Examples to violation of personal safety include physical or moral torture while under detention or arrest inside or outside a police station or authority centre.

### ***Methodology of information gathering***

- Obtaining information regarding the violation in question from different media, namely the press, and different research, studies, reports, notifications and statements made by social, law, cultural and political organizations.
- Verification of the exactitude of such information by listening to victims of the abuse and the agencies organizing them; it is also possible to hear or write to the organizations, institutions or individuals accuses of committing such abuses.
- Reviewing the conflicts related to the violations and those dealt with in legal proceedings in order to assess their magnitude and type and the nature of rulings made in such regard.
- The same methodology shall be applied to gather all evidence regarding proving violations of special rights including rights of women, children and the environment with a special focus on observations when it comes to environmental rights.

### ***Meeting complainants and witnesses***

1. The introductions: start by introducing yourself before you explain role and mandate.
2. Routine questions first: start with routine questions first in order to help the complainant and witness feel comfortable. For example, in meeting a prisoner, ask him/ her how long has he/she been in jail.
3. Be more specific: The more you advance in the meeting, make your questions more specific and focused.
4. Try not to interrupt the complainant, but rather manage the meeting by remaining focused on the case and using direct questions to reinforce your information about specific topics

like names of persons involved in the attack or abuse and its date and time. Do not forget to write down the information provided by complainant.

5. Avoid questions that have implications whose answers could be "yes" or "no" unless you wish to verify a certain point. Ask questions with open answers like: can you describe? or tell me why? in order to encourage the complainant to speak.

#### *Active listening*

- Listen to the answers to your questions and show this to the complainant by verifying that you understand his/ her answers and statements.
- To make sure you understood his/ her answers, summarize the answer by saying, for instance, if I understand you right, the reasons that pushed the defendant to dismiss you from work were political reasons.
- As follow-up questions: these may include, are there other reasons why you were dismissed other than you disability? Why do you think so?
- Write down names of witnesses and titles of documents: so long as the complainant is answering your questions, write down the titles of documents you will need to review and the names of witnesses you wish to meet.
- Concluding the meeting: Round up the meeting by describing the next steps in investigation and follow up and by proposing to make other contacts and review the documents in the file.
- Set the expected duration needed to process the case.
- Ask the complainant if he had any questions or if any thing was bothering him/ her.

#### *Correspondence*

- Correspondence shall be addressed to the defendant.
- Writing to a certain agency in the form of an inquiry
- Writing the provisions of the law that has been violated, preferably a local law, without omitting recalling the international provisions covering the same subject
- Writing your address and the contact person with an additional remark about the possibility of contacting this person or setting up an appointment with him/ her by phone to follow up the case
- Send a letter specifying the charges
- Mention the law specifying this point
- Request answers to the questions to help us understand the situation
- The defendant must receive an explanation of the law he/ she is violating
- Use diplomatic language
- Lay down the main charges and evidence
- Put down the secondary charges and evidence
- A letter is sent to the defendant party asking it to present its story of how things happened.

#### ***Correspondence manual***

##### *Introduction*

The following are some steps for PICCR staff to follow to help the complaint department process correspondence with the defendant party. They aim at ensuring that all communication and letters are recorded and signed to ensure PICCR professionalism. They can however be adapted for other organizations and firms.

- signature and ratification by Director General:
- All incoming letters and complaint received by PICCR must be presented to the Director General before they are distributed to the different departments and staff members; thus, the competent department to deal with such complaints shall start its work upon receipt of such complaint or material.

- The previous rule regarding presentation of all incoming mail to the Director General applies to written complaints sent by fax or mail or delivered by hand to the different offices of PICCR and to complaints gathered by field researchers.
- It is preferable to send letters to ask questions to the defendant within one week from the date of receipt of the complaint.
- Although this may not be possible at times because of lack of clarity of complaints or because PICCR is processing a large number of complaints, the maximum time limit for sending inquiries to defendant shall not exceed two weeks from the date of receipt of the complaint in question.

#### *Procedures for preparation of complaint letters*

Using the forms on your computer, prepare a preliminary draft of the complaint specifying the violations committed by defendant and introducing data and facts in chronological order (see attached forms)

#### **1. Form and submission of letter:**

Before consulting with your supervisor and legal councils about your draft letter, make sure you use clear layout and font; use proper language and correct grammar and spelling mistakes; put the letter special PICCR forms.

#### **2. Keeping records of complaints in special register:**

After sending the preliminary letter (after completing the editing as applicable) the competent staff member shall keep the letter in the letters file for follow up and shall enter the letter on the electronic register (soft files).

Final form of the letter, registration and description procedures:

#### **3. Final codification:**

Before typing the final version of the letter, check the following:

- All contents and corrections proposed by the Director General and Legal Department have been introduced.
- Spelling and Grammar are correct.
- The letter is produced on computer following the uniform PICCR letter forms.

Pursuant to ratification by the Director General on your final version, make another check and print it in three copies in order to:

1. send a copy to the defendant on PICCR letter-headed paper with the signature of the Director General.
2. a copy for the file in your department to present it on the Director general and Department staff in the next bi-weekly meeting
3. copy for the complaint file

#### **4. Classification of copies for final codification:**

1. An ordinary copy for signature of Director General
2. the original letter-headed copy, signed by Director General to be sent to defendant.
3. file copy

#### ***Registration procedures***

##### *Answers*

Answers must be analyzed and sent as copy to complainant for reviews and comments.

- In some cases, such responses would be satisfactory (sufficient).
- There are times when the complainant is not satisfied with the answer.
- The complainant should explain if there has been a mistake or if some facts have been concealed.
- It is possible to assist the complainant but while keeping balanced relation
- When summarizing responses, the complaint and order of material shall be organized according to priority and claims.
- When writing the report, claims and responses from complainant and defendant must be matching
- When writing report the number of letters must be stated as well as the number of answered letters.

### **Phase III. Creating files**

The staff member in charge shall create a file for every case comprising a cover and the main information and ending with a paper on which all applied procedures in processing the complaint will be registered; files shall contain:

1. letters.
2. comments from the legal department and head of section.
3. memos on dialogues, contacts and meetings with plaintiff and defendant.
4. memos recording all of the dialogues and discussions that PICCR conducted with different governmental and semi-governmental organizations that are related to the complaint, including (police departments, prisons, security agencies, ministries, municipalities and others)
5. memos recording visits to sites or any relevant meetings.

### ***Recording complaints in the Department's file***

The staff member in charge, after recording all details regarding the complaint and complainant in a special file, must make sure it includes:

- Name, address and contact details of complainant.
- Manner of receipt of complaint and the persons receiving it.
- Name of staff member in charge.
- Defendant.
- Expected date of receipt of answer after sending the letter, that is in 21 days.
- If the correspondence related to existing complaints need receipts or confirmation via fax and registration of a deadline to receive the reply in the their special file in order to:
  - 1- follow up
  - 2- request additional information from complainant
  - 3- request answers from defendant to complainant
  - 4- Make necessary preparations for conciliation or settlement between the parties after approval of direct supervisor or Director General.

### ***Referring file to follow up***

The staff member chosen to follow up on the complaint by coordinator of the complaint department or Director General should receive the files with full details and documents and prepare all necessary correspondence.

### **Phase VI. Notification letters**

It is of paramount importance to inform the complainant by phone or via a written communication of PICCR decision regarding the complaint in question and if it is within the sphere of activity and jurisdiction of PICCR.

The maximum recommended deadline to send a memo to the complainant is a week whether the complaint was sent by hand to PICCR offices or via fax or e-mail.

For complaints falling within PICCR jurisdiction, memos must be prepared and sent to complainant faster than memos explicating that the complaint is not within PICCR sphere of activity or those that PICCR cannot process in reason of any of the following:

1. lack of resources
2. other channels or procedures may be used to process the complaint
3. lack of time
4. uncertain or falsified complaints
5. complaint dealt with before courts
6. unimportant
7. complainant does not wish to initiate an investigation
8. PICCR is processing other items on its list of priority

Archive officials must abstain from sending any document or letter that is not signed by the Director General.

Procedures of file keeping of copies of documents in the Complaint Department:

- The staff member in charge within the department shall include such copies in the file to be presented in bi-weekly meetings and shall place a copy of such documents in the complaint file after writing down the date in the Department's main register with specification of the final deadline to send response.
- A new file shall be prepared every second week and presented to the Director General and Department staff members for review and transparency

After receiving a complaint, a precise summary shall be prepared and presented to your supervisor (Head of Office, Coordinator of Complaint Department, staff member in charge of follow up); the précis shall lay down details of the complaint and your opinion thereof in order to help PICCR decide whether it is within its jurisdiction or not.

- Complaints that do not fall within PICCR jurisdiction

Complainants must be notified of complaints that do not fall within PICCR sphere of activity: (PICCR cannot investigate your case).

The letter must explain the reason why PICCR refused to process the complaint and must propose other channels or procedures that complainant can have recourse to in order to get his/ her rights.

- Complaints within the sphere of activity of PICCR  
Accepted complaints must be investigated and processed without delay.

- Reasons to halt processing complaints
- The need for additional information from complainant.

If there is a need to obtain additional information from complainant a letter must be sent or he/she may be contacted by phone to request such information to enable PICCR send its queries to the defendant.

Additional information and details to be requested from complainant may include:

- Names of witnesses: Any person or persons present when the abuse of violation took place and who can testify of the truth.
- Documents: any records kept by complainant like court records or rulings, reports or medical tests and others.
- Material evidence: photographs or others.

### ***Closing complaint and preparing follow up files:***

Complaints shall be closed in the following manner:

1. closure with satisfactory result: this may be achieved if the agency with whom the complaint is being processed cooperates and that the problem is solved and violation redressed.
2. closure without satisfactory result: in case of insufficient cooperation by such agency with PICCR, leading to absence of recognition of abuse or the perpetrators are not held accountable.
3. closure without cooperation: this means that PICCR closed the file after having used all afore-stated procedures including letters and contacts but without any cooperation at all by contacted agencies.

Complaints about political detainees shall remain open until detainees are released or sentenced. The same apply to forced disappearance until the missing person re-appears.

A report is prepared about the result of follow-up and submitted to concerned agencies.

#### *Re-opening complaints*

PICCR reopens complaint files and reprocesses them in case new events take place.

#### *Number of complaints*

- The term *shakwa* (complaint, complaint) will be used only
- The number of complaints as per the number of complainants: example: Intelligence services detained three members from the same family. This means there are three complaints.
- In case of public complaints affecting a large number of citizens, they will be dealt with as one complaint
- The number of complainants shall have no effect in calculating the number of complaints.

### **Reports issued by the Palestinian Legislative Council**

1. PICCR must notify PLC every year of the procedures it applied in its annual report submitted thereto in sessions.
2. it is possible to present a special report in emergency cases or to submit reports to PLC committees if the PLC is in session
3. annual and special reports shall be published. PICCR shall prepare an annual report about its activities on the status of citizens' rights in Palestine, and submit it to PLC, the President of the Executive Authority, PLC speaker and chief Justice as well as to the public.
  - in its annual report, PICCR must explain the number of type of cases while specifying the rejected cases and the reasons for refusal; the report shall also lay down the cases that have been investigated and the outcome explaining the proposals or recommendations accepted by the General Administration
  - the report should not include any personal data that would enable the general public identify the identity of the agencies involved in the investigation.
  - The report shall be printed and published.

### **Recommendation to commissions to make other decisions**

- I. Decision to refer the case back to the Director General or Commissioners Board:  
In case the staff member follow up the case was unable to settle the complaint or in case any of the parties violates the terms of agreement or fails to fulfil its obligations therein, the case must be sent to the Director of the Complaint Department and to the Director General and Commissioners Board without delay.

Before resending the case to the Director General or Commissioners Board, the staff member in charge needs to prepare the following:

- Report on the settlement meeting
- Summary of complaint and answers received by defendant
- Copy of the settlement agreement
- An official memo specifying whether the signed agreement has been violated and which party committed such abuse

## II. Procedures for Director General or Commissioner General

In a second step, the Commissioner General decides how to proceed, by any of the following:

- Approve sending the case to the Supreme Court upon PICCR initiative and cover expenses of litigation as prescribed by PICCR Law
- Establish a committee to follow up on the violation committed by any of the parties and produce recommendations to senior bodies to compel this party to fulfil its obligations as per the approved and signed agreement
- If an executive committee has been formed against the defendant or the person involved in the investigation, but such person refuses to abide by the Committee's recommendations or if the Committee or Commissioner General discovers that it is not possible to reach a settlement under such circumstances and that no alternative option is available within PICCR to solve the problem, the Commissioner General may order to stop processing the complaint.

### **Visits to Jails**

PICCR shall inspect jails, detention and protection centres and any other state-managed centres. Inspection in areas where citizens have been deprived of their liberty like jails, psychiatric hospitals; after inspection, PICCR shall write down its observations.

PICCR shall organize visits to jails, detention centres, juvenile care centres, psychiatric asylums, elders Houses on regular basis to ensure respect of the provisions and standards specified in the Law on Rehabilitation Centres and other relevant laws and international human rights standards.

### **General Data**

PICCR, based on the policy set forth by its Board, shall not publish any data unless all steps for direct settlement have been exhausted and that it did not receive any assistance from concerned or responsible agencies or if the subject matter is urgent and extremely important that PICCR publishes an emergency statement thereon.

In addition to the official registered data, the Commissioner General and Director General may present a public opinion explicating PICCR official position regarding all open cases. This step has been applied on continual basis.

### **PICCR Services**

In case PICCR receives a complaint that does not fall within its jurisdiction, it may accept to provide a legal advice to direct the concerned citizen to the agency that is more appropriate to follow up his/ her case.

### ***Free of charge services***

All of the services provided by PICCR regarding complaints, requests and memos shall be free of charge.

### ***Form of information needed for some complaints:***

#### Complaints Form

- Personal Data:
- Information on complainant
  1. Full name:
  2. ID card number
  3. Address
  4. Age (Date of Birth)
  5. sex
  6. Address
  7. Profession
  8. Tel
  9. Mobile



10. E-mail
11. Fax
12. Status (individuals, groups, NGOs, Government Organizations, others)
13. Date of submission of complaint
14. signatures

▪ Information on the case

1. Date
2. Place
3. Time
4. Nature of event, kindly describe what happened including the information you consider important to understand the case while respecting the chronological order
5. The authorities you think are responsible for what happened and why you think they are responsible
6. if there are any witnesses and what are their names and whether they wish to stay anonymous
7. steps undertaken by citizen or his family
  - a- state whether a complaint application has been submitted: when? Who presented it? To what agency?
  - b- Other steps
  - c- Steps undertaken by governmental authorities
  - d- In case an application has been submitted, was it by the citizen or his/ her family and who was it treated by the concerned authorities and what were the results?

## 5. Identifying Human Rights Violations

*This chapter sets out where practical guidance for identifying, investigating and prosecuting human rights violations can be found.*

---

### Torture Reporting

---

Title: The Torture Reporting Handbook - How to document and respond to allegations of torture within the international system for the protection of human rights.

Author: By Camille Giffard (The Human Rights Centre, University of Essex)

Source: <http://www.essex.ac.uk/torturehandbook/english.htm>

<http://www.essex.ac.uk/torturehandbook/arabic.htm>

#### ***What is the Torture Reporting Handbook?***

The Torture Reporting Handbook is a reference guide for anyone who wishes to know how to take action in response to allegations of torture or ill-treatment. It explains simply and clearly how the process of reporting and submitting complaints to international bodies and mechanisms actually works, and how to make the most of it: how you might go about documenting allegations, what you can do with the information once it has been collected, how to choose between the various mechanisms according to your particular objectives, and how to present your information in a way which makes it most likely that you will obtain a response.

#### ***Who is the Torture Reporting Handbook for?***

The Torture Reporting Handbook is for anyone who comes across information indicating that torture has occurred. It is particularly relevant to human rights field workers and non-governmental organisations, but could be used by doctors, lawyers, or any other professionals or individuals who might receive such information. It is not a technical manual and you do not need any special knowledge in order to use it.

#### ***Why should you consider using the Torture Reporting Handbook?***

Information is the key to the eradication of torture. International bodies and mechanisms have been created to address the problem of torture, but their effectiveness depends on the information which is sent to them. A lot of the information received is wasted because it is sent to the wrong body, presented in an inappropriate way, or seems unreliable. Careful preparation of your information following the guidelines in the Handbook should make it possible to avoid such mistakes and more likely that you will achieve your objectives in submitting the information.

## Contents

Submitting a torture allegation is not just about writing a letter to an international body. It is about knowing where to look and what to look for, and it starts with the very first word of the very first interview with the person alleging torture. This is because the quality and consequent credibility of the allegation will depend almost entirely on the information recorded about it. This means knowing which questions to ask, and paying great attention to detail when keeping notes of the interview, because you will not often get a second chance to fill in the gaps. It also requires a certain familiarity with both the legal and practical contexts of torture, and an understanding of the objectives and likely results of submitting the allegation. The three core sections which address the various stages of the process are the following:

**Part I, Chapter 3 - Setting the Context** - This chapter provides a background for reporting allegations: it discusses what might be achieved by reporting allegations of torture, explains briefly the concept of torture and other forms of ill-treatment, identifies those places and situations where torture is most likely to take place, and highlights the circumstances in which allegations are most likely to be received. Finally, it addresses the thorny problem of the actions of non-governmental actors, and asks what can be done with allegations concerning them.

**Part II - Documenting Allegations** - The objective of this part is to offer some guidelines on how to go about collecting information about incidents of torture and other forms of ill-treatment. It highlights those pieces of information which are essential to any allegation, provides some pointers on how to carry out an interview with a victim or witness, and identifies the kind of supporting evidence which should be collected in order to strengthen an allegation or make prosecution possible.

**Part III - Responding to the Information Collected** - This part introduces the various mechanisms available for reporting allegations of torture and other forms of ill-treatment, particularly at the international level, provides guidance on how to choose between them, and explains how best to prepare and tailor your submission to the particular type of mechanism selected. It also acknowledges that there may be situations where you do not wish to pursue an allegation in person, where you might need support or advice on how to proceed, or where you might wish to seek political as well as legal action. It makes some suggestions on where to turn for help in such cases.

### TABLE OF CONTENTS

*Selected Abbreviations*

*Index of Tables*

*Glossary of Specialised Terms*

*Publishing Information, Contributors and Acknowledgements*

*Search*

3.2.2 Seek positive changes in a general situation

3.2.3 Combat impunity

3.2.4 Seek a remedy for an individual victim

3.2.4.1 A finding of violation

3.2.4.2 Holding perpetrators to account

3.2.4.3 Reparation

3.2.4.4 Preventing the deportation of an individual to a country where he or she would be at risk of torture

## PART I - PRELIMINARY MATTERS

### 1. INTRODUCTION

### 2. HOW TO USE THIS HANDBOOK

#### 2.1 Outline of core chapters

#### 2.2 Terminology

#### 2.3 Essential policy issues

### 3. SETTING THE CONTEXT

#### 3.1 Introduction

#### 3.2 What can you hope to achieve by reporting allegations of torture?

3.2.1 Draw attention to a situation/establish a pattern of violations

### 3.3 What is torture?

3.3.1 Introduction

3.3.2 What does international law say about the meaning of torture?

3.3.3 What does this mean in practical terms?

3.3.3.1 Essential elements

3.3.3.2 Degree of suffering

3.3.4 Conclusion: what is torture?

### 3.4 How does torture happen?

3.4.1 Who are the perpetrators?

3.4.2 Who are the victims?

3.4.3 Where is torture most likely to occur?

3.4.4 When is torture most likely to occur?

### **3.5 In what contexts might you receive or obtain allegations of torture?**

### **3.6 Can allegations be made against non-governmental actors?**

3.6.1 Can action be taken under human rights law?

3.6.2 Do other types of law prohibiting torture apply to non-governmental actors?

3.6.2.1 *International law of armed conflict*

3.6.2.2 *Crimes against humanity*

3.6.2.3 *National law*

3.6.3 Conclusion: how can you use information alleging torture by non-governmental actors?

## **SUMMARY OF PART I**

## **PART II - DOCUMENTING ALLEGATIONS**

### **1. INTRODUCTION**

### **2. BASIC PRINCIPLES OF DOCUMENTATION**

2.1 Why do these principles matter?

2.2 What does good quality information consist of?

2.3 What can you do to maximise the accuracy and reliability of information?

### **3. INTERVIEWING THE PERSON ALLEGING TORTURE**

#### **3.1 Introduction**

#### **3.2 General considerations**

#### **3.3 Conducting the interview**

3.3.1 Before you start

3.3.2 How should you begin the interview?

3.3.3 Should you keep notes of the interview?

3.3.4 By whom should the interview be conducted?

3.3.5 Are there any special considerations to keep in mind when using interpreters?

3.3.6 What can you do to make the interviewee feel more at ease?

3.3.7 How can you deal with people who are too afraid to talk?

3.3.8 Are there any special considerations to keep in mind when conducting interviews in prisons or other places of group custody?

3.3.9 How can you address the sensitivity of the subject-matter?

3.3.10 What can you do to maximise the reliability of information?

3.3.11 Are there any special gender considerations to take into account when selecting an interviewer or interview team?

3.3.12 Are there any special considerations to take into account when interviewing children?

## **4. INFORMATION WHICH SHOULD BE RECORDED**

### **4.1 Model information**

4.1.1 What kind of details do you need in order to answer these basic questions?

4.1.2 What can you do to obtain these details without influencing the content of the account?

### **4.2 Specific contexts**

## **5. EVIDENCE**

### **5.1 Medical evidence**

5.1.1 Physical evidence

5.1.2 Psychological evidence

### **5.2 Statement of person making allegation**

### **5.3 Witness evidence**

### **5.4 Other types of evidence**

## **SUMMARY OF PART II**

## **PART III - RESPONDING TO THE INFORMATION COLLECTED**

### **1. INTRODUCTION TO POSSIBLE COURSES OF ACTION**

#### **1.1 Action at the international level**

1.1.1 Range of international procedures

1.1.1.1 *Origin of the mechanism*

1.1.1.2 *Functions of the mechanism*

1.1.2 How to select an international procedure

1.1.2.1 *Availability: which mechanisms are open to you?*

1.1.2.2 *Suitability: which mechanisms are most suited to your objectives?*

#### **1.2 Action at the national level**

1.2.1 Criminal proceedings

1.2.2 Civil proceedings

1.2.3 Administrative proceedings

1.2.4 Disciplinary proceedings

1.2.5 Asylum claims

1.2.6 Exceptional remedies

1.2.7 Other procedures

### **2. WHAT YOU SHOULD KNOW ABOUT INTERNATIONAL REPORTING MECHANISMS AND HOW TO USE THEM**

#### **2.1 What kind of general characteristics should your communication have?**

2.1.1 Accessible

2.1.2 Balanced and Credible

2.1.3 Detailed

## **2.2 Submitting information to a body engaged in monitoring: what should your communication include?**

2.2.1 Sending general information to a monitoring body

2.2.2 Sending an individual allegation to a monitoring body

## **2.3 Submitting information in the context of the state reporting procedure**

2.3.1 How does the state reporting procedure work?

2.3.2 What can you achieve by submitting information in the context of the state reporting procedure?

2.3.3 What should an NGO report in the context of the state reporting procedure contain?

2.3.4 Practical tips for submitting information in the context of the state reporting procedure

## **2.4 Submitting information to a body engaged in fact-finding**

2.4.1 Submitting information in advance of a fact-finding visit

2.4.2 Submitting information during a fact-finding visit

## **3. WHAT YOU SHOULD KNOW ABOUT INTERNATIONAL COMPLAINT PROCEDURES AND HOW TO USE THEM**

### **3.1 What can you seek to achieve by using individual complaint procedures?**

### **3.2 What kind of complaints can individual complaint procedures examine?**

### **3.3 How do individual complaint procedures work?**

3.3.1 Basic chronology

3.3.2 Admissibility

3.3.2.1 *What is admissibility?*

3.3.2.2 *Why might a complaint be declared inadmissible?*

3.3.3 Amicus curiae briefs/Third party interventions

3.3.4 Provisional measures

### **3.4 What should an application under an individual complaint procedure contain?**

### **3.5 Practical tips for using individual complaint procedures**

## **4. THE MECHANISMS AND PROCEDURES: UNITED NATIONS**

### **4.1 Introduction to the United Nations system**

### **4.2 Reporting mechanisms within the United Nations system**

4.2.1 The United Nations Non-Treaty Procedures

4.2.1.1 *The 1503 Procedure*

4.2.1.1.1 How does the 1503 Procedure work?

4.2.1.1.2 What can you achieve by submitting information to the 1503 Procedure?

4.2.1.1.3 What should a communication to the 1503 Procedure contain?

4.2.1.1.4 Specific tips

4.2.1.2 *The Special Procedures of the UN Commission on Human Rights*

4.2.1.2.1 Thematic Rapporteurs and Working Groups

4.2.1.2.2 Special Rapporteur on Torture

4.2.1.2.3 Country Rapporteurs

4.2.2 The United Nations Treaty Bodies

4.2.2.1 *Committee Against Torture*

4.2.2.1.1 How does the Committee Against Torture work?

4.2.2.1.2 What can you achieve by submitting information to the Committee Against Torture?

4.2.2.1.3 What should a communication to the Committee Against Torture contain?

4.2.2.1.4 Specific tips

4.2.2.2 *Human Rights Committee*

4.2.2.2.1 How does the Human Rights Committee work?

4.2.2.2.2 Specific tips

4.2.2.3 *Other Committees*

4.2.2.3.1 Specific tips

## **4.3 Complaint procedures within the United Nations system**

4.3.1 The Committee Against Torture

4.3.1.1 *What kind of complaints can it examine?*

4.3.1.2 *What are the admissibility requirements?*

4.3.1.3 *Specific tips*

4.3.2 Human Rights Committee

4.3.2.1 *What are the admissibility requirements?*

4.3.2.2 *Specific tips*

4.3.3 Other Committees

4.3.3.1 *What are the admissibility requirements?*

4.3.3.2 *Specific tips*

## **5. THE MECHANISMS AND PROCEDURES: REGIONAL**

### **5.1 The European System**

5.1.1 Reporting Mechanism: The European Committee for the Prevention of Torture

5.1.1.1 *How does the European Committee for the Prevention of Torture work?*

5.1.1.2 *What can you achieve by submitting information to the Committee for the Prevention of Torture?*

5.1.1.3 *What should a communication to the Committee for the Prevention of Torture contain?*

5.1.1.4 *Specific tips*

5.1.2 Complaint Procedure: The European Convention on Human Rights

5.1.2.1 *What are the admissibility requirements?*

5.1.2.2 *What should your application contain?*

#### 5.1.2.3 Specific tips

### 5.2 The Inter-American System

#### 5.2.1 Reporting Mechanism: The Inter-American Commission on Human Rights

##### 5.2.1.1 How does the Inter-American Commission on Human Rights work?

##### 5.2.1.2 What can you achieve by submitting information to the Inter-American Commission on Human Rights?

##### 5.2.1.3 What should a communication to the Inter-American Commission on Human Rights contain?

#### 5.2.2 Complaint Procedure: the Inter-American Commission and Court of Human Rights

##### 5.2.2.1 What can you achieve by using this procedure?

##### 5.2.2.2 What kind of complaints can be examined?

##### 5.2.2.3 What are the admissibility requirements?

##### 5.2.2.4 Specific tips

### 5.3 The African System

#### 5.3.1 Reporting Mechanisms

##### 5.3.1.1 African Commission on Human and Peoples' Rights

##### 5.3.1.1.1 Functions

##### 5.3.1.1.2 Specific tips

##### 5.3.1.2 Special Rapporteur on Prisons and Conditions of Detention in Africa

#### 5.3.2 Complaint Procedure: The African Commission on Human and Peoples' Rights

##### 5.3.2.1 What are the admissibility requirements?

##### 5.3.2.2 Specific tips

### 5.4 Other Regions

## 6. COMPARATIVE EVALUATION TABLES OF THE INTERNATIONAL PROCEDURES

## 7. WHERE MIGHT YOU SEEK FURTHER HELP?

### 7.1 Why might you wish to seek further help?

### 7.2 Some specific sources of help

#### 7.2.1 International Committee of the Red Cross

#### 7.2.2 UN High Commissioner for Refugees

#### 7.2.3 Field missions and visits

#### 7.2.4 International and national or local NGOs, and other support organisations

#### 7.2.5 UN Voluntary Fund for the Victims of Torture

#### 7.2.6 Lobbying

## SUMMARY OF PART III

## APPENDICES

### APPENDIX I - LIST OF RELEVANT INSTRUMENTS

### APPENDIX II - CONTACT DETAILS AND OBTAINING FURTHER INFORMATION

### APPENDIX III - STANDARD APPLICATION FORMS

### APPENDIX IV - BODY DIAGRAMS

---

## Combating Torture

---

Title: Combating Torture - A Manual for Judges and Prosecutors  
Author: By Conor Foley (The Human Rights Centre, University of Essex)  
Source: <http://www.essex.ac.uk/combatingtorturehandbook/english/index.htm>  
<http://www.essex.ac.uk/combatingtorturehandbook/arabic/index.htm>

This manual outlines the duties and responsibilities of judges and prosecutors to prevent and investigate acts of torture, and other forms of ill-treatment, to ensure that those who perpetrate such acts are brought to justice and to provide redress for their victims. It also provides practical advice, drawn from best practice, about how torture can be combated at a procedural level. Although primarily aimed at judges and prosecutors, it can be used as a resource by defence lawyers and others concerned with the prevention and investigation of acts of torture. A well-informed and sensitised legal profession has a vital role to play in eradicating torture and this manual is also aimed at helping its members to fulfil that professional function.

### **Who is this manual for?**

This manual has been written as an information resource for judges and prosecutors throughout the world in order to assist them to prevent and investigate acts of torture. Based on international standards, it also contains check-lists of good practice and advice that should be applicable in any legal system. Given the different legal systems, rules of evidence and methods of procedure that exist in different countries it is not possible to produce a detailed legal reference book that will be universally applicable in every jurisdiction. This manual instead aims to provide a practical guide

for judges and prosecutors whose decisions may, in many cases, have a direct impact on the problem of torture and other prohibited forms of ill-treatment.

Torture is absolutely prohibited under international law and cannot be justified under any circumstances. The United Nations (UN) has condemned torture as a denial of the purposes of its Charter and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. Torture is also prohibited by most domestic legal systems in the world. Even where there is no specific crime of torture in domestic law, there are usually other laws under which the perpetrators can be held to account. Nevertheless, acts of torture and ill-treatment remain widespread across the world.

Preventing torture and other forms of ill-treatment is primarily an act of political or professional will and the responsibility to combat it extends to all those in authority in society. Judges and prosecutors, given their role in upholding the rule of law, have a particular responsibility to help prevent acts of torture and ill-treatment by promptly and effectively investigating such acts, prosecuting and punishing those responsible and providing redress to the victims. Preventing and investigating alleged acts of torture poses particular problems for judges and prosecutors, and for the administration of justice, because the crime is usually committed by the same public officials who are generally responsible for upholding and enforcing the law. This makes it more difficult to deal with than other forms of criminality. Nevertheless, judges and prosecutors have a legal duty to ensure that the integrity of their profession and the justice they uphold are not compromised by the continued tolerance of torture, or other forms of ill-treatment.

As well as considering the specific safeguards detailed in this manual it is important that all those in authority – particularly those responsible for law enforcement and the administration of justice – publicly condemn torture in all its forms whenever it occurs. They should make it clear that those responsible for committing acts of torture and those in charge of places of detention at the time such abuses are perpetrated will be held personally responsible for these abuses.

Torture and other forms of ill-treatment may take place in virtually any location. People are particularly at risk when they are deprived of their liberty, held in pre-trial detention or subject to interrogation. The greatest risk is in the first phase of arrest and detention, before the person has access to a lawyer or court. People being held in incommunicado detention – without access to anyone in the outside world – are particularly vulnerable.

Judges and prosecutors have a responsibility to ensure that they do not themselves, unintentionally or otherwise, collude with acts of torture while carrying out their official functions. In some legal systems, prosecutors may be directly involved in conducting interrogations in which coercive methods of extracting confessions and information are used. In some situations, prosecutors may rely on information or confessions, when conducting cases, without satisfying themselves that these were not obtained by coercive means.

Sometimes judges and prosecutors fail to ensure that the laws and procedures designed to protect people in detention, and prevent acts of torture and other forms of ill-treatment, are upheld. They may also fail to require that a person making a statement or confession does so in their presence; fail to explore for signs of physical or mental distress on a detainee who is brought before them; return a detainee to the custody of law enforcement officials where there is reason to believe that the detainee will suffer ill-treatment; fail to react to signs which indicate that a person may have been ill-treated even in the absence of a formal complaint; fail to take complaints of ill-treatment sufficiently seriously; fail to investigate such allegations with a view to bringing proceedings against the perpetrators; and fail to exercise their powers to carry out thorough inspections of places of detention.

Conversely, judges and prosecutors may exercise their powers to prevent and investigate acts of torture. They may demand that a suspect be brought before them at the earliest opportunity and check that he or she is being properly treated. Where they have discretion, they may interpret the balance of proof, with respect to allegations of torture and the admissibility of evidence obtained through it, in ways that discourage law enforcement officers, and those in charge of places of

detention, from carrying out, or permitting others to carry out, torture and other forms of ill-treatment. They may also stay alert to all possibilities that their own courts or tribunals do not conform to the highest possible standards with respect to preventing and investigating torture.

While international law provides a basic minimum, there are also examples from different countries that can be drawn on when developing standards of good practice. The case studies contained in this manual, which only represent a brief snap-shot of such cases drawn from around the world, are intended to illustrate how judges and prosecutors have sought to combat torture within their own national jurisdictions.

## **Contents**

The first chapter of this manual briefly sets out the prohibition of torture in international law and the obligations that flow from this prohibition. It also refers to some of the international supervisory mechanisms that exist. The second chapter outlines the safeguards that exist for people who have been deprived of their liberty not to be subjected to torture or any other forms of ill-treatment. It includes both treaty and non-treaty standards and regional as well as universal instruments. Together with the case-law and reports of international monitoring bodies and institutions these provide an important legal source that can help inform the domestic judge and prosecutor.

The third chapter describes the role of judges and prosecutors in ensuring that these standards are upheld in practice. This includes check-lists of safeguards for those deprived of their liberty and advice on carrying out inspections of detention facilities. It also considers the role of judges and prosecutors when it is alleged that evidence in a criminal trial has been obtained by torture or other forms of ill-treatment. The positive duty to protect a person who may be at risk of torture in other countries – in the context of deportation or extradition proceedings, or claims for asylum – is also briefly discussed.

The fourth chapter outlines how those responsible for investigating acts of torture should respond to allegations and gather evidence relating to torture. It discusses who should carry out such investigations and the general principles governing them. It also provides advice on interviewing victims, witnesses and suspects and protecting witnesses during investigations and trials of suspected torturers.

The fifth chapter relates to the prosecution of those involved in torture or other forms of ill-treatment. It discusses the legal definition of torture and other crimes of ill-treatment, who should be held culpable for such crimes and how they can be identified and prosecuted. The issues of universal jurisdiction, amnesties, punishment and redress are briefly discussed.

The texts of some international instruments are contained as appendices to this manual. A table of the status of ratification of the principal human rights treaties is also attached

Table of contents	International supervisory machinery and complaints procedures
<i>Foreword</i>	The Human Rights Committee
<i>Acknowledgements</i>	The UN Committee against Torture
<i>Glossary</i>	Regional mechanisms
Introduction	Other monitoring mechanisms
Who is this manual for?	The UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
How to use this manual	International criminal courts and tribunals
	The International Committee of the Red Cross (ICRC)
1: The prohibition of torture in international law	2: Safeguards against torture for those deprived of their liberty
General prohibition	Notifying people of their rights
The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984	Use of officially recognised places of detention and maintenance of effective custody records
Other relevant standards	Avoiding incommunicado detention
Legal definitions	Humane conditions of detention
	Limits on interrogation



Access to a lawyer and respect for the functions of a lawyer

Access to a doctor

The right to challenge the lawfulness of detention

Safeguards for special categories of detainees

Women in detention

Juvenile detainees

People with mental health problems

3: The role of judges and prosecutors in protecting detainees and criminal suspects from torture

The role of judges

The role of prosecutors

Safeguards during detention

Interrogations

Independent inspections

Conditions of detention

Appearance before a judicial authority

Legal assistance

Admissibility of evidence

Examining witnesses

Duty to protect in cases of expulsion

4: Conducting investigations and inquiries into acts of torture

Responding to allegations of torture

Principles governing investigations

Medical evidence

Conducting interviews

Interviewing alleged torture victims

Interviewing alleged victims of sexual violence

Interviewing children and juveniles

Interviewing suspects

Identifying other witnesses

Witness protection issues

5: Prosecuting suspected torturers and providing redress to the victims of torture

Torture as a criminal offence

Culpability for crimes of torture or other forms of ill-treatment

Identifying and prosecuting those responsible

The obligation to prosecute

Fair trials

Immunities, amnesties and statutes of limitation

Punishment

Redress

## Appendices

### Appendix 1: Selected international instruments

1. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Articles 1-16

2. International Covenant on Civil and Political Rights, Articles 7 and 10; the European Convention on Human Rights, Article 3; the American Convention on Human Rights, Article 5; the African Charter on Human and Peoples' Rights, Article 5

3. Common Article 3 to the four Geneva Conventions 1949

4. The Statute of the International Criminal Court, Articles 7 and 8

5. Human Rights Committee General Comment 20 to the International Covenant on Civil and Political Rights

6. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

7. Guidelines on the Role of Prosecutors (extracts)

8. Basic Principles on the Independence of the Judiciary (extracts)

9. Basic Principles on the Role of Lawyers (extracts)

10. Recommendations of the Special Rapporteur on Torture (extracts)

11. The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final Report of the Special Rapporteur, Professor M. Cherif Bassiouni

12. Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (the Istanbul Protocol)

### Appendix 2: The CPT Standards – Selected extracts

### Appendix 3: Further information and contact organisations

### Appendix 4: Table of ratification status of selected human rights instruments

### Further Reading

---

## Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

---

Title: United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

Author: U.N. Doc. E/ST/CSDHA/12 (1991).

Source: <http://www.mnadvocates.org/4Jun20046.html>

Hard copies available in Arabic from <http://www.mnadvocates.org>

This manual, which supplements the Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions (adopted by the Economic and Social Council in its resolution 1989/65 of 24 May 1989), contains international human rights standards, a model

protocol for investigating extra-legal, arbitrary, and summary executions, a model autopsy protocol, and a model protocol for disinterment and analysis of skeletal remains.

## **Contents**

### **INTRODUCTION**

#### **I. INTERNATIONAL HUMAN RIGHTS STANDARDS**

##### **A. United Nations**

1. General Assembly
  2. Economic and Social Council
  3. Commission on Human Rights
  4. Human Rights Committee
  5. Committee against Torture
  6. Committee on Crime Prevention and Control
  7. United Nations congresses on the prevention of crime and the treatment of offenders
- ##### **B. International Labour Organisation**
- ##### **C. Regional organizations**
1. Inter-American Commission on Human Rights
  2. African Commission on Human and People's Rights
  3. European Commission on Human Rights

#### **II. THE ELABORATION OF INTERNATIONAL STANDARDS FOR EFFECTIVE PREVENTION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS**

#### **III. MODEL PROTOCOL FOR A LEGAL INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS ("MINNESOTA PROTOCOL")**

- ##### **A. Introduction**
- ##### **B. Purposes of an inquiry**
- ##### **C. Procedures for an inquiry**
1. Processing of the crime scene
  2. Processing of the evidence
  3. Avenues to investigation
  4. Personal testimony
- ##### **D. Commission of inquiry**
1. Factors triggering a special investigation
  2. Defining the scope of the inquiry
  3. Power of the commission
  4. Membership qualifications
  5. Number of commissioners
  6. Choosing a commission counsel

7. Choosing expert advisors
8. Choosing investigators
9. Protection of witnesses
10. Proceedings
11. Notice of inquiry
12. Receipt of evidence
13. Rights of parties
14. Evaluation of evidence
15. The report of the commission
16. Response of the Government

#### **IV. MODEL AUTOPSY PROTOCOL**

- ##### **A. Introduction**
- ##### **B. Proposed model autopsy protocol**
1. Scene investigation
  2. Autopsy

#### **V. MODEL PROTOCOL FOR DISINTERMENT AND ANALYSIS OF SKELETAL REMAINS**

- ##### **A. Introduction**
- ##### **B. Proposed model skeletal analysis protocol**
1. Scene investigation
  2. Laboratory analysis of skeletal remains
  3. Final report
  4. Repository for evidence

Annexes (available from Amnesty International)

- ##### **I. Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions**
- ##### **II. Post-mortem detection of torture**
- ##### **III. Drawings of parts of human body for identification of torture - pages 49-56**
- Drawings of parts of human body for identification of torture - pages 57-64
- Drawings of parts of human body for identification of torture - pages 65-71

---

## **Human Rights and Pre-trial Detention**

---

Title: Human Rights and Pre-trial Detention: A Handbook of International Standards relating to Pre-trial Detention  
Author: UN  
Source: [http://www.ohchr.org/english/about/publications/docs/pts3\\_ar.doc](http://www.ohchr.org/english/about/publications/docs/pts3_ar.doc)  
Not available in English.

This manual is designed to raise awareness of international standards in the area of pre-trial detention and awareness as well as explanatory material related to those standards. The manual provides guidelines for the process of implementing the standards. Based on the opinions of experts and the experiences of countries with regard to pre-trial detention. It was designed to guide in such a way as to allow flexibility and provide guidelines for those bodies which exercise criminal jurisdiction.

## Contents

Table of Contents	Term pre-trial detention
A prelude	Separation of categories of detainees
The international instruments listed in this guide	Obtaining the services of a lawyer
Introduction	Investigation concerning persons held in custody, torture and ill-treatment
International standards relating to pre-trial detention	Material conditions of detention
The development of international standards relating to pre-trial detention	Accommodation
Standard prison conditions on standards relating to torture and ill-treatment	Food, water
Standards of disappearances and arbitrary executions	Medical care
Standards on the role of members of the judiciary and lawyers	Clothing
Criteria for alternatives to pre-trial detention	Property Rights
Standards for the Protection of Juveniles	Restrictions and discipline during pre-trial detention
Nature of the problem of pre-trial detention of overcrowding	Intellectual and religious conditions of detention
Conditions of detention	Supervision of places of detention
The legal status of detainees in pre-trial detention	Fair trial
The role of this guide	Judicial review of custody
Note on the text and terminology used	Administrative detention
Non-discrimination	Special rules on the events
The presumption of innocence	Implementation
Arrest	Savings clauses
Notice	Annexes
Appear before a judicial or other authority	Release services for pre-trial custody
Alternatives to custody	A form to release information from the detainee prior to the trial
	Selected Bibliography

---

## Fair Trial

---

Title: Amnesty International Fair Trial Manual  
Author: Amnesty International  
Source: <http://www.amnesty-arabic.org/ftm/index.htm> (Arabic)  
<http://www.amnesty.org/ailib/intcam/fairtrial/fairtria.htm> (English)

This Fair Trials Manual provides a guide to international and regional standards for fair trial which are incorporated in human rights treaties and non-treaty standards. It will assist Amnesty International's staff and other human rights defenders around the world seeking to protect the right to a fair trial. It will also help lawyers, judges, and others to understand international standards for the protection of the right to a fair trial.

## Contents

Preface	<b>Chapter 2 The rights of people in custody to information</b>
Introduction	2.1 Right to be informed immediately of the reasons for arrest or detention
International human rights standards and bodies	2.2 Right to notification of rights
Standards and bodies cited in this manual	2.2.1 Notification of the right to legal counsel
Use of terms	2.3 Right to be informed promptly of any charges
Abbreviations	2.4 Notification in a language the person understands
<b>A. PRE-TRIAL RIGHTS</b>	2.5 Foreign nationals
<b>Chapter 1 The right to liberty</b>	<b>Chapter 3 The right to legal counsel before trial</b>
1.1 The right to liberty	3.1 Right to the assistance of a lawyer
1.2 When is an arrest or detention lawful?	3.1.1 The right to a lawyer in pre-trial stages
1.2.1 European Convention	3.2 Right to choose a lawyer
1.3 When is an arrest or detention arbitrary?	3.3 Right to have a lawyer assigned free of charge
1.4 Who can lawfully deprive a person of their liberty?	3.3.1 Right to competent and effective counsel
1.5 The presumption of release pending trial	3.4 Right of detainees to have access to counsel
	3.4.1 When does a detainee have the right of access to counsel?

- 3.5 Right to time and facilities to communicate with counsel
- 3.6 Right to confidential communication with counsel

#### **Chapter 4 The right of detainees to have access to the outside world**

- 4.1 Right to communicate and receive visits
  - 4.1.1 Incommunicado detention
- 4.2 Right to inform family of arrest or detention and place of confinement
- 4.3 Right of access to family
- 4.4 Rights of access of foreign nationals
- 4.5 Right of access to doctors
  - 4.5.1 When should access to doctors start?

#### **Chapter 5 The right to be brought promptly before a judge or other judicial officer**

- 5.1 The right to be brought promptly before a judge or other judicial officer
  - 5.1.1 Officers authorized to exercise judicial power
- 5.2 What does 'prompt' mean?

#### **Chapter 6 The right to challenge the lawfulness of detention**

- 6.1 Right to challenge the lawfulness of detention
- 6.2 Procedures allowing challenges to lawfulness of detention
- 6.3 Continuing review
- 6.4 This right should always apply
- 6.5 Right to reparation for unlawful arrest or detention

#### **Chapter 7 The right to trial within a reasonable time or to release from detention**

- 7.1 Right to trial within a reasonable time or release pending trial
- 7.2 What is a reasonable time?
  - 7.2.1 Risk of flight
  - 7.2.2 Are the authorities acting with the necessary diligence?

#### **Chapter 8 The right to adequate time and facilities to prepare a defence**

- 8.1 Adequate time and facilities to prepare a defence
- 8.2 What is adequate time?
- 8.3 Access to information
- 8.4 Right to information about charges
  - 8.4.1 When must information about charges be given?
  - 8.4.2 Language
- 8.5 Access to experts

#### **Chapter 9 Rights during interrogation**

- 9.1 Safeguards for people undergoing interrogation
- 9.2 Prohibition against coerced confessions
- 9.3 The right to silence
- 9.4 Right to an interpreter
- 9.5 Records of interrogation
- 9.6 Review of interrogation rules and practices

#### **Chapter 10 The right to humane conditions of detention and freedom from torture**

- 10.1 The right to humane conditions of detention
  - 10.1.1 The right to be held in a recognized place of detention
  - 10.1.2 Records of detention
  - 10.1.3 The right to adequate medical care
- 10.2 Additional safeguards for people in pre-trial custody
- 10.3 Women in custody
- 10.4 Freedom from torture and ill-treatment
  - 10.4.1 Prolonged solitary confinement
  - 10.4.2 Use of force
  - 10.4.3 Physical pressure during interrogation

- 10.4.4 Use of restraints
- 10.4.5 Body searches
- 10.4.6 Medical or scientific experimentation
- 10.4.7 Disciplinary offences
- 10.4.8 Right to reparation for torture or ill-treatment

#### **B. RIGHTS AT TRIAL**

#### **Chapter 11 The right to equality before the law and courts**

- 11.1 The right to equality before the law
- 11.2 The right to equality before the courts
  - 11.2.1 The right to equal access to the courts
  - 11.2.2 The right to equal treatment by the courts

#### **Chapter 12 The right to trial by a competent, independent and impartial tribunal established by law**

- 12.1 The right to trial by a competent, independent and impartial tribunal
- 12.2 The right to be heard by a tribunal established by law
- 12.3 The right to be heard by a competent tribunal
- 12.4 The right to be heard by an independent tribunal
  - 12.4.1 Separation of powers
  - 12.4.2 Appointment and conditions of employment of judges
  - 12.4.3 Assignment of cases
- 12.5 The right to be heard by an impartial tribunal
  - 12.5.1 Challenges to the impartiality of a tribunal

#### **Chapter 13 The right to a fair hearing**

- 13.1 The right to a fair hearing
- 13.2 'Equality of arms'

#### **Chapter 14 The right to a public hearing**

- 14.1 The right to a public hearing
- 14.2 Requirements of a public hearing
- 14.3 Permissible exceptions to a public hearing
- 14.4 Violations of the right to a public hearing

#### **Chapter 15 The presumption of innocence**

- 15.1 The presumption of innocence
- 15.2 The burden of proof
- 15.3 Procedures impinging on the presumption of innocence
- 15.4 After acquittal

#### **Chapter 16 The right not to be compelled to testify or confess guilt**

- 16.1 The right not to be compelled to testify against oneself or confess guilt
- 16.2 The right to silence
- 16.3 Allegations of coercion

#### **Chapter 17 Exclusion of evidence elicited as a result of torture or other compulsion**

- 17.1 Exclusion of evidence elicited by torture or ill-treatment
- 17.2 Exclusion of evidence elicited under duress
  - 17.2.1 Article 8(3) of the American Convention

#### **Chapter 18 The prohibition of retroactive application of criminal laws and of double jeopardy**

- 18.1 The prohibition of prosecution for offences which were not crimes when committed
- 18.2 The prohibition of double jeopardy
  - 18.2.1 The prohibition of double jeopardy under the American Convention
- 18.3 International tribunals

#### **Chapter 19 The right to be tried without undue delay**

- 19.1 The right to trial without undue delay

19.2 What is a reasonable time?

19.2.1 Complexity of the case

19.2.2 Conduct of the accused

19.2.3 Conduct of the authorities

## **Chapter 20 The right to defend oneself in person or through counsel**

20.1 The right to defend oneself

20.2 The right to defend oneself in person

20.3 The right to be defended by counsel

20.3.1 Notice of the right to counsel

20.3.2 Right to choose defence counsel

20.3.3 Right to have defence counsel assigned; right to free legal assistance

20.4 Right to confidential communications with counsel

20.5 Right to experienced, competent and effective defence counsel

20.6 The prohibition of harassment and intimidation of counsel

## **Chapter 21 The right to be present at trial and appeal**

21.1 The right to be present at trial

21.2 Trials in absentia

21.3 The right to be present at appeals

## **Chapter 22 The right to call and examine witnesses**

22.1 Witnesses

22.2 The right of the defence to question witnesses against the accused

22.2.1 Anonymous witnesses

22.2.2 Limitations on the examination of prosecution witnesses

22.3 The right to call and examine defence witnesses

22.4 The rights of victims and witnesses

## **Chapter 23 The right to an interpreter and to translation**

23.1 Interpretation and translation

23.2 The right to a competent interpreter

23.3 The right to have documents translated

## **Chapter 24 Judgments**

24.1 The right to a public judgment

24.2 The right to know the reasons for the judgment

24.3 Judgment within a reasonable time

## **Chapter 25 Punishments**

25.1 When can punishments be imposed?

25.2 What penalties can be imposed?

25.3 Punishments must not violate international standards

25.4 Corporal punishment

25.5 Conditions of imprisonment

25.6 Prohibition of collective punishments

## **Chapter 26 The right to appeal**

26.1 The right to appeal

26.2 Review by a higher tribunal

26.3 Genuine review

26.4 Fair trial guarantees during appeals

## **C. SPECIAL CASES**

### **Chapter 27 Children**

27.1 Children's rights to a fair trial

27.2 Definition of a child

27.3 Guiding principles for the treatment of children in conflict with the law

27.3.1 Separate systems for juvenile justice

27.3.2 Procedures short of trial

27.3.3 Cases involving children must be dealt with speedily

27.3.4 Privacy

27.4 Arrest and pre-trial detention

27.5 Trial

27.6 Judgments

27.7 Punishments

27.7.1 Prohibited punishments

27.8 Imprisoned children

### **Chapter 28 Death penalty cases**

28.1 Abolition of the death penalty

28.2 No retroactive application, but the benefits of reform

28.3 Scope of crimes punishable by death

28.4 People who may not be executed

28.4.1 Juveniles

28.4.2 The elderly

28.4.3 The mentally disabled

28.4.4 Pregnant women and new mothers

28.5 Strict compliance with all fair trial rights

28.5.1 Right to effective counsel

28.5.2 Right to adequate time and facilities to prepare a defence

28.5.3 Right to completion of proceedings without undue delay

28.5.4 Right to appeal

28.6 Right to seek pardon and commutation

28.7 No executions while appeals or clemency petitions are pending

28.8 Adequate time between sentence and execution

28.9 Conditions of imprisonment for prisoners under sentence of death

### **Chapter 29 Special courts and military courts**

29.1 Special or extraordinary courts or tribunals

29.2 Specialized courts

29.3 Right to fair trial in all courts

29.4 Jurisdiction established by law

29.5 Independence and impartiality

29.6 Military courts

29.6.1 Competence, independence and impartiality

29.6.2 Trials of military personnel in military courts

29.6.3 Trials of civilians by military courts

### **Chapter 30 The right to compensation for miscarriages of justice**

30.1 The right to compensation for miscarriages of justice

30.2 Miscarriages of justice

### **Chapter 31 Fair trial rights during states of emergency**

31.1 Derogation

31.2 Necessity and proportionality

31.2.1 Is there a state of emergency?

31.3 Rights that may never be restricted

31.3.1 Judicial guarantees under the Inter-American system

31.4 Standards that do not allow suspension of fair trial rights

31.4.1 Human rights treaties

31.4.2 Non-treaty standards

31.4.2 Humanitarian law

31.6 Compliance with international obligations

### **Chapter 32 Fair trial rights in armed conflict**

32.1 International humanitarian law

32.1.1 International armed conflict

32.1.2 Non-international armed conflict

32.1.3 Non-discrimination

32.1.4 Duration of protection

32.1.5 Fair trial rights

32.2 Before the trial hearing  
32.2.1 Notification  
32.2.2 Presumption of innocence  
32.2.3 Right to be free from compulsion to confess  
32.3 Rights in pre-trial detention  
32.3.1 Women in detention  
32.3.2 Children in detention  
32.4 Rights at trial  
32.4.1 Competent, independent and impartial tribunal

32.4.2 Trial within a reasonable time  
32.4.3 Defence rights  
32.4.4 Protection against double jeopardy  
32.4.5 Protection against retrospective prosecutions or punishments  
32.5 Sentencing in non-death penalty cases  
32.5.1 Prohibition of collective punishments  
32.6 Death penalty cases

---

## Human Rights Monitoring

---

Title: Training Manual on Human Rights Monitoring  
Author: UN  
Source: [http://www.ohchr.org/english/about/publications/docs/train7\\_a.pdf](http://www.ohchr.org/english/about/publications/docs/train7_a.pdf)  
[http://www.ohchr.org/english/about/publications/docs/train\\_ara.htm](http://www.ohchr.org/english/about/publications/docs/train_ara.htm)

This Training Manual provides practical guidance principally for the conduct of human rights monitoring in United Nations field operations, but it may also be useful to other human rights monitors.

### Contents

#### TABLE OF CONTENTS

Note to Manual Users

Foreword

Preface

Part One: Introduction to the Training Manual

Chapter I: Introduction

Part Two: Local Context and International Standards

Chapter II: The Local Context

Chapter III: Applicable International Human Rights and

Humanitarian Law: The Framework

Chapter IV: Overview of International Human Rights  
and Humanitarian Law Standards

Part Three: The Monitoring Function

Chapter V: Basic Principles of Monitoring

Chapter VI: Identification and Prioritization of Efforts  
Regarding Human Rights Violations

Chapter VII: Information Gathering

Chapter VIII: Interviewing

Chapter IX: Visits to Persons in Detention

Chapter XI: Monitoring and Protecting the Human  
Rights of Returnees and Internally

Chapter XII: Children's Rights

Appendix 1 to Chapter XII — Sources of further  
information

Chapter XIII: Trial Observation and Monitoring the  
Administration of Justice

Chapter XVI: Monitoring During Periods of Armed  
Conflict

Chapter XVII: Monitoring Economic, Social and Cultural  
Rights

Chapter XVIII: Background of United Nations  
Monitoring Standards

Chapter XIX: Following-Up and Seeking

Chapter XX: Human Rights Reporting

Chapter XXII: Norms Applicable to UN Human Rights  
Officers and Other Staff

Chapter XXIII: Stress, Vicarious Trauma and Burn-Out

Chapter XXIV: Security

---

## United Nations Training and Educational Material

---

Source: [http://www.ohchr.org/english/about/publications/docs/train7\\_a.pdf](http://www.ohchr.org/english/about/publications/docs/train7_a.pdf)

The **Guide Series** was launched in 2001 with a United Nations Guide for Indigenous Peoples - an information set for indigenous peoples on United Nations operations and procedures. The second publication in the series is the United Nations Guide for Minorities, which consists of 14 pamphlets indicating how minorities can use United Nations human rights procedures and those established by regional mechanisms.

The **Professional Training Series** consists of handbooks and manuals intended to increase awareness of international standards and is directed at target audiences selected for their ability to influence the human rights situation at the national level. Although primarily designed to support the training activities of the Technical Cooperation Programme of the Office of the United Nations High Commissioner for Human Rights, these publications also serve as practical tools for organizations that provide human rights education to professional groups.

The training manuals issued in the Professional Training Series are, by design, adaptable to the needs and experience, in terms of culture, education and history, of a range of potential audiences within the target group. Where appropriate, information on effective pedagogical techniques is included to assist trainers in using the manuals as effectively as possible.

Each manual or handbook is prepared with the assistance of experts in the relevant fields and is subject to extensive external review and appraisal. Where appropriate, manuals or handbooks are tested in training sessions prior to their finalization.

The **Human Rights Education Series** consists of materials aimed at supporting general human rights education efforts by all partners; it includes information on the World Programme for Human Rights Education, a study on human rights education and human rights treaties, a compilation of provisions of international and regional instruments dealing with human rights education and a practical booklet to support human rights education activities in the school system.

## 6. Sources and Links

*What follows is a non-exhaustive list of online links and sources used in the production of this manual. Most of these sites provide links to other useful sites.*

---

### Sources

---

(A) – also contains content in Arabic.

#### Human Rights

📖 What is a Fair Trial? A Basic Guide to Legal Standards and Practice, Lawyers Committee for Human Rights, New York 2000:

[http://www.hrea.org/erc/Library/display.php?doc\\_id=300&category\\_id=13&category\\_type=3&group=](http://www.hrea.org/erc/Library/display.php?doc_id=300&category_id=13&category_type=3&group=).

📖 (A) Amnesty International Fair Trials Manual, Amnesty International, London, 1998: <http://www.amnesty-arabic.org/ftm/index.htm> (Arabic) <http://www.amnesty.org/ailib/intcam/fairtrial/fairtria.htm> (English)

📖 International Standards on the Death Penalty, Amnesty International:

[http://web.amnesty.org/aidoc/aidoc\\_pdf.nsf/index/ACT500101998ENGLISH/\\$File/ACT5001098.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/ACT500101998ENGLISH/$File/ACT5001098.pdf)

📖 United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Minnesota Advocates for Human Rights:

<http://www.mnadvocates.org/printview/4Jun20046.html>

📖 (A) Human Rights in the Administration of Justice - A Manual on Human Rights for Judges, Prosecutors and Lawyers (IBA Manual): <https://webmcdev.oddl.fsu.edu/human-rights/>

📖 Bayefsky <http://www.bayefsky.com/> The purpose of this website is to enhance access to the UN human rights treaty standards, by making materials associated with the treaty system available in electronic and user-friendly form.

📖 (A) University of Minnesota Human Rights Library: <http://www1.umn.edu/humanrts/>

📖 (A) The Torture Reporting Handbook: <http://www.essex.ac.uk/torturehandbook/>

#### Palestinian Legal System

📖 (A) Annual Reports are a good source of both applicable law and violations:

<http://www.piccr.org/report/report.html>

📖 An overview of the Palestinian Legal System by Wadi Fouad Muhaisen:

<http://www.theyap.org/showcase/politicsandlaw/palestinianlegalsystem/>

📖 (A) Waiting for Justice - Al-Haq: 25 Years Defending Human Rights (1979-2004), June 2005:

<http://asp.alhaq.org/zalhaq/site/books/files/Annual%20Report%20Combo.pdf>

📖 (A) Summary of the Israel-PLO 'Interim Agreements':

<http://www.palestinecenter.org/cpap/pubs/20000427ib.html>

📖 (A) Legal Overview in Palestine: <http://lawcenter.birzeit.edu/overview/pa.html>

📖 (A) Documents on a range of categories: <http://www.phrmg.org/PHRMG%20Documents/default.asp>

📖 Israeli Military Orders - Israel Law Resource Centre, includes the full text of some Israeli Military Orders and much of the information in this Manual on Military Orders has been taken from this site:



<http://www.israelawresourcecenter.org/>

📖 (A) Al Muqtafi Online Database, this contains all Palestinian legislation from the Ottomans to the present day and states whether the law is in force. <http://>

## UN Sources

📖 (A) Office of the UN High Commissioner for Human Rights: <http://www.ohchr.org/english/>, <http://www.ohchr.org/arabic/index.htm>

📖 (A) Special Procedures: <http://www.ohchr.org/english/bodies/chr/special/index.htm>

📖 (A) Special Rapporteur on the situation of human rights in the Palestinian territory occupied by Israel since 1967 : <http://www.ohchr.org/english/bodies/chr/special/>

## Regional Sources

📖 African

🖱 African Union: <http://www.africa-union.org/>

🖱 African Commission on Human and Peoples Rights: <http://www.achpr.org/>

🖱 <http://www1.umn.edu/humanrts/africa/>

📖 Arab

🖱 <http://www1.umn.edu/humanrts/instree/arabhrcharter.html>

🖱 (A) <http://www.arableagueonline.org;>

🖱 (A) <http://www.diplomacy.edu/arabcharter/>

📖 European:

🖱 Council of Europe: <http://www.coe.int>

🖱 European Court of Human Rights: <http://www.echr.coe.int/>

🖱 HUDOC, Database of ECHR judgments and decisions: <http://hudoc.echr.coe.int/hudoc/>

📖 Inter-American

🖱 Organization of American States: <http://www.oas.org/>

🖱 Inter-American Commission on Human Rights: <http://www.cidh.org/>

🖱 Inter-American Court of Human Rights: [http://www.corteidh.or.cr/index\\_ing.html](http://www.corteidh.or.cr/index_ing.html)

---

## Links

---

🔗 (A) **Adalah:** <http://www.adalah.org/ara/index.php>

Adalah is an independent human rights organization, registered in Israel. It is a non-profit, non-governmental, and non-partisan legal centre. Established in November 1996, it serves Arab citizens of Israel, numbering over one million people or close to 20% of the population. Adalah ("Justice" in Arabic) works to protect human rights in general, and the rights of the Arab minority in particular. Adalah's main goals are to achieve equal individual and collective rights for the Arab minority in Israel in different fields including land rights; civil and political rights; cultural, social, and economic rights; religious rights; women's rights; and prisoners' rights.

🔗 (A) **Addameer:** <http://www.addameer.org/>

Addameer Prisoners Support and Human Rights Association is a Palestinian NGO established in 1992. The centre offers supports for Palestinian prisoners and works to end torture through monitoring and legal procedures. Legal Aid Program provides legal advice and representation to prisoners and their families, and works on cases of precedent in the issue of torture and fair trials. Regular visits to Palestinian and Arab prisoners and documentation of detainees and any violations suffered. The site has good legal analysis on detention.

🔗 (A) **Al-Haq:** <http://www.alhaq.org>

Al-Haq was established in 1979 by a group of Palestinian lawyers following extended debate over how best to address the lack of human rights protection mechanisms in the Occupied Palestinian Territories (OPT). Founded as Law in the Service of Man, Al-Haq was one of the first human rights organisations established in the Arab world. Al-Haq has been the West Bank Affiliate of the International Commission of Jurists - Geneva for over 20 years and it is a member of the International Federation for Human Rights (FIDH), Habitat International Coalition and the World Organisation Against Torture (OMCT). Al-Haq is also part of the Executive Committee of the Euro-Mediterranean Human Rights Network (EMHRN) and of the Steering Committee of the Palestinian Non-Governmental Organizations' Network (PNGO).

🔗 (A) **Al-Muqtafi:** <http://www.muqtafi.com>

Al-Muqtafi, the acronym in Arabic for the Palestinian Legal and Judicial System, is developed at the Institute of Law (IoL), Birzeit University (BZU), since 1995, by teams of Palestinian legal researchers and computer systems engineers. Al-Muqtafi contains all legislation enacted in Palestine, with relations between legislation (abrogation, modification, consolidation, reliance), from the middle of the nineteenth century until today. It spans the various periods of rule over Palestine: Ottoman, British Mandate, Egyptian in Gaza, Jordanian in the West Bank, Israeli Occupation and Palestinian Authority; a referential database containing details of all legislation enacted in Palestine over the last 150 years; the full text of all laws published in the Palestinian Authority "Palestine Gazette" to-date, and legislation in force from other periods; images (in PDF) of all legislation scanned from original sources; selected case law from all periods, indexed with professional commentary; text of international legal documents dealing with Palestine or the Palestinians anywhere.

🔗 (A) **Amnesty International:** <http://www.amnesty.org/>

Amnesty International (AI) is a worldwide movement of people who campaign for internationally recognized human rights.

🔗 **Amnesty International Links:** <http://web.amnesty.org/links>

Search for theme or country specific external links.

🔗 (A) **Arab Association for Human Rights (HRA):** <http://www.arabhra.org/core/hcredu.htm>

The Arab Association for Human Rights (HRA) was established in 1988 and registered as a non-profit organisation in Israel in 1990. Their mandate is the protection and promotion of international human-rights standards of the Palestinian Arab minority in Israel.

The HRA's activities are divided into three major fields: human-rights education, women's rights, and international advocacy. As an independent grassroots NGO, the HRA focuses on working with the local community. Its goal is to increase awareness of human rights among the Arab minority citizens in Israel. The second major strand of activities involves international advocacy.

🔗 (A) **Arab Human Rights Index:** <http://www.arabhumanrights.org/en/>

The Human Rights Index for the Arab Countries, sponsored by the United Nations Development Programme on Governance in the Arab Region (UNDP-POGAR), is a repository for the entire set of United Nations documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It includes the date of each Arab country's adoption of each treaty, coupled with any reservations, and its responses to periodic reports of the pertinent international committee monitoring the application of the respective treaty. Reservations are referenced by article of the international convention in question, so as to clarify the country's precise stance on the matter.

🔗 **BADIL:** <http://www.badil.org/>

BADIL is a resource centre for Palestinian residency and refugee rights.

🔗 (A) **B'tselem:** <http://btselem.org/index.asp>

B'tselem is the Israeli Information Centre for Human Rights in the Occupied Territories was established in 1989 by a group of prominent academics, attorneys, journalists, and Knesset members. It endeavours to document and educate the Israeli public and policymakers about human rights violations in the Occupied Territories, combat the phenomenon of denial prevalent among the Israeli public, and help create a human rights culture in Israel.

🔗 (A) **Birzeit University, Institute of Law:** <http://lawcenter.birzeit.edu/>

Birzeit University established the Institute of Law in 1993 in order to contribute to the evolution of legal structures and the rule of law in Palestine. The establishment of Palestinian administration and Palestinian exercise of legislative activity in the framework of the present political process have created the need for a venue in which academics and professionals may think systematically and creatively about the challenges facing legal institutions in Palestine, and contribute to building them. Due to the constitutional and legal history of the West Bank and Gaza, legal norms in Palestine urgently need review and the individuals whose function is to study, control or implement them need to acquire or recover high professional standards. In order to fulfil its mandate, the Institute of Law has defined two main objectives: to contribute to the rehabilitation of the legal professions, and to contribute to the preparatory effort for the Palestinian legislative process. Since that time the Institute of Law, through its various activities and programs, has worked to build the capabilities of and instil confidence and respect in the Palestinian legal community. In order to achieve these objectives, the Institute of Law has assigned to itself the following activities: Conducting applied legal research; Offering continuing legal education through conferences, seminars and training courses; Offering a Master of Laws degree; Establishing comprehensive and modern legal information and documentation resources and facilities.

🔗 **CataLaw:** <http://www.catalaw.com/region/Israel.shtml>

CataLaw is a catalogue of worldwide law on the Internet. It aids legal research by arranging all indexes of law and government into a uniform, universal and unique metaindex. This site is a good link to other databases.

🔗 (A) **Centre of Islamic and Middle Eastern Law (CIMEL):** <http://www.soas.ac.uk/Centres/IslamicLaw/>

CIMEL was established in 1990 at the School of Oriental and African Studies, University of London. The analysis of the various systems of law at work in the Islamic and Middle Eastern world as well as an active interaction with Middle Eastern and Muslim lawmakers and scholars are crucial for the future of stability and for the rule of law in its various forms inside each jurisdiction. The rule of law will also determine the parameters of the relationship with Europe and the West generally. In an increasingly small and interdependent world, CIMEL operates as a scholarly legal bridge for research and practice at the crossroad of Islam, the Middle East and the West.

🔗 **HaMoked:** <http://www.hamoked.org.il/>

HaMoked: Centre for the Defence of the Individual is an Israeli human rights organization whose main objective is to assist Palestinians of the Occupied Territories whose rights are violated due to Israel's policies. The site contains information relating to these human rights violations. It gives the texts of Israeli laws and regulations, including those of the Military Government; international conventions; petitions to the Israeli High Court of Justice; claims for compensation for damages; decisions by Israeli and other courts; and other official documents and reports.

🔗 (A) **Human Rights Education Associates:** <http://www.hrea.org/>

Human Rights Education Associates (HREA) is an international non-governmental organisation that supports human rights learning; the training of activists and professionals; the development of educational materials and programming; and community-building through on-line technologies. HREA is dedicated to quality education and training to promote understanding, attitudes and actions to protect human rights, and to foster the development of peaceable, free and just communities. HREA works with individuals, non-governmental organisations, inter-governmental organisations and governments interested in implementing human rights education programmes. This is a fantastic source of material.

🔗 **Human Rights Information and Documentation System (HURISEARCH)** <http://www.hurisearch.org/>

HURISEARCH is a Human Rights search engine which aims to: provide one point access to all human rights information published by human rights organisations worldwide, and particularly human rights NGOs; provide a searching tool with egalitarian and known ranking and indexing principles without regard to commercial agendas; provide a searching tool which is overseen by human rights people specifically to meet human rights needs; provide an easy to use multilingual human rights search engine.

🔗 **Human Rights Internet (HRI)** :<http://www.hri.ca/index.aspx>

Founded in 1976, HRI is a leader in the exchange of information within the worldwide human rights community. Of particular use is the HR Databank.

🔗 (A) **Human Rights Watch:** <http://hrw.org/doc/?t=mideast&c=isrlpa>

Human Rights Watch is dedicated to protecting the human rights of people around the world. It is an independent, nongovernmental organization, supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly.

🔗 (A) **Institute of Law, Birzeit University:** <http://lawcenter.birzeit.edu/>

Birzeit University established the Institute of Law in 1993 in order to contribute to the evolution of legal structures and the rule of law in Palestine.

🔗 (A) **Israel/Palestine Centre for Research and Information:** <http://www.ipcri.org/>

IPCRI, founded in Jerusalem in 1988, is the only joint Palestinian-Israeli public policy think-tank in the world. It is devoted to developing practical solutions for the Israeli-Palestinian conflict. IPCRI deals with the cardinal issues in the Israeli-Arab conflict - issues where the two sides find themselves at loggerheads, and where cooperation is necessary. This site has a good links page.

🔗 (A) **Jerusalem Legal Aid and Human Rights Centre (Mosaada):** <http://www.mosaada.org/moseng/>

JLAC provides legal services to low income or impoverished families and individuals. Having two branches, it is able to offer legal representation in both the Palestinian and Israeli jurisdictions. The majority of cases with which JLAC is involved arise from occupation policies, principally family reunification applications, revocation of residency rights, land confiscation and petitions for travel and entry permits. They also handle cases of arbitrary arrest and detention and pay prison visits to clients in both Israeli and Palestinian prisons.

🔗 (A) **Jerusalem Media and Communications Centre:** <http://www.jmcc.org/>

JMCC was established in 1988 by a group of Palestinian journalists and researchers to provide information on events in the West Bank (including East Jerusalem) and the Gaza Strip. JMCC's Jerusalem and Gaza offices provide a wide range of services to journalists, researchers, international agencies, individuals and organizations interested in obtaining reliable information on the Palestinian territory. This site is a good source for applicable documents.

🔗 **JURIST:** <http://jurist.law.pitt.edu/world/palest.htm>

JURIST (<http://jurist.law.pitt.edu>) is a Web-based legal news and real-time research service from the University of Pittsburgh School of Law in Pittsburgh, Pennsylvania, USA. This site is a good source of information and links.

🔗 **Law Library of US Congress:** <http://www.loc.gov/law/guide/otwbgaza.html>

The mission of the Law Library of Congress is to provide research and legal information to the U.S. Congress as well as to U.S. Federal Courts and Executive Agencies, and to offer reference services to the

public ... To accomplish this mission, it has created the world's largest collection of law books and other legal resources from all countries, and now moves into the age of digitized information with online databases and guides to legal information worldwide.

🔗 (A) **MidEast Web:** <http://www.mideastweb.org/index.html>

MidEast Web was started by people active in Middle East dialog and peace education efforts. Their goal is to weave a world-wide web of Arabs, Jews and others who want to build a new Middle East based on coexistence and neighbourly relations. Their members and staff include distinguished educators, engineers, Web designers and other professionals experienced in dialog, peace education projects and in promoting dialog and coexistence using the Internet. MidEast Web for Coexistence is a registered non-government organization in Israel. This site is a good general source.

🔗 (A) **Palestinian Human Rights Monitoring Group** <http://www.phrmg.org/>

PHRMG was founded in December 1996 in response to the deteriorating state of democracy and human rights under the newly established Palestinian Authority. The group was founded by a diverse group of well-established Palestinians. including Palestinian Legislative Council (PLC) members, newspaper editors, journalists, a union leader, veteran human rights activists and religious leaders. The political composition of its founders is diverse - including members of many Palestinian organizations and institutions - thereby ensuring the non-partisan character of the organization.

🔗 (A) **Palestinian Independent Commission for Citizens' Rights:** <http://www.piccr.org>

PICCR is the first National Human Rights Institution in the Arab World. Its mandate is concentrated on ensuring respect for citizens' rights in Palestine through constantly striving to uphold respect for the rule of law by all official bodies.

🔗 (A) **The Palestine Monitor:** [http://www.palestinemonitor.org/nueva\\_web/](http://www.palestinemonitor.org/nueva_web/)

At the outbreak of the Second Intifada in September 2000, The Palestinian Nongovernmental Organization Network (PNGO) perceived a lack of the Palestinian narrative in the mainstream media. PNGO felt that if people understood the issues of the crisis, heard what the Palestinians had to say, and realized there was 'another side' to the story, eventually public opinion might be influenced and people overseas could be mobilized to put pressure on their governments and representatives – and this way pressure could be brought to bear on Israel – to end the occupation and open the road to a just and durable peace.

PNGO delegated to the Health Development Information and Policy Institute the responsibility of disseminating information and unified messages from Palestinian civil society to the foreign press about local developments by creating The Palestine Monitor.

🔗 **Palestine Center:** <http://www.thejerusalemfund.org/palestinecenter/index.php>

Established in 1991, the Palestine Center is an educational program of The Jerusalem Fund. It is dedicated to analysis of the relationship between the United States and the Middle East, with particular emphasis on Palestine and the Arab-Israeli conflict. The Palestine Center, formerly known as the Center for Policy Analysis on Palestine, provides a much-needed Palestinian/Arab perspective to the political, academic, and media establishments in Washington, D.C. and throughout the U.S.

🔗 (A) **Palestine Centre for Human Rights:** <http://www.pchrgaza.org/>

The Centre is an independent Palestinian human rights organization based in Gaza City. The Centre enjoys Consultative Status with the ECOSOC of the United Nation. It is an affiliate of the International Commission of Jurists-Geneva, the International Federation for Human Rights (FIDH) – Paris, and the Euro-Mediterranean Human Rights Network - Copenhagen, Arab Organization for Human Rights – Cairo.

🔗 (A) **POGAR - An Information Portal Dedicated to Development and Governance in the Arab Region:** <http://www.pogar.org/>

The United Nations Development Programme (UNDP), Regional Bureau for Arab States (RBAS) launched the Programme on Governance in the Arab Region (POGAR) in early 2000. POGAR was developed at the request of Arab governments, and therefore specifically addresses national needs and concerns. POGAR is dedicated to the promotion and development of good governance practices and related reforms in the Arab states; it works in partnership with key governance institutions including legislatures, judiciaries, and civil society organizations to identify needs and solutions. POGAR's activities, which include rendering policy advice, engaging in institutional capacity building, and testing policy options through pilot projects, revolve around three main concepts: 1. Participation; 2. Transparency and Accountability; 3. Rule of Law.



The website's objective is to provide resources and information on governance reform in the Arab states, including general and country-specific essays on the themes pertaining to each concept, related publications, empirical studies, statistics, searchable databases and Web links, in addition to information on POGAR's activities and collaborating institutions.

🔗 (A) **Arab Human Rights Index:** <http://www.arabhumanrights.org/en/>

The Human Rights Index for the Arab Countries, sponsored by the United Nations Development Programme on Governance in the Arab Region (UNDP-POGAR), is a repository for the entire set of United Nations documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. There are seven of these human rights treaty bodies, which meet regularly to monitor the implementation of the respective treaties. The Human Rights Index includes the date of each Arab country's adoption of each treaty, coupled with any reservations, and its responses to periodic reports of the pertinent international committee monitoring the application of the respective treaty. Reservations are referenced by article of the international convention in question, so as to clarify the country's precise stance on the matter. Indexed by source, topic, country, and date, the web interface facilitates cross-country comparisons of progress in adopting international human rights standards. It also provides information about non-government organizations that may be working for the human rights involving any or all of the seven international committees.

🔗 (A) **Ramallah Centre for Human Rights Studies (RCHRS):** <http://www.rchrs.org>

RCHRS is an independent research and studies centre, established in 1998. It aims to spread the culture of human rights, democracy, equality and tolerance through active research and legal and social studies on human rights issues. RCHRS activities are related to human rights law, international treaties, declarations and covenants. In addition, the Centre aims to enhance the profile of human rights and the rule of law in Palestine.

🔗 **Rights International:** <http://www.rightsinternational.org/>

Rights International Research Guide for International Human Rights Lawyers.

🔗 (A) **UNDP:** [www.undp.org](http://www.undp.org)

In 1996, following a request by the Palestinian Authority (PA), and pursuant to the call of the UN Commission on Human Rights, the then Centre for Human Rights signed a programme of technical assistance and advisory services with the PA. The agreement provides for the implementation of a comprehensive technical cooperation programme in the field of human rights in the Gaza Strip and the West Bank. The programme aims to (a) strengthen capacity in the area of rule of law and administration of justice, (b) strengthen the Palestinian Independent Commission on Citizen's rights; (c) strengthen human rights awareness and education; and, (d) mainstream human rights. These aims are approached through working to establish a legal framework consistent with human rights standards, and through supporting Palestinian institutions and organizations in the conduct of legal analysis work. The national human rights action plan would provide a framework for developing capacity, institutions and a culture of human rights as well as an official human rights policy. Beneficiaries include police, prison officials, judges, prosecutors and lawyers, PICCR and local non-governmental organizations (NGOs).

🔗 (A) **Programme of Assistance to the Palestinian People:** <http://192.115.229.1/>

🔗 (A) **Office of the United Nations High Commissioner for Human Rights (OHCHR), Publications Programme:** <http://www.ohchr.org/english/about/publications/>

The goal of the Publications Programme of the Office of the United Nations High Commissioner for Human Rights (OHCHR) is to raise awareness of human rights and fundamental freedoms and to publicize ways of promoting and protecting them at the international level. Another aim is to encourage debate on human rights issues under discussion in United Nations bodies. The Fact Sheet booklets provide information in a nutshell on a wide range of subjects. Special issue papers explore selected issues in greater depth and OHCHR's training and educational material consists of guides, manuals and handbooks for indigenous peoples, minorities, professional groups and educational institutions.

🔗 **Permanent Observer Mission of Palestine to the United Nations:** <http://www.palestine-un.org/>

At this site, you may access information on important issues related to Palestine and the United Nations, as well as information regarding the work and official documents of the Permanent Observer Mission of Palestine to the United Nations. You will also find information on Palestinian affairs including, historical pieces and documents of the Middle East peace process. Featured as well is the monthly publication of Palestine & The UN.

📄 (A) **USAID:** <http://www.usaid.gov/wbg/index.htm>

The United States Agency for International Development (USAID) funds programs that help people living in the West Bank and Gaza lead healthier and more productive lives. It is a good source of information.

📄 **WorldLII Palestinian Database:** <http://www.worldlii.org/catalog/2756.html>

The World Legal Information Institute (WorldLII) is a free, independent and non-profit global legal research facility developed collaboratively by the following Legal Information Institutes and other organisations. WorldLII also includes as part of this searchable collection its own databases not found on other LIIs. Databases of case-law, legislation, treaties, law reform reports, law journals, and other materials are included.

# Annexes

*The following laws are not official translations. The Palestinian Laws are taken from the Al-Muqtafi database developed at the Institute of Law, Birzeit University. Disclaimer: The translation into English of this text was neither done nor edited by the Birzeit University Institute of Law, the BHRC or author. They cannot therefore vouch for its accuracy.*

## **The Amended Basic Law (Promulgated March 18, 2003)<sup>242</sup>**

*In the Name of God, the Merciful and the Compassionate.*

### Introduction

The continuous attachment of the Arab Palestinian people to the land of their fathers and forefathers, on which this people has historically lived, is a fact that has been expressed in the Declaration of Independence, issued by the Palestine National Council. The strength of this attachment is confirmed by its consistency over time and place, by keeping faith with and holding onto national identity, and in the realization of wondrous accomplishments of struggle. The organic relationship between the Palestinian people, their history and their land has confirmed itself in their unceasing effort to prompt the world to recognize the rights of the Arab Palestinian people and their national entity, on equal footing with other nations.

The birth of the Palestinian National Authority in the national homeland of Palestine, the land of their forefathers, comes within the context of continuous and vigorous struggle, during which the Palestinian people witnessed thousands of their precious children sacrificed as martyrs, injured persons and prisoners of war, all in order to achieve their people's clear national rights, the foremost of which are the right of return, the right to self-determination and the right to establish an independent Palestinian state, with Jerusalem as a capital, under the leadership of the Palestine Liberation Organization, the sole, legitimate representative of the Arab Palestinian people wherever they exist.

Within the framework of the interim period, resulting in the Declaration of Principles Agreement, the establishment of the Palestinian National Authority with its three pillars – the legislative, executive and judicial branches – became among the most urgent of national missions. The establishment of the Palestinian Legislative Council, through free and direct general elections, made the adoption of a Basic Law suitable for the interim period a necessary foundation upon which to organize the mutual relationship between the government and the people. It is a first step on the way to determining the distinguishing characteristics of a civil society capable of achieving its independence. At the same time, it is a basic foundation upon which to enact unifying legislation and law for the Palestinian national homeland.

This Basic Law has established a firm foundation, representing the collective conscience of our people, including its spiritual components, its national faith and its nationalist loyalty. The titles of the Basic Law include a group of modern constitutional rules and principles that address public and personal rights and liberties in a manner that achieves justice and equality for all, without discrimination. Further, they ensure the rule of law, strike a balance between the executive, legislative and judicial branches, and draw lines between their respective jurisdictions in a manner that ensures independence to each of them while coordinating their roles to achieve a high national interest that will serve as a guide to all.

---

<sup>242</sup> Published in the Palestine Official Gazette, Special Issue No. 2, March 19, 2003. The original Basic Law was published in the Palestine Official Gazette, Special Issue, July 7, 2002. Further amendments were made in 2005 [The Basic Law of 2005, Concerning the Amendment some of the Provisions of the Amended Basic Law of 2003]. These amendments have been included in this text.



The enactment of this temporary Basic Law for a transitional and interim period constitutes a fundamental step towards the realization of the firm national and historical rights of the Arab Palestinian people. It shall not in any way whatsoever abrogate or cancel their right to continue to strive to achieve their rights of return and self-determination, including the establishment of a Palestinian state with Jerusalem (*al-Quds al-Sharif*) as its capital, which is the first shrine and the third mosque, to which the Prophet Muhammad, *may peace be upon him*, traveled by night, in the land of the nativity of Jesus, *may peace be upon him*.

The provisional character of the Basic Law shall not abrogate the right of any Palestinian, wherever residing, to exercise equal rights with his/her fellow citizens on the soil of the homeland.

This temporary Basic Law draws its strength from the will of the Palestinian people, their firm rights, their continuous struggle and the exercise of their democratic right – as represented in the election of the President of the Palestinian National Authority and the members of the Palestinian Legislative Council – to commence the organization and establishment of a sound, democratic and legislative life in Palestine. At the same time, the enactment and ratification of this law by the Legislative Council does spring from the fact that the Palestine Liberation Organization is the sole and legitimate representative of the Arab Palestinian people.

#### Explanatory Memorandum for the Amended Basic Law

Article 111<sup>243</sup> of the Basic Law provides the Legislative Council with the authority to amend the Basic Law by securing a majority vote of two-thirds of its members. The Council believes that it is necessary to amend the Basic Law to allow for the creation of the position of a Prime Minister in the Palestinian National Authority and to determine his powers and the legal and political controls that will regulate his work, as well as to define and clarify the form of the relationship between him and the President of the Palestinian National Authority and the legislative branch.

This amendment requires rearrangement of some provisions of the original law. Accordingly, the title that deals with the powers of the President of the National Authority is now Title Three in the amended law. On the other hand, the title that deals with the legislative branch has been moved to a subsequent title, which is Title Four.

As for Title Five, dealing with the Council of Ministers, it covers the formation of the government by the Prime Minister, the procedure for obtaining the confidence of the [Legislative] Council, the powers of the Council of Ministers and its head, and the relationship between the Prime Minister and the President of the National Authority.

The Council decided during the review of the amended law that it would not be necessary to add provisions dealing with the Prime Minister's presentation of all matters related to the formation, resignation or dissolution of the cabinet to the President of the National Authority, on the grounds that this is a political tradition that does not require being put into a separate article in the text of the law.

Ahmed Qurei' (Abu Ala')  
Speaker  
The Palestinian Legislative Council

## TITLE ONE

### Article 1

Palestine is part of the larger Arab world, and the Palestinian people are part of the Arab nation. Arab unity is an objective that the Palestinian people shall work to achieve.

---

<sup>243</sup> Editor's note: Article 111 refers to the original text of the Basic Law as published in July 2002. In the Amended Basic Law, it becomes Article 120. The reason for this apparent discrepancy is that the Palestinian Legislator has chosen to integrate the March 2003 amendments into a consolidated text. This has involved numbering anew a substantial part of the original articles.

## Article 2

The people are the source of power, which shall be exercised through the legislative, executive and judicial authorities, based upon the principle of separation of powers and in the manner set forth in this Basic Law.

## Article 3

Jerusalem is the capital of Palestine.

## Article 4

1. Islam is the official religion in Palestine. Respect for the sanctity of all other divine religions shall be maintained.
2. The principles of Islamic *Shari'a* shall be a principal source of legislation.
3. Arabic shall be the official language.

## Article 5

The governing system in Palestine shall be a democratic parliamentary system, based upon political and party pluralism. The President of the National Authority shall be directly elected by the people. The government shall be accountable to the President and to the Palestinian Legislative Council.

## Article 6

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.

## Article 7

Palestinian citizenship shall be regulated by law.

## Article 8

The flag of Palestine shall be of four colors and in accordance with the dimensions and measurements approved by the Palestine Liberation Organization. It shall be the official flag of the country.

## TITLE TWO: PUBLIC RIGHTS AND LIBERTIES

## Article 9

Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, color, religion, political views or disability.

## Article 10

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.

## Article 11

1. Personal freedom is a natural right, shall be guaranteed and may not be violated.
2. 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. The law shall specify the period of prearrest detention. Imprisonment or detention shall only be permitted in places that are subject to laws related to the organization of prisons.

#### Article 12

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 13

1. No person shall be subject to any duress or torture. Indictees and all persons deprived of their freedom shall receive proper treatment.
2. All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this article shall be considered null and void.

#### Article 14

An 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.

#### Article 15

Punishment shall be personal. Collective punishment is prohibited. Crime and punishment shall only be determined by the law. Punishment shall be imposed only by judicial order and shall apply only to actions committed after the entry into force of the law.

#### Article 16

It is unlawful to conduct any medical or scientific experiment on any person without prior legal consent. No person shall be subject to medical examination, treatment or surgery, except in accordance with the law.

Transplantation of human organs and new scientific developments shall be regulated by the law in order to serve legitimate humanitarian purposes.

#### Article 17

Homes shall be inviolable; they may not be subject to surveillance, broken into or searched, except in accordance with a valid judicial order and in accordance with the provisions of the law.

Any consequences resulting from violations of this article shall be considered invalid. Individuals who suffer from such violation shall be entitled to a fair remedy, guaranteed by the Palestinian National Authority.

#### Article 18

Freedom of belief, worship and the performance of religious functions are guaranteed, provided public order or public morals are not violated.

#### Article 19

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 law.

#### Article 20

Freedom of residence and movement shall be guaranteed within the limits of the law.

#### Article 21

1. The economic system in Palestine shall be based on the principles of a free market economy. The executive branch may establish public companies that shall be regulated by a law.
2. Freedom of economic activity is guaranteed. The law shall define the rules governing its supervision and their limits.
3. Private property, both real estate and movable assets, shall be protected and may not be expropriated except in the public interest and for fair compensation in accordance with the law or pursuant to a judicial ruling.
4. Confiscation shall be in accordance with a judicial ruling.

#### Article 22

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.

#### Article 23

Every citizen shall have the right to proper housing. The Palestinian National Authority shall secure housing for those who are without shelter.

#### Article 24

1. Every citizen shall have the right to education. It shall be compulsory until at least the end of the basic level. Education shall be free in public schools and institutions.
2. The National Authority shall supervise all levels of education and its institutions, and shall strive to upgrade the educational system.
3. The law shall guarantee the independence of universities, institutes of higher education, and scientific research centers in a manner that guarantees the freedom of scientific research as well as literary, artistic and cultural creativity. The National Authority shall encourage and support such creativity.
4. Private schools and educational institutions shall comply with the curriculum approved by the National Authority and shall be subject to its supervision.

#### Article 25

1. Every citizen shall have the right to work, which is a duty and honor. The Palestinian National Authority shall strive to provide work for any individual capable of performing it.
2. Work relations shall be organized in a manner that guarantees justice to all and provides workers with welfare, security, and health and social benefits.
3. Organization of unions is a right that shall be regulated by the law.
4. The right to conduct a strike shall be exercised within the limits of the law.

#### Article 26

Palestinians shall have the right to participate in political life, both individually and in groups. They shall have the following rights in particular:

1. To form, establish and join political parties in accordance with the law.
2. To form and establish unions, associations, societies, clubs and popular institutions in accordance with the law.
3. To vote, to nominate candidates and to run as candidates for election, in order to have representatives elected through universal suffrage in accordance with the law.
4. To hold public office and positions, in accordance with the principle of equal opportunities.
5. To conduct private meetings without the presence of police members, and to conduct public meetings, gatherings and processions, within the limits of the law.

#### Article 27

1. Establishment of newspapers and all media means is a right for all, guaranteed by this Basic Law. Their financing resources shall be subject to the scrutiny of the law.
2. Freedom of audio, visual, and written media, as well as freedom to print, publish, distribute and transmit, together with the freedom of individuals working in this field, shall be guaranteed by this Basic Law and other related laws.
3. Censorship of the media shall be prohibited. No warning, suspension, confiscation, cancellation or restriction shall be imposed upon the media except by law, and pursuant to a judicial ruling.

#### Article 28

No Palestinian may be deported from the homeland, prevented or prohibited from returning to or leaving it, deprived of his citizenship, or handed over to any foreign entity.

#### Article 29

Maternal and childhood welfare are national duties. Children shall have the right to:

1. Comprehensive protection and welfare.
2. Not to be exploited for any purpose whatsoever, and not to be permitted to perform work that might damage their safety, health or education.
3. Protection from harmful and cruel treatment.
4. Not to be subjected to beating or cruel treatment by their relatives.
5. To be segregated – in cases where they are sentenced to a penalty that deprives them of their freedom – from adults, and be treated in a manner that is appropriate to their age and aims at their rehabilitation.

#### Article 30

1. Submitting a case to court is a protected and guaranteed right for all people. Each Palestinian shall have the right to seek redress in the judicial system. Litigation procedures shall be organized by law to guarantee prompt settlement of cases.
2. Laws may not contain any provisions that provide immunity to any administrative decision or action or against judicial review.
3. Judicial error shall result in a remedy by the National Authority. Conditions and methods of such remedy shall be regulated by law.

#### Article 31

An independent commission for human rights shall be established pursuant to a law that will specify its formation, duties and jurisdiction. The commission shall submit its reports to the President of the National Authority and to the Palestinian Legislative Council.

#### Article 32

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 remedy to those who suffer from such damage.

#### Article 33

The enjoyment of a balanced and clean environment is a human right. The preservation and protection of the Palestinian environment from pollution for the sake of present and future generations is a national duty.

TITLE THREE:  
THE PRESIDENT OF THE PALESTINIAN NATIONAL AUTHORITY

Article 34

The President of the Palestinian National Authority shall be elected in a general and direct election by the Palestinian people, in accordance with the Palestinian Election Law.

Article 35

Before assuming office, the President shall take the following oath before the Legislative Council and in the presence of the Speaker of the Palestinian National Council and the President of the High Court:

*“I swear by God, the Almighty, to be faithful to the homeland and to its sacred places, to the people and its national heritage, to respect the constitutional system and the law, and to safeguard the interests of the Palestinian people completely, as God is my witness.”*

Article 36

The term of the presidency of the National Authority shall be four years. The President shall have the right to nominate himself for a second term of presidency, provided that he shall not occupy the position of the presidency more than two consecutive terms.

Article 37

1. The office of the President shall be considered vacant in any of the following cases:
  - a. Death;
  - b. Resignation submitted to the Palestinian Legislative Council, if accepted by two-thirds of its members;
  - c. Loss of legal capacity, as per a ruling issued by the High Constitutional Court and subsequently approved by a majority of two-thirds of the members of the Legislative Council.
2. If the office of the President of the National Authority becomes vacant due to any of the above cases, the Speaker of the Palestinian Legislative Council shall temporarily assume the powers and duties of the Presidency of the National Authority for a period not to exceed sixty (60) days, during which free and direct elections to elect a new President shall take place in accordance with the Palestinian Election Law.

Article 38

The President of the National Authority shall exercise his executive duties as specified in this law.

Article 39

The President of the National Authority is the Commander-in-Chief of the Palestinian Forces.

Article 40

The President of the National Authority shall appoint and terminate the services of the National Authority's delegates to foreign countries, international organizations and foreign agencies. The President shall accept the credentials of foreign delegates to the Palestinian National Authority.

Article 41

1. The President of the National Authority shall promulgate the laws voted by the Palestinian Legislative Council within thirty (30) days of their transmittal to him. The President may refer a law back to the Legislative Council with his observations and the reasons of his objection within the same period. Otherwise, the law will be deemed promulgated and will be published in the *Official Gazette*.

2. If the President of the National Authority returns the proposed law to the Legislative Council in conformity with the time limit and conditions specified in the previous paragraph, the Council shall debate the law again. If the Council passes the law a second time by a majority of two-thirds of its members, the proposed law shall be considered approved and shall be immediately published in the *Official Gazette*.

#### Article 42

The President of the National Authority has the right to grant special pardons or to commute sentences. However, general amnesties or amnesties for crimes may not be granted except by law.

#### Article 43

The President of the National Authority shall have the right, in cases of necessity that cannot be delayed, and when the Legislative Council is not in session, to issue decrees that have the power of law. These decrees 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 decrees are presented to the Legislative Council, as mentioned above, but are not approved by the latter, then they shall cease to have the power of law.

#### Article 44

The President's salary, allowances and remuneration shall be determined by law.

#### Article 45

The President of the National Authority shall appoint the Prime Minister and authorize the latter to constitute his government. The President shall have the right to dismiss the Prime Minister or to accept his resignation and to request him to convene the Council of Ministers.

#### Article 46

The Council of Ministers shall assist the President in the performance of the President's duties and exercise of powers, in the manner stipulated in this Basic Law.

### TITLE FOUR: THE LEGISLATIVE AUTHORITY

#### Article 47

1. The Palestinian Legislative Council is the elected legislative authority.
2. The Legislative Council shall assume its legislative and oversight duties as prescribed in its Standing Orders, insofar as they do not contradict the provisions of this law.
3. The term of the Legislative Council shall be four years from the date of its being elected and the elections shall be conducted once each four years in a regular manner.

#### Article (47 bis)

The term of the current Legislative Council shall terminate when the members of the new elected Council take the constitutional oath.

#### Article 48

1. The members of the Legislative Council shall be elected in general, free and direct elections in accordance with the provisions of the Elections Law, which shall determine the number of members, electoral constituencies and electoral system.
2. In the event the position of a member of more than a member of the Legislative Council becomes vacant, the vacancy shall be occupied in accordance with the provisions of the Elections Law.

#### Article 49

Before commencing work, every Member shall take the following oath before the Council:

*"I swear by God, the Almighty, to be faithful to the homeland, to preserve the rights and interests of the people and the nation, to respect the law, and to perform my duties in the best manner, as God is my witness."*

#### Article 50

In its first meeting, the Council shall elect a Speaker, two Deputies to the Speaker, and a Secretary-General. Together, they shall make up the Office of the Legislative Council. It shall not be permitted to be a member of the Office and hold at the same time the position of President of the National Authority, or Minister, or any other governmental position.

#### Article 51

The Council shall accept the resignation of its Members and establish its own Standing Orders, as well as procedures for questioning its Members, in a manner that does not contradict the provisions of this Basic Law or general constitutional principles. The Council shall be solely responsible for maintaining order and security during sessions and committee meetings. Security personnel may not be present in the Council premises unless requested by the Speaker or by a Committee Chair, as the circumstances may require.

#### Article 52

The President of the Palestinian National Authority shall open the first ordinary session of the Council and deliver an opening address.

#### Article 53

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 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.
3. No Member of the Legislative Council shall be required during the period of membership, or subsequently, to testify on any subject regarding Council-related actions, statements or information obtained as a result of membership in the Council, unless the Member voluntarily agrees to do so and has the prior consent of the Council.
4. No penal measures shall be taken against any Member of the Legislative Council unless a Member is found red-handed in the commission of a crime. The Council shall be notified immediately about measures taken against a Member so that the Council may decide upon its proper course of action in the matter. The Office of the Council shall assume this responsibility if the Council is not in session.
5. A Member of the Legislative Council shall not relinquish parliamentary immunity without the prior permission of the Council. Immunity shall not lapse after membership in the Council ceases but shall be subject to the limits prevailing during the membership period.

#### Article 54

1. A Member of the Legislative Council may not exploit Council membership in any type of private business or in any manner whatsoever.
2. Members of the Legislative Council shall present financial statements for themselves, their spouse and their minor children that detail their wealth, including real estate and movable property both inside Palestine and abroad, as well as debts. These statements shall be kept in sealed confidential envelopes at the High Court of Justice and may not be accessed unless permitted by the Court and within the limits it allows.



#### Article 55

Allocations, rights and obligations of the members of the Legislative Council and Ministers shall be determined by law.

#### Article 56

Each Member of the Council shall have the following rights:

1. To submit to the executive branch all legitimate requests necessary to enable the Member to carry out parliamentary functions.
2. To propose laws. Rejected proposals may not be resubmitted within the same term.
3. To address inquiries and interpellations to the government, to any Minister or to others of similar rank. Interpellations may only be discussed seven days after submission, unless the addressee agrees to reply immediately or within a shorter period. However, the seven-day period can be shortened to three days in urgent cases and with the approval of the President of the National Authority.

#### Article 57

1. Following an interpellation, a minimum of ten Members of the Council may submit a request to withdraw confidence from the government or from any Minister. Voting on such a request may not be held earlier than three days after submission. A decision may be issued by approval of the majority of the Council's Members.
2. Withdrawal of confidence shall result in termination of the term of the party from whom confidence was withdrawn.

#### Article 58

The Council may form special committees or entrust one of its committees to conduct information gathering and fact-finding regarding any public matter or regarding any public institution.

#### Article 59

The Legislative Council shall approve the General Development Plan. The law shall specify the way to prepare and present the Plan to the Council.

#### Article 60

The law shall regulate the specific rules governing the preparation and approval of the general budget and disbursement of funds appropriated in it, as well as any attached budgets, developmental budgets, budgets for public institutions and services, and budgets for any project in which the government's investment comprises at least 50% of its capital.

#### Article 61

Taking into consideration the provisions of Article 90 of this Basic Law:

1. The government shall present the draft budget to the Legislative Council at least two months prior to the start of the fiscal year.
2. The Legislative Council shall convene a special session to discuss the annual draft budget. It shall either ratify it with the necessary amendments prior to the start of the new fiscal year or send it back to the government, within a period not exceeding one month from the date of receipt. The returned draft budget shall include the Council's observations so that its requirements can be fulfilled and the draft budget resubmitted to the Legislative Council for approval.
3. The Council's voting on the general budget shall be title by title.
4. Transfer of funds between the various budget titles is not permitted unless it is agreed upon between the Legislative Council and the Executive branch.

## Article 62

The final accounts of the National Authority's budget shall be presented to the Legislative Council no later than one year after the end of the fiscal year. The Council shall vote on the final accounts title by title.

## TITLE FIVE: THE EXECUTIVE AUTHORITY

## Article 63

The Council of Ministers (the "government") is the highest executive and administrative instrument; it shoulders the responsibility for implementing the program that has been approved by the legislative branch. Except for the executive powers of the President of the National Authority, as specified in this Basic Law, executive and administrative powers shall be within the competence of the Council of Ministers.

## Article 64

1. The Council of Ministers shall comprise a Prime Minister and a number of Ministers, not to exceed twenty-four (24) in number.
2. The appointment shall identify to which Ministry each Minister shall be assigned.

### *Formation of the Government*

## Article 65

1. Once appointed by the President of the Palestinian National Authority, the Prime Minister shall form a government within three weeks of the date of appointment. There shall be a right to an extension of a maximum of two weeks.
2. If the Prime Minister fails to form a government within the stated deadline or does not obtain the confidence of the Legislative Council, then the President of the National Authority shall appoint another Prime Minister within two weeks of the passing of the deadline or the date of the confidence session, whichever applies. Provisions contained in the above paragraph 1 shall apply to the new Prime Minister.

### *Confidence in the Government*

## Article 66

1. Once the Prime Minister selects the members of the government, the Prime Minister shall submit a request to the Legislative Council to hold a special session for a vote of confidence. The vote of confidence shall take place after hearing and discussing the written ministerial declaration which specifies the program and policy of the government. The session shall be held no later than one week from the date of submission of the request.
2. The vote of confidence shall be cast for the Prime Minister and the members of the government together, unless the absolute majority of the members of the Legislative Council decides otherwise.
3. Confidence shall be granted to the government if it obtains the affirmative vote of the absolute majority of the Members of the Palestinian Legislative Council.

## Article 67

After obtaining the vote of confidence and before assuming their offices, the Prime Minister and members of the government shall take the constitutional oath, stipulated in Article 35 of this Basic Law, before the President of the National Authority.

### *Powers of the Prime Minister*

## Article 68

The Prime Minister shall exercise the following powers:

1. To form or modify the composition of the Council of Ministers, to dismiss or accept the resignation of any of its members, or to fill a vacant position.
2. To convene the Council of Ministers for weekly meetings, or when necessary, or upon a request from the President of the National Authority, as well as to set its agenda.
3. To preside over sessions of the Council of Ministers.
4. To manage the affairs of the Council of Ministers.
5. To oversee the work of the Ministers and public institutions dependent on the government.
6. To issue necessary decisions within the Prime Minister's competence in accordance with the law.
7. To sign and issue regulations approved by the Council of Ministers.
8. The Prime Minister shall appoint a Minister to serve as deputy and to assume the duties of the Prime Minister, if the Prime Minister is absent.

#### *Powers of the Council of Ministers*

#### Article 69

The Council of Ministers shall exercise the following powers:

1. To devise general policies within the limits of its jurisdiction and in light of the ministerial program approved by the Legislative Council.
2. To implement general policies adopted by the relevant Palestinian authorities.
3. To prepare the general budget for presentation to the Legislative Council.
4. To prepare the administrative apparatus, set its structure and provide it with all necessary means, as well as to supervise it and follow up on it.
5. To follow up on the implementation of laws and to ensure compliance with their provisions, taking necessary actions in this regard.
6. To supervise the performance of the ministries and all other components of the administrative apparatus in respect of their duties and functions, as well as to coordinate between them.
7. To be responsible for maintaining public order and internal security.
8. To discuss with various governmental bodies relevant to paragraphs 6 and 7 above their proposals and policies with regard to implementation of their respective responsibilities.
9. (a) To establish or dissolve agencies, institutions, authorities and similar administrative units belonging to the executive apparatus of the government, provided that each shall be regulated by law.  
(b) To appoint heads of institutions and agencies mentioned above in subparagraph (a), and to supervise them in accordance with the provisions of the law.
10. To specify the respective areas of responsibilities of all ministries, agencies and institutions, that report to the executive branch, and others of similar status.
11. To assume any other responsibility assigned to it, in accordance with the provisions of the law.

#### Article 70

The Council of Ministers shall have the right to transmit draft laws to the Legislative Council, to issue regulations and to take necessary actions to implement laws.

#### Article 71

Each Minister shall exercise the following powers and functions within their respective ministry:

1. To propose the general policy for the ministry and to supervise its implementation after approval.
2. To supervise the conduct of affairs in the ministry and to issue necessary instructions therefore.
3. To implement the general budget within the funds allocated for the ministry.
4. To propose bills and legislation related to the ministry and to present them to the Council of Ministers.
5. A Minister may delegate certain powers to a Deputy Minister or to other senior officers in the ministry, within limits set by the law.

#### Article 72

Each Minister shall submit detailed reports to the Council of Ministers on the activities, policies, plans and achievements of their respective ministry in comparison with the objectives specified for the ministry within the

framework of the General Plan, including the ministry's proposals and recommendations concerning its future policies.

These reports shall be submitted regularly every three months, so that the Council of Ministers remains well informed and has sufficient information about the activities and policies of each ministry.

#### *Meetings of the Council of Ministers*

##### Article 73

1. Upon invitation of the Prime Minister, the Council of Ministers shall meet periodically every week, or whenever necessary. Persons other than Ministers may not attend these meetings, unless there is a prior invitation from the Prime Minister.
2. The meetings of the Council of Ministers shall be documented.

#### *Accountability of the Prime Minister and Ministers*

##### Article 74

1. The Prime Minister is accountable to the President of the National Authority for his actions and the actions of his government.
2. Ministers are accountable to the Prime Minister, each within the limits of their jurisdiction and for the actions of their respective ministry.
3. The Prime Minister and members of the government are jointly and individually accountable to the Legislative Council.

##### Article 75

1. The President of the National Authority shall have the right to refer the Prime Minister for investigation as a result of crimes attributed to the Prime Minister during, or due to, the performance of official duties, in accordance with the provisions of law.
2. The Prime Minister shall have the right to refer any Minister for investigation based on any of the reasons mentioned in the above paragraph 1, in accordance with the provisions of law.

##### Article 76

1. Any accused Minister shall be suspended from the performance of official duties immediately upon the issuance of an indictment. The termination of service shall not prevent continuing the investigation or follow-up procedures.
2. The Attorney General, or a representative from the Public Prosecution, shall undertake the investigation and indictment procedures. If a trial ensues, it shall be conducted before an appropriate tribunal and shall follow the provisions and procedures prescribed in the Penal Code and in the Law of Criminal Procedure.
3. The above provisions shall apply to Deputy Ministers, Assistant Ministers and others of similar rank.

#### *Vote of No Confidence*

##### Article 77

1. A minimum of ten Members of the Legislative Council may submit a request to the Speaker to hold a special session to withdraw confidence from the government or from any Minister after an investigation.
2. The date of the first session shall be specified three days after the date of submitting the request. The session shall not be held later than two weeks after the date of the request.

##### Article 78

1. A vote of no confidence in the Prime Minister and the government shall require an absolute majority of the Members of the Palestinian Legislative Council.

2. A vote of no confidence in the Prime Minister and the government shall result in the termination of their term.
3. Upon the completion of the term of the Prime Minister and the government, they will temporarily exercise their powers in the capacity of a caretaker government, during which they may make decisions only insofar as they are necessary for the conduct of executive affairs until a new government is formed.

#### Article 79

1. In case the Legislative Council, by an absolute majority, casts a vote of no confidence in the Prime Minister, or in the Prime Minister and the members of the government collectively, the President of the National Authority shall present a new Prime Minister who will take over from the former within a period not to exceed two weeks from the date of the vote of no confidence. The new Prime Minister shall be subject to the provisions of this title.
2. In case the Legislative Council casts a vote of no confidence in one or more members of the government, the Prime Minister shall present the new member or members to the following session, provided that it takes place within two weeks of the date of the no confidence vote.
3. (a) Any addition or change that affects a portfolio, a Minister, or more than a Minister shall be considered a ministerial reshuffle, so long as it affects less than one-third of the members of the Council of Ministers.  
(b) Upon a ministerial reshuffle, the addition of a Minister, or the filling of a vacancy, for any reason, the new Minister or Ministers shall be presented at the very next session of the Legislative Council, which shall occur no later than two weeks from the date of the reshuffle or the occurrence of the vacancy, for a vote of confidence in accordance with the provisions of this article.
4. Neither the Prime Minister nor any of the Ministers shall assume their duties until they have obtained the confidence of the Legislative Council.

#### *Financial Liability of Members of Council of Ministers*

#### Article 80

1. The Prime Minister and each Minister shall submit a financial statement for themselves, their spouse and their minor children that details what they own in real estate, movable property, stocks, bonds, cash money and debts, whether inside Palestine or abroad, to the President of the National Authority, who shall make the necessary arrangements to maintain their secrecy. Such information shall remain confidential and may not be accessed unless permitted by the High Court when necessary.
2. Neither the Prime Minister nor any Minister may purchase or lease any property belonging to the State or to any public entity, or have a financial interest in any contract concluded with any governmental or administrative body, nor may they, during their terms of office, be board members in any company, or practice commerce or any other profession, or receive a salary or any other financial reward or remuneration from any person in any capacity whatsoever, other than the single salary determined for Ministers and the relevant allowances.

#### *Remuneration and Allowances of Prime Minister and Ministers*

#### Article 81

Remuneration and allowances for the Prime Minister, Ministers and others of similar rank shall be determined by the law.

#### Article 82

The appointed Prime Minister and all Ministers shall be Palestinians who enjoy full civil and political rights.

#### Article 83

The government shall be considered dissolved and shall be reformed in accordance with the provisions of this title in the following cases:

1. Upon the commencement of a new term of the Legislative Council.

2. After a vote of no confidence in the Prime Minister, in the Prime Minister and the government, or in one-third or more of the total number of Ministers.
3. Upon any addition, change, vacancy, or dismissal that involves at least one-third of the Council of Ministers.
4. Upon the death of the Prime Minister.
5. Upon the resignation of the Prime Minister, or the resignation of one-third or more of the members of government.
6. Upon the dismissal of the Prime Minister by the President of the National Authority.

### *Security Forces and Police*

#### Article 84

1. The Security Forces and the Police are regular forces. They are the armed forces in the country. Their functions are limited to defending the country, serving the people, protecting society and maintaining public order, security and public morals. They shall perform their duties within the limits prescribed by law, with complete respect for rights and freedoms.
2. The law shall regulate the Security Forces and the Police.

### *Local Administration*

#### Article 85

1. The law shall organize the country into local administrative units, which shall enjoy juridical personality. Each unit shall have a council elected directly, as prescribed by law.
2. The law shall specify the areas of responsibility of the local administrative units, their financial resources, their relations with the central authority and their role in the preparation and implementation of development plans. The law shall specify the aspects of oversight over these units and their various activities.
3. Demographic, geographic, economic and political parameters shall be taken into consideration at the time of defining the administrative divisions so as to preserve the territorial unity of the homeland and the interests of the communities therein.

### *Public Administration*

#### Article 86

The appointment of all public officials and governmental staff, and the conditions of their employment, shall be in accordance with the law.

#### Article 87

The law shall regulate all affairs related to civil service. The Civil Service Department shall, in coordination with the relevant governmental bodies, upgrade and develop public administration. Its advice shall be sought upon drafting laws and regulations that deal with public administration and civil servants.

### *Public Finance*

#### Article 88

Public taxes and duties shall be imposed, amended and repealed only by law. No one may be totally or partially exempted, except in circumstances prescribed by law.

#### Article 89

The law shall state the provisions concerning the collection of public funds and the procedures for spending therefrom.

#### Article 90

The law shall specify the beginning and the end of the fiscal year, and shall regulate the public budget. If the public budget is not approved by the beginning of the new fiscal year, expenditures shall continue on the basis of a monthly allocation of one-twelfth (1/12) of the previous fiscal year's budget, for each month.

#### Article 91

1. All revenues received – including taxes, duties, loans, grants and profits accruing to the Palestinian National Authority from managing its property or activities – shall be paid to the Public Treasury. No part of the Public Treasury funds may be allocated or spent for any purpose whatsoever except in accordance with the law.
2. In accordance with the provisions of law, the Palestinian National Authority may form a strategic financial reserve, to encounter fluctuations and emergency situations.

#### Article 92

Public borrowing shall be concluded by law. It is not permitted to commit to a project which would require spending funds from the Public Treasury at a later stage unless approved by the Legislative Council.

#### Article 93

1. The law shall regulate the Monetary Authority, banks, the securities market, foreign exchange and insurance companies and all financial and credit institutions.
2. The Governor of the Monetary Authority shall be appointed per a decision issued by the President of the National Authority and endorsed by the Palestinian Legislative Council.

#### Article 94

The law shall specify rules and procedures for granting privileges or imposing obligations related to the utilization of natural resources and public facilities. The law shall also detail the ways and means of dealing with real estate owned by the state and other public legal personalities, and the rules and procedures regulating them.

#### Article 95

The law shall specify the rules for granting wages, remuneration, pensions, subsidies and allowances incurring to the state's treasury. The law shall also specify the bodies that will be responsible for their implementation. No exceptional funds shall be spent except within limits specified legally.

#### Article 96

1. A Financial and Administrative Auditing Bureau shall be established by law to provide financial and administrative oversight to all apparatus and bodies of the National Authority, which shall include monitoring the collection of public revenues and spending therefrom, within the limits of the budget.
2. The Bureau shall submit to the President of the National Authority and to the Legislative Council a report annually, or upon request, about its work and observations.
3. The Chief of the Financial and Administrative Auditing Bureau shall be appointed pursuant to a decision issued by the President of the National Authority and endorsed by the Palestinian Legislative Council.

### TITLE SIX: THE JUDICIAL AUTHORITY

#### Article 97

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

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.

#### Article 99

1. Appointment, transfer, secondment, delegation, promotion and questioning of judges shall be as prescribed in the Judicial Authority Law.
2. Judges may not be dismissed except in cases that are allowed in the Judicial Authority Law.

#### Article 100

A High Judicial Council shall be created. The law shall specify the way it is constituted, its responsibilities and its operating rules. The High Judicial Council shall be consulted about draft laws relating to the Judicial Authority, including the Public Prosecution.

#### Article 101

1. Matters governed by *Shari'a* law and matters of personal status, shall come under the jurisdiction of *Shari'a* and religious courts, in accordance with the law.
2. Military courts shall be established by special laws. Such courts may not have any jurisdiction beyond military affairs.

#### Article 102

Administrative courts may be established by law, to consider administrative disputes and disciplinary claims. Any other jurisdiction of such courts, and procedures to be followed before them, shall be specified by the law.

#### Article 103

1. A High Constitutional Court shall be established by law to consider:
  - (a) The constitutionality of laws, regulations, and other enacted rules.
  - (b) The interpretation of the Basic Law and legislation.
  - (c) Settlement of jurisdictional disputes which might arise between judicial entities and administrative entities having judicial jurisdiction.
2. The law shall specify the manner in which the High Constitutional Court is formed and structured, the operating procedures it will follow and the effects resulting from its rulings.

#### Article 104

The High Court shall temporarily assume all duties assigned to administrative courts and to the High Constitutional Court, unless they fall within the jurisdiction of other judicial entities, in accordance with applicable laws.

#### Article 105

Court hearings shall be public, unless a court decides to make them *in camera* due to considerations related to public order or public morals. In all cases, the sentence shall be pronounced in a public hearing.

#### Article 106

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. The aggrieved party may file a case directly to the competent court and the National Authority shall guarantee a fair remedy for him.



## *The Public Prosecution*

### Article 107

1. The Attorney General shall be appointed pursuant to a decision issued by the President of the National Authority, based upon a nomination submitted by the High Judicial Council.
2. The Attorney General shall handle and assume public cases, in the name of the Palestinian Arab people. The jurisdiction, functions and duties of the Attorney General shall be specified by law.

### Article 108

1. The law shall specify the manner of forming the Public Prosecution service, and its jurisdiction.
2. The law shall determine the conditions for appointing, transferring and dismissing members of the Public Prosecution service and the rules of their accountability.

### Article 109

A death sentence pronounced by any court may not be implemented unless endorsed by the President of the Palestinian National Authority.

## TITLE SEVEN: STATE OF EMERGENCY PROVISIONS

### Article 110

1. 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, armed insurrection or in times of natural disaster, for a period not to exceed thirty (30) days.
2. The state of emergency may be extended for another period of thirty (30) days if a two-thirds majority of the members of the Legislative Council vote in favor of the extension.
3. The decree declaring a state of emergency shall state its purpose, the region to which it applies and its duration.
4. The Legislative Council shall have the right to review all or some of the procedures and measures adopted during the state of emergency, at the first session convened after the declaration of the state of emergency or in the extension session, whichever comes earlier, and to conduct the necessary interpellation in this regard.

### Article 111

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 emergency.

### Article 112

Any arrest resulting from the declaration of a state of emergency shall be subject to the following minimum requirements:

1. Any detention carried out pursuant to a state of emergency decree shall be reviewed by the Attorney General, or by the appropriate court, within a time period not to exceed fifteen (15) days from the date of detention.
2. The detained individual shall have the right to select and appoint a lawyer.

### Article 113

The Palestinian Legislative Council may not be dissolved or its work hindered during a state of emergency, nor shall the provisions of this title be suspended.

#### Article 114

All provisions regulating states of emergency that were applicable in Palestine prior to the entry into force of this Basic Law shall be cancelled, including the [British] Mandate Defense (Emergency) Regulations issued in the year 1945.

### TITLE EIGHT: GENERAL & TRANSITIONAL PROVISIONS

#### Article 115

The provisions of this Basic Law shall apply during the interim period and may be extended until the entry into force of the new Constitution of the State of Palestine.

#### Article 116

Laws shall be promulgated in the name of the Palestinian Arab people and shall be published immediately in the *Official Gazette*. These laws shall come into force thirty (30) days from the date of their publication, unless the law states otherwise.

#### Article 117

Laws shall apply only to that which occurs after their entry into force. It may be stipulated otherwise when necessary, except for penal matters.

#### Article 118

Laws, regulations and decisions in force in Palestine before the implementation of this law shall remain in force to the extent that they do not contradict the provisions of this Basic Law, until they are amended or repealed, in accordance with the law.

#### Article 119

All legal provisions that contradict the provisions of this Amended Basic Law are repealed.

#### Article 120

The provisions of this Amended Basic Law may not be amended except by a majority vote of at least two-thirds of the members of the Palestinian Legislative Council.

#### Article 121

This Amended Basic Law shall be effective as of its publication in the *Official Gazette*.

Issued in Ramallah City on March 18, 2003  
Corresponding to Muharam 15, 1424 H.

Yasser Arafat  
Chairman of the Executive Committee of the  
Palestine Liberation Organization, and  
President of the Palestinian National Authority

## **Law No 1 of 2002 on the Judicial Authority** (Promulgated May 14, 2002)

The Chairman of the Executive Committee of the Palestine Liberation Organization,  
The President of the Palestinian National Authority

After reviewing:

The Law on the Independence of the Judiciary No. 19/1955, in force in the West Bank Districts;  
The Courts Ordinance No. 31/1940, in force in the Gaza Strip Districts;  
The Law on the Formation of the Courts, No. 26/1952, in force in the West Bank Districts;  
The Civil Service Law No. 4/1998;  
The Social Insurance and Retirement Law, No. 8/1964;  
Order No. 473/1956, issued by the Administrative Governor General, regarding the Jurisdiction of Public Prosecution, in force in the Gaza Strip Districts; and  
Decree No. 286/1995, regarding the formation of the Consultation and Legislation Department [at Ministry of Justice];

And after the adoption of the Legislative Council,

We have promulgated the following law.

### TITLE ONE: GENERAL PRINCIPLES AND PROVISIONS

#### Article 1

The Judicial Authority is independent. No other authority shall interfere with the judiciary or with the affairs of justice.

#### Article 2

Judges are independent and shall not be subject, in the exercise of their judicial function, to any authority other than the authority of the law.

#### Article 3

1. The Judicial Authority shall have its own budget, which shall appear as an independent section in the annual public budget of the Palestinian National Authority.
2. The High Judicial Council shall prepare the draft budget and transmit it to the Minister of Justice in order for the latter to fulfill the legal requirements according to the provisions of the Law on the Organization of the Budget and Public Finance.
3. The High Judicial Council shall supervise the implementation of the budget of the Judicial Authority.
4. The budget of the Judicial Authority shall be subject to the provisions of the Annual Budget Law of the Palestinian National Authority.

#### Article 4

Arabic shall be the official language used in courts. The court shall hear the statements of non-Arabic speaking litigants or witnesses through a sworn interpreter.

#### Article 5

Judgements shall be issued and executed in the name of the Arab Palestinian people. Judgements shall specify the reasons upon which they are based.

## TITLE TWO: THE COURTS

### CHAPTER ONE: TYPES AND LEVELS OF COURTS

#### Article 6

Courts in Palestine shall consist of the following:

First: *Shari'a* and Religious Courts, organized by law.

Second: A High Constitutional Court, organized by law.

Third: Regular courts, that consist of:

1. A High Court, which consists of:
  - (a) The Court of Cassation; and
  - (b) The High Court of Justice.
2. Courts of Appeal.
3. Courts of First Instance.
4. Conciliation Courts.

Each court shall consider cases submitted to it according to the law.

#### Article 7

The formation of courts and their respective areas of jurisdiction shall be specified by the law.

#### *The High Court*

#### Article 8

1. The High Court shall be comprised of a President, one or more Vice-Presidents and a sufficient number of Judges.
2. The permanent seat of the High Court shall be in Jerusalem. The court shall convene temporarily in Gaza and in Ramallah cities, according to the situation.

#### *The Technical Office*

#### Article 9

1. A Technical Office shall be established at the High Court. It shall be chaired by one of the judges of the High Court, assisted by a number of judges, retired judges or senior lawyers selected by the High Judicial Council for two years subject to renewal.
2. The Technical Office shall be provided with a sufficient number of employees.

#### Article 10

The Technical Office shall be responsible for the following:

1. Draw the legal principles adopted by the High Court from the judgements it renders, classify them and monitor their publication, after presenting them to the President of the High Court.
2. Conduct the necessary research.
3. Any other matter required by the President of the High Court.

#### *Courts of Appeal*

#### Article 11

1. The Courts of Appeal shall be established in Jerusalem, Ramallah and Gaza.

2. Each Court of Appeal shall consist of a President and a sufficient number of Judges.

#### *Courts of First Instance*

##### Article 12

1. The seats of Courts of First Instance shall be in the centers of the governorates.
2. Each Court of First Instance shall be comprised of a President and a sufficient number of Judges.
3. Courts of First Instance may convene in any place outside their local jurisdiction whenever necessary, pursuant to a decision issued by the President of the High Court to make such a change.

#### *Conciliation Courts*

##### Article 13

1. Within the circuit of each Court of First Instance, one or more Conciliation Court, as necessary, shall be established. The Minister of Justice shall issue a decision specifying their respective seats and jurisdictional circuits.
2. Conciliation Courts may convene in any place within their jurisdictional circuit, whenever necessary, pursuant to a decision issued by the President of the Court of First Instance.

### CHAPTER TWO: JURISDICTION OF THE COURTS

##### Article 14

Regular courts shall consider and settle all disputes and crimes, except those excluded by a special provision of law. The authority of the judiciary shall be exercised over all persons.

#### *Court Sessions*

##### Article 15

1. Court sessions shall be open and public, unless the court decides *sua sponte* or at the request of one of the litigants that proceedings be held *in camera* for reasons of morality or to maintain public order. In all cases, pronouncement of the judgement shall be made in a public session.
2. The presiding judge is responsible for the organization and orderly process of the session.

### TITLE THREE: JUDGES

#### CHAPTER ONE: APPOINTMENT, PROMOTION, AND SENIORITY OF JUDGES

##### Article 16

A member assigned to the judiciary shall fulfill the following requirements:

1. Must possess Palestinian nationality and enjoy full legal capacity.
2. Must hold a license (BA degree) in law or *Shari'a* and law from a recognized university.
3. Must not have been condemned by a court or a disciplinary council on a matter involving breach of honor, even if having since been rehabilitated or covered by a general amnesty.
4. Must be of good conduct and repute as well as medically fit to assume the position.
5. Must terminate membership in any party or political organization upon appointment.
6. Must have good command of the Arabic language.

##### Article 17

The High Judicial Council shall develop a system to train and prepare judges before they assume their judicial functions.

## Article 18

1. Judicial positions shall be filled pursuant to a decision by the President of the National Authority, based upon a nomination from the High Judicial Council and in the following manner:
  - (a) Initially, by appointment.
  - (b) By promotion based upon seniority while taking competence into consideration.
  - (c) By appointment through transfer from Public Prosecution.
  - (d) By secondment from a sister country.
2. A judge on secondment must satisfy all the criteria set forth in Article 16 of this law except for the requirement of Palestinian nationality, provided the judge on secondment is an Arab national.
3. Appointment or promotion shall be effective as of the date the relevant decision is issued.

## Article 19

1. The following may be appointed judges in the Conciliation Courts, Courts of First Instance and Appeal, or members of the Public Prosecution:
  - (a) Former judges and members of the Public Prosecution.
  - (b) Lawyers.
  - (c) Teaching staff of faculties of law and faculties of *Shari'a* and law.The High Judicial Council shall issue general guidelines regarding the length of experience required for appointment from each category mentioned in the above Paragraph 1 and any other experience deemed comparable to a judicial function.
2. To be appointed as a Presiding Judge of a Court of Appeal, one must have sat and worked for a period of not less than five years on a panel of a Court of Appeal.

## Article 20

1. A Judge appointed to the High Court shall satisfy the following criteria:

One must have worked for at least three years as a Judge in a Court of appeal, or for the equivalent in public prosecution, or for at least ten years as a lawyer.
2. To be appointed as President or Vice-President of the High Court, one must have sat and worked for no less than three years on chambers of the High Court, or worked as a lawyer for no less than fifteen years.

## Article 21

1. Prior to assuming their work for the first time, judges shall take the following oath:
2. *"I swear by God, the Almighty, to judge among people fairly and to respect the Constitution and the law."*
3. The President of the High Court shall take the oath before the President of the state. All other Judges shall take the oath before the High Judicial Council.

## CHAPTER TWO: TRANSFER, SECONDMENT AND LOAN OF JUDGES

## Article 22

Judges may not be transferred, seconded or loaned other than in the manner and cases indicated in the law.

## Article 23

1. Judges may not be transferred or seconded to perform non-judicial tasks against their will.
2. Transfer or secondment of judges shall be carried out pursuant to a decision by the High Judicial Council. The effective date of transfer or secondment shall be the notification date of the decision.
3. As an exception to the preceding two paragraphs, a Judge may be temporarily seconded to perform judicial tasks other than the Judge's regular work, or in addition to it, or to perform other legal work if so required by the national interest, pursuant to a decision issued by the Minister of Justice and with the approval of the High Judicial Council.

#### Article 24

According to the provisions of this law, the High Judicial Council may:

1. Temporarily second to the High Court a Judge from a Court of Appeal who fulfills the qualifications for working in the High Court, for a period of six months subject to renewal.
2. Second a Judge from the Courts of Appeal or First Instance to work in another court of the same level, for a period of six months subject to renewal.

#### Article 25

In the event that the position of a Presiding Judge of a court becomes vacant, or during the absence of a Presiding Judge, or due an impediment preventing the exercise of the latter's responsibilities, the most senior judge of the same court, followed by the next most senior judge, shall assume those responsibilities, according to the needs of the situation.

#### Article 26

1. A Judge may be loaned to foreign governments or to international agencies pursuant to a decision of the President of the Palestinian National Authority, based upon a nomination by the High Judicial Council.
2. The duration of secondment or loan may not exceed three consecutive years, unless there is a compelling national interest. To be seconded or loaned, a Judge must have spent the previous four years working on a court panel and must have received favorable competence reports.

#### *Permanence of Judges*

#### Article 27

Judges are irremovable except according to the conditions indicated in this law.

### CHAPTER THREE: DUTIES OF JUDGES

#### Article 28

1. A Judge may not engage in any commercial activity. Nor may a Judge engage in any activity that is not consistent with the independence and dignity of the judiciary. The High Judicial Council may prohibit a judge from engaging in any work that it deems to be in conflict with the duties of the position and its sound performance
2. All Judges shall submit, upon appointment, a financial statement for themselves, their spouse and their minor children that details what they own in real estate, movable property, stocks, bonds, cash money and debts, whether inside Palestine or abroad, to the President of the High Court, who will make the necessary arrangements to maintain their secrecy. Such information shall remain confidential and will be only accessed with the permission of the High Court, when necessary.

#### Article 29

Judges are forbidden to:

1. Violate the confidentiality of deliberations or disclose any confidential information they obtain while performing their work.
2. Engage in political activity.
3. Stand for election for the Presidency of the National Authority, or the Legislative Council, local councils or political organizations, unless they have submitted their resignations and these were accepted.

#### Article 30

1. Judges interrelated by a blood kinship or kinship by marriage up to the second degree may not sit in the same circuit.
2. Judges related to a member of public prosecution, a representative of a litigant, or with either litigant by a blood kinship or kinship by marriage up to the fourth degree, may not sit in cases involving such persons.

3. The law shall determine the provisions for recusing judges.

#### Article 31

1. A Judge may not be absent or cease working without a valid excuse and without having notified the Presiding Judge of the court.
2. A Judge shall be deemed to have resigned if the Judge stops working for fifteen (15) consecutive days without an excuse acceptable to the High Judicial Council, even if this occurs after the end of a period of leave, loan or secondment.

### CHAPTER FOUR: SALARIES AND ALLOWANCES OF JUDGES

#### Article 32

1. Salaries and allowances of Judges, of all ranks, shall be set in accordance with Tables (1) and (2) annexed to this law.
2. Allowances specified in the two annexed Tables shall not prejudice the administrative, social, transportation and cost of living allowances provided to all government officials, pursuant to the provisions of the Civil Service Law.

#### *Resignation*

#### Article 33

1. The resignation of a Judge shall be deemed accepted two weeks after its submission to the President of the High Judicial Council. A decree from the Minister of Justice shall be issued accepting the resignation effective as of that date.
2. The resignation of a Judge shall not result in loss of entitlement to pension or compensation.

#### *Retirement*

#### Article 34

1. No one beyond the age of seventy (70) shall be allowed to remain in the position of a Judge or be appointed thereto.
2. A Judge's pension or compensation shall be calculated on the basis of the last salary the judge received.

### CHAPTER FIVE: VACATIONS

#### Article 35

1. There shall be a judicial vacation beginning annually in mid-July and ending at the end of August.
2. The annual leave of a Judge shall not exceed, in any case, thirty-five (35) days.
3. During the judicial vacation, courts shall continue to hear urgent matters, the types of which shall be established by the High Judicial Council.

#### Article 36

Judges and members of the Public Prosecution shall be entitled to sick leave in accordance with the Civil Service Law.



## TITLE FOUR: THE HIGH JUDICIAL COUNCIL

### CHAPTER ONE: FORMATION OF THE HIGH JUDICIAL COUNCIL

#### Article 37

1. Pursuant to the provisions of this law, a judicial council shall be established which shall be called the High Judicial Council. It shall exercise its jurisdiction in accordance with the law.
2. The High Judicial Council shall be comprised of:
  - (a) The President of the High Court, as President.
  - (b) The most senior Vice-President of the High Court, as Vice-President.
  - (c) The two most senior Judges of the High Court, selected by the High Court Assembly.
  - (d) The Presiding Judges of the Courts of Appeal in Jerusalem, Gaza and Ramallah.
  - (e) The Attorney General.
  - (f) The Deputy Minister of Justice.

#### Article 38

1. In the event that the position of the President of the High Court is vacant, or during the absence of the President of the High Court, or due an impediment preventing the exercise of the latter's responsibilities, the Presidency shall be filled by the next most senior Vice-President of the High Court.
2. The replacement for any of the Presiding Judges of the Courts of Appeal shall be the next most senior Judge in the relevant court. The Deputy Attorney General, then the most senior Head of a Prosecutors' [District] Office, shall replace the Attorney General.
3. Any of the other members shall be replaced by the next most senior member of their respective offices, followed by the next senior.

#### Article 39

As provided by law, the President of the High Judicial Council shall follow up on the implementation of its decisions. The President will represent the Council in contacts with others and before the judiciary.

#### Article 40

1. The High Judicial Council shall meet at the seat of the High Court at least once every month.
2. The High Judicial Council shall meet whenever necessary, either upon an invitation from its President, upon the request of the Minister of Justice, or upon the request of three of its members.
3. A meeting shall be considered appropriately convened with the attendance of at least seven of its members, including the President or, in the absence of the President, the Vice-President. Decisions shall be issued by a majority of those present. In the event of a tie, the position of the side which includes the President shall prevail.
4. Governmental and nongovernmental organizations and agencies shall submit to the High Judicial Council whatever data, documents or papers it requests that are related to its jurisdiction.

#### Article 41

The High Judicial Council shall set forth by-laws according to which it will exercise its responsibilities. It may form one or more committees of its members, to which it may delegate some of its responsibilities, except for those pertaining to appointment, promotion and transfer.

### CHAPTER TWO: JUDICIAL INSPECTION

#### Article 42

1. A Judicial Inspection Department shall be established and attached to the High Judicial Council. It shall consist of the Chair of the Technical Office and a sufficient number of Judges of the Courts of Appeal or members of the Public Prosecution of similar rank.

2. The High Judicial Council shall set forth regulations for the Inspection Department, indicating its responsibilities, the rules and procedures needed to perform its work, and the elements of the performance evaluation, including the results of training courses, and reasons for reversing, canceling, or amending a judge's rulings
3. Performance shall be evaluated at one of the following grades: "Excellent"; "Very Good"; "Good"; "Average"; and "Below Average."

#### Article 43

Judges shall be inspected at least once every two years, except for High Court Judges. The inspection report shall be filed at the High Judicial Council, within a maximum of one month of its completion. Judges shall be notified of all comments or any other document placed in their service files.

### CHAPTER THREE: GRIEVANCES AND APPEALING DECISIONS

#### Article 44

1. The Chair of the Judicial Inspection Department shall notify those Judges whose performance has been evaluated as "Average" or "Below Average" as soon as the department has completed its evaluation. Those notified shall have the right to appeal the evaluation within fifteen (15) days from the date of notification.
2. The Chair of the Judicial Inspection Department shall notify those judges who were eligible for promotion but were not promoted for reasons unrelated to the performance reports. The notice shall specify the reasons for being passed over. Those notified shall have the right to appeal within the deadline provided under paragraph 1 above.

#### Article 45

1. A grievance shall be filed in the form of a petition submitted to the Judicial Inspection Department, which shall in turn present the grievance to the High Judicial Council within five days of its submission.
2. The High Judicial Council shall decide upon the grievance after having reviewed the documentation and having heard the statement of the aggrieved party. It shall issue its decision sufficiently in advance of making the judicial promotions. The concerned individual shall be notified of the decision by registered letter, return receipt requested.

#### Article 46

1. The High Court, and no other court, shall have the sole jurisdiction to resolve cancellation, compensation and suspension requests filed by Judges against administrative decisions related to any of their affairs, as well as to resolve disputes related to salaries, pensions and compensation to them or to their heirs.
2. Requests related to matters covered in the preceding paragraph shall be submitted with a petition, to be filed with the Clerk of the High Court, without the payment of any fee. These shall include the name of the petitioner, the subject of the request and related evidence.

### CHAPTER FOUR: DISCIPLINARY INQUIRY OF JUDGES

#### Article 47

1. The Minister of Justice shall have administrative supervision over all courts. The Presiding Judge of each court shall supervise the work of the Judges and the progress of the work carried out therein.
2. The Presiding Judge of each court shall warn a Judge of any act that constitutes a violation of judicial duties or the requirements of office. The warning may be made verbally or in writing. If the warning is written, the Judge may object to it within fifteen (15) days of notification, in accordance with the procedures established in Article 45 of this law. In such a case, the Court<sup>244[1]</sup> shall either rule to reject the objection or alternatively, will rule that the warning is groundless and will cancel it.

---

<sup>244[1]</sup> Editor's note: There appears to be an inadvertent error in this subparagraph. Either the Legislator intended to refer to Article 46 (in which case, the word "Court" is correct) or the Legislator intended to refer to Article 45 (in which case the reference should probably be to the "High Judicial Council" and not to the High Court).

3. If the violation is repeated or continues after the warning has been confirmed, a disciplinary case shall be filed.

#### *Disciplinary Council*

##### Article 48

1. Disciplining Judges at all levels is under the jurisdiction of a [Disciplinary] Council composed of the two most senior Judges of the High Court and the most senior Judge of each of the Courts of Appeal who are not already members of the High Judicial Council. In the event of the absence or incapacity of one of the members, the absent person shall be replaced by the next most senior Judge or those following in seniority within the relevant Court.
2. The [Disciplinary] Council shall be chaired by the most senior member present from the High Court. Decisions shall be issued pursuant to an absolute majority of the members.

#### *Disciplinary Claim*

##### Article 49

1. A disciplinary claim shall be filed by the Attorney General based upon a request made by the Minister of Justice, by the President of the High Court or by the Presiding Judge of the Court to which the Judge in question belongs.
2. A disciplinary claim shall only be initiated based upon a criminal investigation, or following an investigation conducted by a Judge from the High Court designated by its President *sua sponte* for that purpose, or upon a request from the Minister of Justice, the Attorney General, or the Presiding Judge of the Court to which the Judge in question belongs. The Judge designated to the investigation shall have the power of a Court regarding the authority to take testimony from witnesses deemed useful to hear.
3. In proceedings before the Disciplinary Council, public prosecution shall be represented by the Attorney General or one of the latter's deputies.

##### Article 50

1. A disciplinary claim shall be initiated by a petition that includes the charge or charges arrived at through investigations. The petition shall be filed with the secretariat of the Disciplinary Council.
2. If the Disciplinary Council finds grounds for continuing the procedures, it shall order the Judge to appear on a specified date. The order shall contain sufficient information regarding the subject of the disciplinary action and the grounds for the accusation. A copy of the claim shall be delivered to the Judge in question, upon request and without fees, at least one week prior to the hearing.
3. The Disciplinary Council may decide to suspend the Judge in question from office until the trial is concluded. The Council may reconsider the decision of suspension at any time. The suspension of a Judge shall not lead to withholding of salary during the period of suspension unless the Disciplinary Council decides otherwise.

##### Article 51

The Disciplinary Council may seek whatever information it deems lacking in the investigation or second one of its members to do so. The Disciplinary Council, or a member seconded to the investigation, shall have the power of a Court regarding the authority to take testimony from witnesses deemed useful to hear.

##### Article 52

1. Sessions of the disciplinary proceedings shall be held *in camera* unless the accused Judge requests that they be made public.
2. The accused Judge shall appear in person before the Disciplinary Council. The accused Judge may submit a defense in writing and may appoint a Judge or a lawyer for the defense. If the accused Judge or the representative for the defense fails to appear, the Council may make an *in absentia* ruling, after verifying that the accused Judge was properly notified and served.

#### Article 53

The Disciplinary Council shall issue a ruling in a disciplinary case after having heard the arguments of the prosecution and the defense of the accused Judge. The ruling in a disciplinary case must include substantiating grounds, which shall be read when the ruling is pronounced in an *in camera* session. The accused Judge and the Attorney General shall each have the right to appeal the decision, pursuant to the procedures outlined in Article 45 herein.

#### Article 54

A disciplinary claim terminates upon the resignation or retirement of the judge. A disciplinary claim shall have no effect upon a criminal or civil action arising from the same incident.

#### Article 55

1. The disciplinary penalties that may be imposed upon a judge are as follows:
  - (a) Warning.
  - (b) Reprimand.
  - (c) Dismissal.
2. The High Judicial Council shall implement the disciplinary rulings issued by the Disciplinary Council once they become final. If a ruling is to dismiss, the Judge in question shall be considered to be on leave from the date the ruling is issued until it becomes final.
3. Once finalized, a ruling to dismiss a Judge shall be implemented by a decree issued by the President of the Palestinian National Authority. The dismissal shall be effective from the date the ruling is issued.
4. A ruling to dismiss a Judge shall not affect entitlement to pension or compensation, unless the ruling indicates otherwise.

#### Article 56

1. Apart from a case where a Judge is caught in the immediate commission of a crime, a Judge may not be arrested or detained without special permission from the High Judicial Council to do so.
2. In the event that a Judge is caught in the immediate commission of a crime, the Attorney General shall, upon the arrest or detention of the Judge, present the matter to the High Judicial Council within the next twenty-four (24) hours. The High Judicial Council shall decide, after having heard the statements of the Judge, either to release on bail, to detain without bail, or continue detention for a period to be determined by the Council. The High Judicial Council shall have the right to extend this period.
3. The Judge shall be detained, and the punishment restricting freedom shall be implemented, in a location that is separate from those assigned to other detainees.

#### Article 57

The High Judicial Council shall have jurisdiction to consider the detention of the Judge and the renewal of arrest, unless the case is being heard before the relevant Penal Court, in which case the latter shall have jurisdiction over the case.

#### Article 58

Detention of a Judge shall lead to an immediate suspension of that Judge's official duties during the period of detention. The High Judicial Council may, upon a request by the Minister of Justice or by a Judge seconded to the investigation, order the suspension of the Judge's official duties during the period of the investigation of the crime attributed to the latter. In such cases, the provisions of Article 50 of this law shall be applied.

#### Article 59

A criminal case shall not be filed against a Judge without the permission of the High Judicial Council. The High Judicial Council may designate the Court to hear the case irrespective of the local jurisdictional rules established by law.

## TITLE FIVE: PUBLIC PROSECUTION

### CHAPTER ONE: COMPOSITION OF PUBLIC PROSECUTION

#### Article 60

The Public Prosecution shall consist of the following positions:

1. The Attorney General.
2. One or more Deputies to the Attorney General.
3. Heads of Prosecutors' [District] Offices.
4. Prosecutors.
5. Prosecutor Assistants.

#### *Prosecutor Assistants*

#### Article 61

To be appointed a member of Public Prosecution, one must satisfy the conditions and requirements stipulated in Article 16 of this law.

#### Article 62

1. After soliciting the opinion of the concerned Prosecutor, the Attorney General shall draft a report on the work of the Prosecutor Assistant, indicating the extent of qualifications and suitability for judicial work. The member in question shall be notified of the report.
2. This report, along with any written comments submitted by the member in question, shall be presented to the Minister of Justice, who shall decide whether the member is suitable for appointment to the position of Prosecutor, or, if not, whether the member should be given a grace period, not to exceed one year, for a reevaluation of qualifications and suitability.

#### *Appointment of the Attorney General*

#### Article 63

1. The Attorney General shall meet the conditions and requirements stipulated in Article 16 of this law.
2. The Attorney General shall be appointed by a decision issued by the President of the Palestinian National Authority, based upon a nomination from the High Judicial Council. The duties and jurisdiction of the Attorney General shall be determined by law.

#### Article 64

1. Members of the Public Prosecution shall take an oath, before assuming their duties for the first time, as follows:  
*"I swear by God, the Almighty, to respect the Constitution and the law and to perform my duties honestly and in good faith."*
2. The Attorney General shall take the oath before the President of the Palestinian National Authority and in the presence of the Minister of Justice.
3. The other members of the Public Prosecution shall take oath before the Minister of Justice and in the presence of the Attorney General.

#### Article 65

1. Designation of the place of work for members of the Public Prosecution, and transfer outside the circuit of the court to which they are appointed, shall be by decision of the Minister of Justice, based upon a recommendation by the Attorney General. Transfer within the court's circuit, or their secondment outside it, shall be by decision of the Attorney General, provided that such secondment shall not exceed six months.

2. Except for the Attorney General and the Deputy Attorney General, the tenure of members of the Public Prosecution outside court's circuits shall not exceed four years from the time of meeting the requirements to work within circuits.

#### Article 66

Members of the Public Prosecution shall report to their superiors in accordance with the sequence and hierarchy of their respective ranks.

### CHAPTER TWO: JURISDICTION OF PUBLIC PROSECUTION

#### Article 67

The Public Prosecution shall exercise the jurisdiction and authorities vested in it by law. It shall have the right alone and solely to file and initiate criminal cases unless the law provides otherwise.

#### Article 68

1. The Attorney General, or any member of the Public Prosecution, shall perform the function of public prosecution before the Courts. Prosecutor Assistants shall perform the work assigned to them, under the supervision and responsibility of those members of the Public Prosecution assigned to train them.
2. In the event that the position of the Attorney General becomes vacant, or during the absence of the Attorney General, or due an impediment preventing the exercise of the latter's responsibilities, the position shall be filled by the Deputy Attorney General with all of the powers that it entails for a period not to exceed three months.
3. In case of absence or incapacity of a member of the Public Prosecution, the Attorney General shall appoint a replacement.
4. No one below the rank of Head of Prosecutors' [District] Office shall perform public prosecution functions before the High Court.

#### Article 69

Judicial officers shall report to the Public Prosecution with respect to their work.

#### Article 70

The Attorney General or the Attorney General's agents, as well as Judges of the Courts, each in their respective jurisdictional circuit, shall have access to all correctional and rehabilitation centers (prisons) at any time to inspect, and verify that the law is being complied with, and that Court rulings and decisions of Public Prosecution are being implemented. Directors of such centers shall provide them with all information they request.

### CHAPTER THREE: DUTIES OF MEMBERS OF THE PUBLIC PROSECUTION

#### Article 71

The provisions of Title Three, Chapter Three of this law – "Duties of Judges" – shall apply to members of the Public Prosecution.

#### *Disciplining members of the Public Prosecution*

#### Article 72

The provisions of Title Four, Chapter Four – "Disciplinary Inquiry of Judges" – shall apply to members of the Public Prosecution. Disciplinary claims shall be instituted against them by the Attorney General, either *sua sponte*, or upon the request of the Minister of Justice.

## CHAPTER FOUR: SALARIES AND ALLOWANCES OF MEMBERS OF THE PUBLIC PROSECUTION

### Article 73

Salaries and allowances for members of the Public Prosecution shall be set in accordance with Article 32 of this law.

## CHAPTER FIVE: PROMOTION AND SENIORITY

### Article 74

1. The seniority of the members of the Public Prosecution shall be determined in accordance with the rules prescribed to determine the seniority of judges, as stipulated in Article 18, paragraph 3 of this law.
2. The promotion of members of the Public Prosecution to higher positions shall be based on seniority and competence, pursuant to Article 42, paragraph 3 herein.

## TITLE SIX

### CHAPTER ONE: JUDICIAL AUXILIARIES

#### Article 75

Judicial Auxiliaries are lawyers, experts, secretaries, clerks, summons servers and translators.

#### Article 76

The law shall regulate the practice of the legal profession.

#### Article 77

The law shall regulate the expertise required before the judiciary and Public Prosecution. The law shall specify the rights and duties of experts and the means for disciplining them.

### CHAPTER TWO: COURT EMPLOYEES

#### Article 78

Each Court shall be assigned a sufficient number of employees. The law shall specify their duties.

#### Article 79

Employees of Courts shall be subject to the provisions of the Civil Service Law.

## TITLE SEVEN

### *General and Transitional provisions*

#### Article 80

The High Judicial Council shall develop the necessary regulations to implement the provisions of this law.

#### Article 81

1. The Transitional High Judicial Council shall be formed pursuant to a decision issued by the President of the Palestinian National Authority and based upon a recommendation by the Minister of Justice. This shall take place within one month of the publication of this law in the *Official Gazette*. The Transitional High Judicial Council shall consist of:

- (a) The President of the High Court, as President.
  - (b) Four Judges from the High Court.
  - (c) The Attorney General.
  - (d) The Presiding Judges of the Courts of Appeal in Gaza and Ramallah, respectively.
  - (e) Deputy Minister of Justice.
2. The Transitional High Judicial Council shall assume the responsibilities of the High Judicial Council, as stipulated in this law, until the latter is formed within a maximum period of one year from the publication of this law in the *Official Gazette*.

#### Article 82

Implementation of judicial rulings is binding. Refraining from implementing them, or suspending them in any way, shall be considered a crime sanctionable by imprisonment, or dismissal from the job if the accused is a public servant or is assigned to public service. One whose rights are violated by the improper suspension or non-implementation of a judicial ruling shall have the right to file a case immediately before a competent court. The Palestinian National Authority shall guarantee full indemnification.

#### Article 83

The High Court shall temporarily assume all functions assigned to the Administrative Courts and to the High Constitutional Court, until such courts are formed, unless they are included within the jurisdiction of other judicial entities in accordance with laws in force.

#### Article 84

The following laws shall be repealed:

1. The Law on the Independence of the Judiciary No. 19/1955, in force in the West Bank Districts.
2. The Courts Ordinance No. 31/1940, in force in the Gaza Strip Districts.
3. Order No. 473/1956, issued by the Administrative Governor General, regarding the Jurisdiction of Public Prosecution, in force in the Gaza Strip Districts.
4. All provisions in conflict with the provisions of this law.

#### Article 85

All concerned parties and bodies, each in their own competence, shall implement the provisions of this law, which shall enter into effect thirty days after publication in the *Official Gazette*.

Issued in Ramallah City on May 14, 2002  
Corresponding to Rabi' Awal 02, 1423 H.

Yasser Arafat  
Chairman of the Executive Committee of the  
Palestine Liberation Organization  
President of the Palestinian National Authority



## Annexes

Table No. (1)

Table of Positions, Salaries and Allowances for Judges and Members of the Public Prosecution

Position	Basic Salary*	Allowance for the Nature of Work*	Periodical Annual Allowance*	Total Salary*
President of High Court	2,500	500	50	3,050
Vice-Presidents of High Court + Attorney General	2,300	460	46	2,806
Judges of High Court + Deputy Attorney General	2,300	460	46	2,806
Presiding Judges of Court of Appeals	1,900	380	38	2,318
Judges of Courts of Appeal	1,900	380	38	2,318
Presiding Judges of Court of First Instance	1,600	320	32	1,952
Judges of Court of First Instance	1,600	320	32	1,952
Judges of Conciliation Court	1,400	280	28	1,708
Heads of Prosecutors' [District] Offices	1,400	280	28	1,708
Prosecutors	1,250	250	26	1,526
Prosecutor Assistants	1,200		24	1,224

\* Note: The above figures are in U.S.\$ until replaced by equivalent figures based on the Palestinian Pound.

Table No. (2)

Representation Allowances for Some Judicial Positions

Position	Amount*
President of High Court	500
Vice-President of High Court + Attorney General	368
Presiding Judge of Court of Appeal	285
Presiding Judge of Court of First Instance	176
Head of Prosecutors' [District] Office	140
Prosecutor	62

\* Note: The above figures are in U.S.\$ until replaced by equivalent figures based on the Palestinian Pound.

## **Law No 3 of 2001 on Penal Procedure**

The Chairman of the Executive Committee of the Palestine Liberation Organization,

The Chairman of the Palestinian National Authority,

After reviewing:

### **First:**

- The Law of 1992 on Violating the Dignity of the Court, and
- Procedural Law No. 4 of 1924 governing Penal Trials (Arrest and Investigation), and
- Procedural Law No. 22 of 1924 governing Penal Trials (Accusatory), and
- Law No. 35 of 1926 on Investigative Judges in Suspicious Deaths, and
- Law No. 37 of 1926 on the Defense of Indigent Prisoners, and
- Law No. 21 of 1934 Amending Trial Procedures, and
- Law No. 24 of 1935 on Penal Trial Procedures, and
- Law No. 7 of 1937 on Investigations into the Causes of Fires, and
- Law No. 28 of 1944 on Release on Bail, and
- Law No. 70 of 1946 on Penal Trial Procedures [Lower Court Cases Before Courts of General Jurisdiction], and
- Law No. 45 of 1947 on the Jurisdiction of Conciliation Courts, and
- Order No. 269 of 1953 concerning the Jurisdiction of the Felony Court, and
- Order No. 473 of 1956 concerning the Functions of the Public Prosecution, and
- Order No. 554 of 1957 investing the Attorney General and his Representatives with the Prerogatives of Investigative Judges in Suspicious Deaths, and
- Rehabilitation Law No. 2 of 1962, and
- Chapter Twenty-Six of the Procedural Law of 1940 on Palestinian Trials before the Conciliation Courts in force in the Governorates of Gaza.

### **Second:**

- Jordanian Law No. 15 of 1952 on Conciliation Courts, and
- Jordanian Law No. 9 of 1959 on Violating the Dignity of the Court, and
- Jordanian Law No. 9 of 1961 on Penal Trial Procedures in force in the West Bank Governorates,

The Legislative Council has ratified and

We have promulgated the following Law:

### **Book One: The Penal Action, the Gathering of Evidence and the Investigation**

#### **Part One: The Penal Action**

#### **Chapter I**

#### **The Right to File a Penal Action**

**Article 1.** The right to file and conduct a penal action is vested exclusively in the Public Prosecution, and it shall not be filed by others except in those cases where the law provides otherwise.

The action may not be suspended, waived or abandoned, nor may it be delayed or settled out of court except in those cases where the law provides otherwise.

**Article 2.** The Attorney General shall prosecute the penal action himself or through one of the members of the Public Prosecution.

**Article 3.** The Public Prosecution is held to set the penal action in motion if the injured party constitutes himself a civil claimant pursuant to the rules prescribed by law.

#### **Article 4.**

1. The Public Prosecution may not conduct an investigation or file a penal action whose institution is statutorily conditioned on a complaint, a civil claim, a requisition or a warrant except on the basis of a written or oral complaint

from the victim or his private attorney, of a civil claim from him or his private attorney, or of a warrant or requisition from the competent authority.

2. Actions whose prosecution is made conditional by law on a complaint or on a civil claim by the victim may be waived until a final judgment is rendered thereon. When there are multiple victims, the waiver shall not operate unless it is issued by all of them. A waiver in respect of one of the accused is deemed a waiver as towards the others.
3. When there are multiple victims, the presentation of a complaint by one of them is sufficient, and when there are multiple accused and the complaint is presented against one of them it shall be deemed as having been presented against all of them.

**Article 5.** In all cases in which the institution of a penal action is statutorily conditioned on the filing of a complaint or a civil claim by the victim or a third party, the complaint shall not be accepted after the lapse of three months from the date the victim learnt of the incident complained of and of its author, save as otherwise prescribed by law.

**Article 6.**

- (1) If the victim in the cases referred to in article (5) of this Law is below the age of fifteen or is mentally impaired, the complaint shall be submitted by his guardian, custodian or trustee.
- (2) In the event of a conflict of interest between the victim and his representative or if the victim does not have a representative, the Public Prosecution shall represent him.

**Article 7.** The right to file a complaint lapses with the death of the victim. If death occurs after the complaint has been filed, this shall not affect the conduct of the action and the decedent's right of waiver shall devolve to his heirs except in cases of adultery, where any of the children of the complaining spouse from the spouse complained against may waive the complaint and terminate the action.

**Article 8.** Any person against whom a penal action is instituted is called the accused.

## **Chapter II**

### **Extinction of the Penal Action**

**Article 9.** The penal action shall be extinguished in any of the following cases:

1. Repeal of the law criminalizing the act.
2. General amnesty.
3. Death of the accused.
4. Prescription.
5. Rendition of a final judgment thereon.
6. Any other reason provided by law.

**Article 10.**

1. The extinction of the penal action shall not prevent the confiscation of seized items.
2. The party injured by a crime is entitled to demand the recovery of seized items whose possession is not deemed a crime, unless such right has lapsed pursuant to law.

**Article 11.** The civil action remains under the jurisdiction of the court seised of the penal action. If the penal action has not been instituted, jurisdiction over the civil action lies with the competent civil court.

**Article 12.**

1. The prescription period for the penal action and the civil action is ten years in felonies, three years in misdemeanours and one year in contraventions, unless otherwise provided by law.
2. In all cases, the prescription period for penal actions shall be calculated as from the date of the last procedure taken therein.
3. Without prejudice to the provisions of the two preceding paragraphs, the prescription period for penal actions in crimes of public functionaries shall not begin to run except from the date of the discovery of the crime, the termination of service or the extinction of capacity.

**Article 13.** The prescription period is interrupted when any of the procedures of gathering evidence, investigation, accusation or trial are taken, if they are taken as towards the accused or if he was officially notified thereof. The period shall commence to run anew as of the day it was interrupted. When the procedures interrupting the prescription period are multiple, it shall commence to run anew from the date of the last such procedure.

**Article 14.** The interruption of the prescription period in respect of one of the accused entails its interruption in respect of the other accused, even if no procedures interrupting the prescription period were taken against them.

**Article 15.** The prescription period for a penal action shall not be interrupted for any reason whatsoever.

**Article 16.** Settlements may be reached in contraventions and misdemeanours which are punishable only by a fine. The competent judicial officer is held, when transcribing the minutes, to propose a settlement to the accused in the contravention or to his attorney and to establish same in the minutes. The proposal for a settlement in a misdemeanour shall be made by the Public Prosecution.

**Article 17.** An accused who accepts a settlement is held to pay a sum equivalent to one quarter of the maximum amount of the fine prescribed for the crime or the value of the minimum amount prescribed therefor, whichever is lower, within fifteen days from the date following his acceptance of the settlement.

**Article 18.** The penal action is extinguished upon payment of the settlement amount. This shall not affect the civil action.

## **Part Two: The Gathering of Evidence and the Institution of the Action**

### **Chapter I**

#### **Officers Invested with Judicial Powers and their Duties**

**Article 19.**

1. The members of the Public Prosecution shall exercise judicial powers and supervise officers invested with judicial powers each within the circuit of his jurisdiction.
2. Judicial officers shall undertake to seek out and investigate crimes and their perpetrators and to gather the evidence necessary for the investigation in the trial.

**Article 20.**

1. The Attorney General shall supervise the judicial officers and they shall be subject to his control in the exercise of the functions of their post.
2. The Attorney General may ask the competent authorities to take disciplinary measures against any person for breach or dereliction of duty without this preventing such person from being called to account under the penal statutes.

**Article 21.** Officers invested with judicial powers include the following:

1. The police commissioner and his deputies and the police chiefs of governorates and general districts.
2. Officers and non-commissioned officers of the police, each within his bailiwick.
3. Masters of vessels and captains of aircraft.
4. Functionaries who are statutorily invested with judicial powers.

**Article 22.** Judicial officers are required to perform the following in accordance with the provisions of law:

1. Accept the reports and complaints addressed to them in connection with crimes, and present same without delay to the Public Prosecution.
2. Conduct examinations and searches and obtain all clarifications as are necessary to facilitate the investigation, as well as seek the assistance of experts and witnesses without administering the oath.
3. Take all necessary measures to preserve evidence of the crime.
4. Transcribe all the procedures they take in official minutes signed by them and by the party concerned.

**Article 23.** Without prejudice to the provisions of articles (16), (17) and (18) of the present law, the competent judicial officer shall remit the minutes and seized items related to the contraventions coming under his jurisdiction to the competent court and shall follow up before such court.

**Article 24.** Any person who learns of the occurrence of a crime may report same to the Public Prosecution or to a judicial officer, unless the law makes the institution of the penal action flowing therefrom conditional on a complaint, a requisition or a warrant.

**Article 25.** Every constituted authority and every public official who, in the performance of his duties or by reason of the performance thereof, acquires knowledge of a crime, is held to report same to the competent authorities unless the law makes the institution of the penal action flowing from such crime conditional on a complaint, a requisition or a warrant.

## **Chapter II**

### **Flagrant Crimes**

**Article 26.** A crime is qualified as flagrant in any of the following cases:

1. While it is being or just after it has been committed.
2. If its perpetrator is pursued by the victim or by public clamour in the wake of its commission.
3. If its perpetrator is found shortly after its commission in possession of tools, weapons, effects, papers or other items which permit an inference that he committed or participated in the crime, or if he exhibits traces or marks conducive to such inference.

**Article 27.** In a case of flagrant felony or misdemeanour, the judicial officer who is advised thereof is held to proceed immediately to the scene of the crime in order to inspect the material evidence and secure same. He shall establish the condition of the premises, of persons and of everything which may serve to make the truth manifest, and hear the testimony of whoever is present at the scene or of any person capable of furnishing information on the crime and its perpetrators. He is held to notify the Public Prosecution immediately, and the competent member of the Public Prosecution shall, promptly upon being notified of a flagrant felony, proceed to the scene.

**Article 28.**

1. The judicial officer who proceeds to the scene of a flagrant crime may prevent those present from leaving the scene of the crime or from distancing themselves therefrom until his written report is completed, and may immediately summon and hear all persons capable of furnishing him with information in connection with the incident.
2. Any person who violates the provisions of paragraph (1) above or who refuses to comply with a summons shall be punished by imprisonment for a term of not more than one month or by a fine of not more than fifty Jordanian dinars or their equivalent in legal tender.

### **Chapter III**

#### **The Arrest of the Accused**

**Article 29.** No person may be arrested or imprisoned except by order of the competent authority as designated by law. He must be treated in a manner that will preserve his dignity and may not be physically or morally harmed.

**Article 30.** The judicial officer may, without a warrant, arrest any person present when there is evidence sufficient to charge him in the following cases:

1. The case of a flagrant felony or of a flagrant misdemeanour punishable by imprisonment for a term of more than six months.
2. If he resists the judicial officer during the latter's performance of the duties of his post, or if he was legally detained and escaped or tried to escape from the place of detention.
3. If he commits or is accused of committing a crime before the judicial officer and refuses to give his name and address or if he has no known or permanent residence in Palestine.

**Article 31.**

1. If the accused is not present in the cases mentioned in the preceding article, the judicial officer may obtain an arrest warrant against him and record same in the report.
2. If there is sufficient evidence to charge a person with a felony or with a misdemeanour that is punishable by imprisonment for a term of more than six months, the judicial officer may ask the Public Prosecution to issue an arrest warrant against such person.

**Article 32.** Any person who witnesses a flagrant felony or misdemeanour is entitled to apprehend the perpetrator and take him to the nearest police station without waiting for the issuance of an arrest warrant by the Public Prosecution.

**Article 33.** The accused in flagrant crimes in which the initiation of the action flowing therefrom is conditional on a complaint may not be arrested unless the party entitled to make such complaint exercises his right to do so. The complaint may be presented to any competent member of the public authority who is present.

**Article 34.** The judicial officer is held to hear the statement of the person arrested immediately and, if such person fails to come forward with justification for his release, to send him within twenty-four hours to the competent deputy prosecutor.

**Article 35.** If the person to be arrested resists or attempts to evade arrest or if he tries to escape, the judicial officer shall be entitled to resort to all means as may reasonably be required to apprehend him.

**Article 36.** The judicial officer or the private citizen arresting an accused is entitled to strip him of the weapons and tools found in his possession and to deliver same to the competent authority before which he law requires the arrestee to be brought.

**Article 37.** Any individual may assist the judicial officer or the private citizen who asks for his help in a reasonable manner to arrest a person he is empowered to arrest or to prevent such person from escaping.

**Article 38.**

1. In those cases in which the law allows an accused to be arrested, the judicial officer may search the accused and draw up a list of the objects seized. The list is signed by the accused and deposited in the place designated for same.
2. The accused is given a copy of the list of objects seized if he so requests.

## **Chapter IV**

### **The Search**

**Article 39.**

1. Entering and searching homes is an act of investigation which may not be conducted except pursuant to a search warrant from the Public Prosecution or in its presence, either on the basis of an accusation charging a person living in the house required to be searched of committing or participating in the commission of a felony or misdemeanour, or on the basis of strong evidence that he is in possession of items related to the crime.
2. The search warrant must be reasoned.
3. The warrant is made out in the name of one or more judicial officers.

**Article 40.** The search warrant is signed by the competent member of the Public Prosecution and includes the following:

1. The surname and given names of the owner of the house to be searched.
2. The address of the house to be searched.
3. The object of the search.
4. The name of the judicial officer authorized to conduct the search.
5. The validity period of the search warrant.
6. The date and hour it was issued.

**Article 41.** Domiciliary searches must be conducted by day, and a house shall not be entered at night unless it is the scene of a flagrant crime or if exigencies so warrant.

**Article 42.** The person inhabiting the house or the person responsible for the premises required to be searched is held to allow access thereto and to provide the necessary facilities. If he bars entry to the house, the judicial officer is entitled to gain admission by force.

**Article 43.** The search is conducted in the presence of the accused or of the person in possession of the house. If such requirement cannot be fulfilled, it shall be conducted in the presence of two witnesses from among his relatives or his neighbours and the fact noted in the minutes of the investigation.

**Article 44.** If there is a suspicion based on serious reasons that a person present in the place where the search is underway is concealing one of the articles being sought, the judicial officer may subject him to a body search.

**Article 45.** Persons who are present in the house while it is being searched may be detained by the officer conducting the search if he fears they may obstruct or delay the search, provided he releases them once the search has been completed.

**Article 46.** If the member of the Public Prosecution requires the disclosure of any document or object related to the investigation and the person in possession of such document or object refuses to furnish same without an acceptable excuse, he may order the necessary search-and-seize operation to be conducted.

**Article 47.** If the person required to be searched is female, she may only be searched by another female deputed for this purpose by the person in charge of the search operation.

**Article 48.** The competent authorities are prohibited from entering houses without a search warrant except in one of the following cases:

1. A request for assistance from inside the house.
2. Cases of fire or drowning.
3. If there is a flagrant crime inside the house.
4. In the event a person who must be arrested or who escaped from a place where he was legally detained is followed to the house.

**Article 49.** In the discharge of their duties during a search operation, judicial officers may call on the assistance of police or military forces when necessary.

**Article 50.**

1. Only objects connected to the crime in respect of which the search is conducted may be searched. However, if during the search objects whose very possession is deemed a crime or which serve to reveal the truth in another crime come to light, they may be seized by the judicial officer.
2. All objects related to the crime which are found during the search are seized, inventoried and sealed. They are evidenced in the minutes and remitted to the competent authorities.
3. Documents that are sealed or closed in any other way found in the house being searched may not be opened by the judicial officer.
4. Minutes of the search are transcribed by the officer in charge of the search, citing the objects seized and the location in which they were found, and signed by those present during the search procedures.



**Article 51.**

1. The Attorney General or one of his assistants may seize letters, communications, newspapers, printed matter, parcels and telegrams at post and telegraph offices when such relate to the crime and its perpetrator.
2. He may also tap telephone and wireless communications and record conversations in private places on the basis of an authorization from the conciliation judge when such is useful in revealing the truth in a felony or a misdemeanour punishable by imprisonment for a term of not less than one year.
3. The search warrant or the tapping or recording authorization must be reasoned and remains in force for a period of not more than fifteen days, subject to renewal once.

**Article 52.** Non-compliance with any of the provisions of this chapter entails nullity.

## **Chapter V**

### **Dispositions by the Public Prosecution after Gathering Evidence**

**Article 53.** If, on the basis of the evidence-gathering minutes, the Public Prosecution believes a case involving a contravention or a misdemeanour is ready for judicial review, it orders the accused to appear immediately before the competent court.

**Article 54.** None but the Attorney General or one of his assistants may institute a penal action against a public employee, a civil servant or an officer invested with judicial powers for a felony or misdemeanour he committed during or by reason of the performance of his job.

## **Part Three: The Investigation**

### **Chapter I**

#### **Conducting the Investigation**

**Article 55.**

1. The Public Prosecution is exclusively competent to investigate crimes and to take action in respect thereof.
2. The Attorney General or the competent deputy prosecutor may mandate one of the competent members of the judicial officer corps to perform any of the acts of investigation in a specific case, except for the interrogation of the accused in a felony.
3. The mandate must not be general.
4. Within the scope of his mandate, the mandatary exercises all the powers conferred on the deputy prosecutor.

**Article 56.** The Public Prosecution conducts the investigation promptly upon learning of the crime.

**Article 57.** The deputy prosecutor may, when the situation calls for a procedure to be taken outside the circuit over which he exercises jurisdiction, issue a rogatory commission to his counterpart in the circuit in which the procedure is required to be taken to act in his stead, and the latter shall exercise full jurisdiction in this connection.

**Article 58.** The deputy prosecutor is accompanied in all the investigation procedures by a clerk to take down minutes and countersign them with him.

**Article 59.** The procedures of the investigation and the results thereof are among the secrets that may not be divulged, and their divulgence is deemed a crime punishable by law.

**Article 60.** The investigation is conducted in the Arabic language. The deputy prosecutor hears the testimony of parties or witnesses ignorant of the language through an interpreter, who takes an oath to perform his task scrupulously and impartially.

**Article 61.** The parties are notified of the date and place at which the investigation will be conducted.

**Article 62.** The parties may communicate such statements and demands as they consider necessary to the deputy prosecutor during the investigation.

**Article 63.** The accused, the injured party and the civil claimant may request copies of the documents and papers of the investigation, at their own expense.

## **Chapter II**

### **The Commissioning of Experts**

**Article 64.** The deputy prosecutor seeks the assistance of the competent physician and other experts to establish the condition of the crime committed. The physician so commissioned and other experts take the necessary procedures under the supervision of the authority conducting the investigation. The investigator may attend while the experts are carrying out their mission if he deems such to be in the interest of the investigation.

**Article 65.** The technical expert may perform his commission in the absence of the parties.

**Article 66.** The expert is held to file a technical report on his work within the time-limit determined by the investigating deputy prosecutor, with due regard to the presence of perishables.

**Article 67.** The deputy prosecutor may replace an expert who is remiss in his duties or who fails to file his report within the prescribed time-limit.

**Article 68.** The expert must take an oath to perform his task scrupulously and impartially prior to embarking thereon, unless he is inscribed in the roster of legally accredited experts.

**Article 69.** The expert presents a reasoned report and signs each page thereof.

**Article 70.** The accused may seek the assistance of a consultant expert and request that he be allowed to view the documents, provided this shall not delay the course of the procedures.

**Article 71.** The parties may recuse the expert if they have serious reasons to do so. The recusal application, which must be reasoned, is presented to the investigating deputy prosecutor, who is held to submit it to the Attorney General or one of his assistants to issue a decision thereon within three days from the date of its submission. Presentation of the application entails the discontinuance of the expert's mission, unless otherwise decided. The decision must in such case be reasoned.

## Chapter III

### The Disposition of Objects Seized

#### Article 72.

1. The objects seized are placed in sealed containers on which the particulars of the contents are inscribed. The containers are placed in the warehouse of the Prosecution or in any place it designates.
2. If the object seized is perishable and the expenses of preserving it exceed its value, the Public Prosecution or the court may order it sold at public auction if the requirements of the investigation so permit. The proceeds of the sale are placed in the court registry and the person entitled to the proceeds may claim the sale price within one year from the date the action is terminated, otherwise it shall devolve to the State without necessity for a judgment ordering same.

#### Article 73.

1. Seized objects may be restituted, even before rendition of judgment, at the request of the person in whose possession they were found at the time they were seized, unless their retention is necessary for the judicial examination or they are subject to mandatory confiscation.
2. If the seized objects are those against which the crime was committed, or if they were obtained as a result of its commission, they shall be restituted to the person who was deprived of their possession by the crime, unless the person in whose possession they were found at the time they were seized is entitled by law to retain them.

**Article 74.** The restitution order is issued by the Public Prosecution. The court may order restitution *pendente lite*.

**Article 75.** The order to retain papers or the judgment rendered on the case must provide for the manner of disposition of the seized objects.

**Article 76.** The parties may, when a dispute arises in connection with the seized objects, resort to the competent civil court.

## Chapter IV

### The Hearing of Witnesses

**Article 77.** The deputy prosecutor or the mandated investigator may summon all persons whose testimony he deems useful in revealing the truth, whether or not their names are included in the complaints or denunciations, and may hear the testimony of any person who appears voluntarily. In such case, this shall be recorded in the minutes.

**Article 78.** The deputy prosecutor charges the competent authorities with summoning the witnesses by means of citations to be delivered to them at least twenty-four hours before the date scheduled to hear their testimony.

**Article 79.** The deputy prosecutor establishes the identity of the witness, his name, age, occupation, domicile, address and the degree to which he is related to one of the parties and transcribes same in the minutes before hearing and transcribing the testimony of the witness.

**Article 80.** Witnesses are heard separately by the deputy prosecutor after taking the oath, in the presence of the clerk of the investigation. The questions put to them and their answers thereto are transcribed in minutes.

**Article 81.** The answers given by the witness are read out to him and he shall ratify them with his signature or fingerprint. If he refuses or is unable to do so, the fact is recorded in the minutes and signed by the deputy prosecutor and the clerk of the investigation.

**Article 82.**

1. The parties may, after the testimony of the witness has been heard, request the deputy prosecutor or the mandated investigator to question the witness on points not addressed in his testimony.
2. The deputy prosecutor may refuse to direct any question to the witness that is unrelated to the case or that will not serve to reveal the truth.

**Article 83.**

1. Persons below the age of fifteen may be heard for information only without taking the oath.
2. The parents, offspring and spouse of the accused are exempted from taking the oath unless the crime was committed against any one of them.

**Article 84.** The deputy prosecutor is entitled to confront the witnesses with one another, as well as to confront them with the accused, if the situation so warrants.

**Article 85.** If the witness does not appear after being summoned for the first time, a second citation will be served on him and, if he again fails to appear, the deputy prosecutor will issue a writ of attachment against him.

**Article 86.** If a witness is unable to appear for health reasons, the deputy prosecutor proceeds to his domicile in order to hear his testimony if he lives within the prosecutor's jurisdictional limits. If he lives outside such limits, the prosecutor issues a rogatory commission to his counterpart within the jurisdictional limits of whom the witness's domicile is located to hear his testimony. The testimony is delivered in a sealed envelope to the deputy prosecutor in charge of the investigation.

**Article 87.** If the deputy prosecutor finds that the health condition of the witness is not such as to justify his failure to appear, he may issue a writ of attachment against him.

**Article 88.** If a witness appears and refuses to testify or to take the oath without an acceptable excuse, he shall be punished by the competent court with a fine of not less than fifty and not more than one hundred Jordanian dinars or their equivalent in legal tender and/or with imprisonment for a term of one week. If the witness retracts his refusal before the end of the trial, he may be exempted from punishment.

**Article 89.** If the deputy prosecutor is persuaded that taking the oath would violate the religious beliefs of a witness, his testimony may be heard and transcribed after he asserts that he will tell the truth.

**Article 90.** If a man of religion is summoned to take an oath before the Public Prosecution or the court and requests that the oath be administered by his bishop or religious superior, he is held to present himself before either of them forthwith and to take an oath to answer all the questions put to him truthfully. He shall return with a certificate from such authority attesting that the oath has been duly administered, whereupon his testimony will be heard.

**Article 91.** The transcript of the testimony may contain no interlineations, erasures or insertions. Such as do occur must be signed by the deputy prosecutor, the clerk of the investigation and the witness, failing which the erasure or insertion is without effect.

**Article 92.** The parties, their attorneys and the civil claimant are entitled to read the minutes of the investigation as soon as they have been completed, after obtaining permission from the Public Prosecution.

**Article 93.** The deputy prosecutor shall – at the request of the witnesses – estimate the expenses they incurred by reason of their presenting themselves to testify.

## Chapter V

### The Interrogation

**Article 94.** The interrogation is the systematic questioning of the accused in connection with the acts imputed to him, during which he is confronted with the facts, questions and suspicions related to the accusation and asked to respond thereto.

**Article 95.** The deputy prosecutor conducts the interrogation of the accused in all felonies, as well as in such misdemeanours as he deems an interrogation to be necessary.

**Article 96.**

1. At the first appearance of the accused at the interrogation, the deputy prosecutor is held to establish his identity, name, address and occupation, question him on the charge imputed to him, demand that he respond to same, advise him of his right to the assistance of counsel and warn him that all he says may be used as evidence against him in the trial.
2. The statements of the accused must be established in the minutes of the interrogation.

**Article 97.**

1. The accused has the right to remain silent and not to respond to the questions put to him.
2. The accused is entitled to postpone the interrogation for twenty-four hours pending the arrival of his counsel. If his counsel does not appear, or if the accused decides not to appoint counsel, he may be interrogated immediately.

**Article 98.** The deputy prosecutor may interrogate the accused before inviting his counsel to attend in the event of a flagrant crime, necessity, urgency or fear that the evidence may be lost, provided the grounds for precipitating the interrogation are stated in the minutes. Counsel for the accused is entitled to read his client's statements after the interrogation is over.

**Article 99.** Before interrogating an accused, the deputy prosecutor must subject him to a physical examination and establish the visible injuries he sees and the reasons for their occurrence.

**Article 100.** The deputy prosecutor orders medical and psychological examinations of the accused by the competent authorities, either *sua sponte* when he deems them necessary or at the request of the accused or his counsel.

**Article 101.** In the event the accused expresses any defense, the deputy prosecutor is held to establish same in his report and to list the names of the defense witnesses cited by the accused, summon them to appear and prevent them from mingling with one another before they are questioned.

**Article 102.**

1. Each of the parties is entitled to the assistance of counsel during the investigation.
2. Counsel may not speak during the investigation except with the permission of the deputy prosecutor. If the permission is withheld, this must be established in the minutes.
3. Counsel is allowed to review the investigation preceding the interrogation in respect of his client.
4. Counsel may present a memorandum with his comments.

**Article 103.** The Attorney General may, in cases of felonies and in the interests of the investigation, decide to prohibit communication with the accused for a period not exceeding ten days, subject to renewal once. The prohibition shall not apply to counsel for the accused, who may communicate with his client at any time he wishes without constraint or supervision.

**Article 104.** If the accused invokes a plea of non-competence, non-admissibility or extinction of the case, the plea must be presented to the Attorney General or one of his assistants to rule thereon within twenty-four hours by means of a decision amenable to appeal before the court of first instance.

**Article 105.** The interrogation must be conducted within twenty-four hours from the date the accused is sent to the deputy prosecutor, who shall order his detention or release.

## **Chapter VI**

### **Writs of Summons and of Attachment**

#### **Article 106.**

1. The deputy prosecutor is entitled to issue a writ of summons ordering the accused to appear and submit to an investigation.
2. If the accused does not appear, or if it is feared that he will flee, the deputy prosecutor may issue a writ of attachment ordering the accused to be brought by force.

#### **Article 107.**

1. The warden of the house of detention must deliver the accused within twenty-four hours to the Public Prosecution for the investigation.
2. The deputy prosecutor shall immediately interrogate an accused against whom a writ of summons has been issued. As to an accused against whom a writ of attachment was issued, the deputy prosecutor must interrogate him within twenty-four hours from the date of his arrest.

**Article 108.** The deputy prosecutor may, after interrogating the accused, detain him for a period of forty-eight hours. The period is extended by the court in accordance with law.

#### **Article 109.**

1. Writs of summons and of attachment are executed immediately and remain in full force and effect until they are executed.
2. A writ of attachment may not be executed after the lapse of three months from the date it was issued, unless its extension for an additional period is ratified by the person who issued it.

**Article 110.** Writs of summons, attachment and detention are signed by the legally competent authority, stamped with its official seal and include the following:

1. The surname, given names and description of the accused whose attachment is required.
2. The crime with which he is charged and the applicable articles of the law.
3. His address in full and the period of detention, if any.

**Article 111.** Pursuant to the provisions of law:

1. The judicial officer undertakes to execute writs of summons and of attachment.
2. The judicial officer may execute writs of attachment by force if necessary.

**Article 112.**

1. The officer charged with the execution of the writ is held to inform the person he is arresting of its contents and to allow him to read it.
2. The officer charged with the execution of the writ may, when necessary, forcibly enter any place in which he has serious grounds to believe that the person against whom the writ was issued is present.

**Article 113.** Writs of attachment are executory throughout Palestine at any hour of the day or night.

**Article 114.** If the health condition of the accused does not allow for his attachment, the deputy prosecutor conducts the investigation at his domicile and may order him moved to hospital for treatment when necessary, while placing him under guard if he decides to detain him.

## **Chapter VII**

### **Custody and Provisional Detention**

**Article 115.** The judicial officer is held to deliver the arrestee promptly to the police station.

**Article 116.** The officer in charge of the police station which receives the arrestee without a writ of attachment shall immediately investigate the reasons for the arrest.

**Article 117.**

1. The officer in charge of the police station is held to keep the arrestee in custody if it transpires that the arrestee:
  - a) Committed a felony and escaped or tried to escape from the place of his detention.
  - b) Committed a misdemeanour and has no known or established domicile in Palestine.

**Article 118.** The deputy prosecutor conducts the interrogation of the arrestee after advising him of the arrest warrant pursuant to the provisions of article (105) hereof.

**Article 119.** If the procedures of the investigation entail the detention of the arrestee for more than twenty-four hours, the deputy prosecutor may request the conciliation judge to extend the detention for a period not exceeding fifteen days.

**Article 120.**

1. The conciliation judge may, after hearing the statements of the representative of the Public Prosecution and the accused, release or detain the accused for a period of not more than fifteen days. He may renew his detention for other periods to an aggregate maximum of forty-five days.
2. No person may be detained for a period longer than that prescribed in para (1) above, unless an application for his detention is submitted by the Attorney General or one of his assistants to the court of first instance. In such case, the period of detention may not exceed forty-five days.
3. The Public Prosecution is held to present the accused before the expiry of the three-month period referred to in the two preceding paragraphs to the court competent to try him in order that it extend his detention for further periods until the trial is over.
4. The period of detention referred to in the three preceding paragraphs may under no circumstances exceed six months, otherwise the accused shall be released immediately, unless he is referred to the court that is competent to try him.

5. In all cases, an arrestee's detention may not continue for longer than the period of the penalty prescribed for the crime by reason of which he is detained.

**Article 121.** A writ of detention may not be issued against any accused in his absence unless the judge is convinced, on the basis of medical evidence, that the accused cannot be brought before him by reason of illness.

**Article 122.** When an accused is detained at a correctional and rehabilitation centre [a prison], a copy of the writ of detention must be delivered to the warden of the centre after he signs the original in acknowledgement of receipt.

**Article 123.** Every detainee is entitled to contact his family and to consult with his counsel.

**Article 124.** The warden of the correctional and rehabilitation centre [the prison] may not allow anyone to contact the detainee except with written authorization from the Public Prosecution. In such case, the warden must inscribe in the register of the centre the name of the person so authorized, the time of the meeting and the date and contents of the authorization, without prejudice to the right of the accused to communicate with his lawyer without the presence of a third party.

**Article 125.** No person may be detained or confined except in a correctional and rehabilitation centre [a prison] and in the places of detention designated by law.

The warden of any such centre may not accept any person except pursuant to an order signed by the competent authority nor retain him beyond the period prescribed in the said order.

**Article 126.** The Public Prosecution and the presidents of first instance and appellate courts may visit the correctional and rehabilitation centres [prisons] and places of detention lying within their jurisdictional limits to ensure that no inmate or detainee is being held illegally. To that end, they are entitled to access the registers of the centre, the arrest warrants and the detention writs and make copies thereof, as well as to contact any detainee or inmate and hear his complaints. The directors and wardens of the centres are held to provide them with every assistance to obtain the information they demand.

**Article 127.** Every detainee or inmate is entitled to present a written or oral complaint to the Public Prosecution through the director of the correctional and rehabilitation centre [the prison], who is held to accept the complaint and transmit it to the Public Prosecution after establishing it in a special register prepared for this purpose at the centre.

**Article 128.** Every person who learns of a detainee or inmate being held illegally or in other than the place designated for his confinement is entitled to report the matter to the Attorney General or one of his assistants, who shall order an investigation and the release of the illegally held detainee or inmate and draw up minutes establishing same in order to take the necessary legal procedures.

**Article 129.** Any detainee or inmate who is legally held in a correctional and rehabilitation centre [a prison] or in a place of detention must submit to identity check and fingerprinting procedures as well as to a physical examination for the purpose of recording distinguishing marks to establish his identity.

## **Chapter VIII**

### **Release on Bail**

**Article 130.** An accused may not be released on bail until after he designates an elected domicile within the court's jurisdictional limits, unless his residence is located within such limits.

**Article 131.** If the accused has not been arraigned, the application for his release on bail is presented to the judge authorized to sign a release order.

**Article 132.** If the accused has been arraigned, the application for his release on bail is presented to the court seised of the trial.



**Article 133.** The application for the release on bail of an accused who has been condemned and sentenced is presented to the court which rendered judgment against him, provided he has challenged such judgment at appeal.

**Article 134.** A request to review an order issued on an application for a release on bail may be presented to the court which issued such order in the event of the discovery of new facts or the occurrence of change in the circumstances surrounding its issuance.

**Article 135.** The order issued on an application for a release on bail may be appealed by the Public Prosecution, the detainee or the convicted party by means of an application presented to the court competent to take cognizance of the appeal.

**Article 136.** An application may be submitted to the president of the Supreme Court to review any order issued pursuant to the foregoing articles.

**Article 137.** In all cases, applications for release on bail shall not be looked into except in the presence of the deputy prosecutor and the accused or the sentenced party or his counsel.

**Article 138.** The court to which an application for release on bail is presented may, after hearing the statements of both parties, decide to:

1. Grant a release on bail
2. Reject the release application
3. Reconsider the previous order issued by it.

**Article 139.**

1. Every person whose request for a release on bail is granted must sign a bail bond in the amount deemed adequate by the court. The bond is also signed by his sureties if the court so requires.
2. The court may allow the deposit of a cash insurance in the value of the bail bond in place of sureties. The insurance is deemed a guarantee for the performance of the conditions of the bail bond.

**Article 140.** The court may, if it deems that the financial standing of the accused will not allow him to post bail, replace bail with an obligation on the accused to present himself to the police station at the times it prescribes in the release order, with due regard to his circumstances. The court may also ask him to choose a place of abode other than the place in which he committed the crime.

**Article 141.** The prerogatives of the court competent to review or take cognizance of appeals of applications for release on bail include:

1. Granting release on bail.
2. Cancelling the order of release on bail and re-detaining the accused.
3. Amending the former order.

**Article 142.** The surety may present an application to the court before which he made out a bail bond requesting its nullification in its entirety or in that part of it which relates to him alone.

**Article 143.** When reviewing the application presented by the surety, the court may:

1. Nullify the bond entirely or as relates to the surety alone.

2. Order the re-detention of the accused if he does not present another surety or a cash bail in the amount determined by the court.

**Article 144.** When the release order is issued, the person responsible for the detention and the director of the correctional and rehabilitation centre [the prison] are held to discharge the detainee or inmate, save when he is confined or detained for another reason.

**Article 145.** If a decision is issued *in absentia* against a fugitive, he may not be released on bail after he is arrested.

**Article 146.** Bail is deemed a guarantee that the accused will appear when summoned and that he will not evade execution of the sentence that may be passed against him.

**Article 147.**

1. In the event of a breach of the conditions set forth in the bail or surety bond, the competent court is entitled to:
  - a) Issue a writ of attachment against the person released or order his redetention.
  - b) Exact payment discharge of the value of the bail or surety bond if it has not been deposited.
  - c) Confiscate, amend or grant an exemption from the cash insurance.
2. The injured party is entitled to appeal the decision issued pursuant to the provisions of para (1) above.

**Article 148.** If the surety dies before the amount of the bail is confiscated or discharged, his estate is released of all obligations related to the bail and the court may order the redetention of the accused unless he presents another surety or a cash bail in the amount it determines.

## Chapter IX

### Conclusion of the Investigation and Action on the Case

**Article 149.**

1. If, after the investigation is over, the deputy prosecutor is of the opinion that the act is not punishable by law, that the action has lapsed by prescription, death, general amnesty or because the accused was previously tried for the same crime or is not penally liable by reason of his youth or mental illness, or that the circumstances of the case entail that it be dismissed for lack of importance, he sends a memorandum with his opinion to the Public Prosecution for further action.
2. If the Attorney General or one of his assistants finds that the opinion of the deputy prosecutor is valid, he issues a reasoned decision to dismiss the case and orders the release of the accused if he is detained.
3. If the decision to dismiss the case is predicated on the lack of criminal liability on the part of the accused by reason of his mental illness, the Public Prosecution may contact the competent authorities to treat him.

**Article 150.** If the deputy prosecutor finds that the act constitutes a contravention, he is held to refer the file of the case to the court competent to try the accused.

**Article 151.** If the deputy prosecutor finds that the act constitutes a misdemeanour, he charges the accused and sends the file of the case to the court competent to try him.

**Article 152.**

1. If the deputy prosecutor finds that the act constitutes a felony, he charges the accused and sends the file of the case to the Attorney General or one of his assistants.
2. If the Attorney General or one of his assistants sees the need for further investigations, he returns the file of the case to the deputy prosecutor to conduct such investigations.
3. If the Attorney General or one of his assistants finds the charging instrument to be well founded, he orders the accused transferred to the competent court.
4. If the Attorney General or one of his assistants finds that the act does not constitute a felony, he orders the qualification of the charge to be amended and returns the file of the case to the deputy prosecutor for presentation to the competent court.
5. If the Attorney General or one of his assistants finds that the act is not punishable by law, that the case has lapsed by prescription, general amnesty or because the accused was previously tried for the same crime or is not penally liable by reason of his youth or mental illness, because of lack of evidence, because the perpetrator is not known or because circumstances entail that the case be dismissed for lack of importance, he issues an order to that effect.
6. If the Public Prosecution issues an order to dismiss the case, it is held to notify such order to the victim and the civil claimant. If one of them is deceased, the order is notified to his heirs at their domicile.

**Article 153.**

1. The civil claimant may protest against the decision to dismiss the case by means of an application submitted to the Attorney General.
2. The Attorney General rules on the application within one month from the date of its submission by means of a final decision.
3. The civil claimant may appeal the decision of the Attorney General before the court competent to review the case and the decision of such court shall be final. If the court cancels the decision, the merits of the case must be reviewed before another tribunal.

**Article 154.** The decision to refer the accused to trial must include the name of the complainant and the name, age, place of birth, address and occupation of the accused, the date he was remanded in custody, a brief account of the act imputed to him, the date of its commission, its nature, legal qualification, the articles of law on which the charge is based and proof of the commission of the crime.

**Article 155.** Without prejudice to the provisions of article (149) of this law, the Attorney General may cancel the decision to dismiss the case in the event new evidence comes to light or the perpetrator comes to be known.

**Article 156.** New evidence includes the testimony of witnesses the prosecution was unable to summon and hear at the time and documents and minutes that were not examined, if their examination is conducive to strengthening the evidence which was found to be insufficient at the time of the investigation or to shedding new light on the facts useful to the manifestation of the truth.

**Article 157.** Crimes are concurrent in one of the following cases:

1. If they are committed at one time by several people jointly.
2. If they are committed by several people at different times and places on the basis of an agreement between them.

3. If some are committed in preparation for others or preliminary to their commission or completion, or to ensure that the accused remains unpunished.
4. If several people participate in concealing all or some of the objects stolen or embezzled or acquired by means of a felony or misdemeanour.

**Article 158.** If some of the concurrent crimes are misdemeanours and some are felonies, the case in its entirety is referred by the Attorney General to the court that is competent to try the more serious crime.

## **Chapter X**

### **Abstention and Recusal of Judges**

**Article 159.** The judge abstains from participating in the review of a case if the crime was committed against him personally or if he performed the function of a judicial officer or a public prosecutor in the case, acted as defense counsel for one of the parties, took an oath in the case or was commissioned as an expert. He also abstains from participating in the judgment if he carried out any of the acts of the investigation or referral, and in the appellate judgment if the judgment under appeal was issued by him.

**Article 160.** The parties may demand the recusal of the judges in the cases referred to in the preceding article, as well as in all the cases entailing recusal under the Law of Civil Procedure. Members of the Public Prosecution or judicial officers may not be recused and the accused is deemed, in respect of the recusal demand, to be an adversary party in the case.

**Article 161.** A judge in whom any of the reasons for recusal is present is held to make this known to the court so that it may decide on the matter of his removal in the deliberation chamber. In other than the statutorily prescribed cases of recusal, the judge may, if he has reason to feel awkward exercising jurisdiction over a case, submit the question of his abstention to the court or to its president, as the case may be, to issue a decision thereon.

**Article 162.** Without prejudice to the foregoing provisions, the provisions and procedures prescribed in the Law of Civil Procedure apply in respect of the recusal or abstention of the judge.

## **Book Two: The Trial**

### **Part One: Jurisdiction of Court**

#### **Chapter I**

##### **In Penal Matters**

**Article 163.** Jurisdiction is determined by the place in which the crime occurred, in which the accused is domiciled or in which he is arrested.

**Article 164.** In case of intent, the crime is deemed to have occurred wherever an act commencing execution of the crime takes place. In the case of continuous crimes, the place of the crime is deemed every place in which the condition of continuity comes into being.

In habitual and consecutive crimes, the place of the crime is deemed every location in which one of the acts coming thereunder occurs.

**Article 165.** If one of the crimes to which the provisions of Palestinian law are applicable occurs abroad and its perpetrator has no place of abode in Palestine and was not apprehended therein, the case shall be brought against him before the competent court in the capital, Jerusalem.

**Article 166.** If an act of which part falls within the scope of jurisdiction of the Palestinian courts and part outside such jurisdiction is committed, and the act constitutes a crime to which the provisions of the Palestinian Penal Law would apply if the act in its entirety were committed within the scope of jurisdiction of the Palestinian courts, every person who commits any part of such act within the scope of jurisdiction of the Palestinian courts may be tried in accordance with the provisions of the Palestinian Penal Law as though he committed the entire act within the jurisdiction of such courts.

**Article 167.** The conciliation courts are seised of all contraventions and misdemeanours coming under the scope of their jurisdiction, save as otherwise prescribed by law.

**Article 168.**

1. The courts of first instance are seised of all felonies as well as all misdemeanours concurrent therewith and referred to them by means of a charging instrument.
2. If one act constitutes several crimes, or if several crimes are committed with one object and are so connected as to be indivisible, and one of those crimes comes under the jurisdiction of the court of first instance, such court shall be competent to review them all.

**Article 169.**

1. If the court of first instance finds that the incident as described in the charging instrument, and before examining it at the session, is a misdemeanour, it pronounces its lack of jurisdiction and refers it to the conciliation court.
2. If the conciliation court finds that the crime presented before it comes under the jurisdiction of the court of first instance, it pronounces its lack of jurisdiction and refers it to the Public Prosecution to take such action as it deems fit.

## **Chapter II**

### **In Civil Matters**

**Article 170.** Without prejudice to the provisions of article (196) of this law, the penal court reviews actions brought to enforce a civil right and awards damages for the injury arising from the crime, however great the value of such damages. It reviews the civil claim as an ancillary of the penal action.

**Article 171.** The court is competent to adjudicate all matters on which a ruling on the penal action brought before it depends, save as otherwise prescribed by law.

**Article 172.** If a ruling on the penal action depends on the result of the ruling on another penal action, the first action must be suspended until the second has been adjudicated.

**Article 173.** If the ruling on a penal action depends on the ruling on a Personal Status matter, the penal court may suspend the action and grant the civil claimant or the injured party a grace period in which to institute an action in such matter before the competent court. This shall not prevent conservatory and summary procedures from being taken.

## **Chapter III**

### **Conflict of Jurisdiction**

**Article 174.** If a crime occurs and two courts proceed to look into it on the grounds that both are vested with jurisdiction thereover, or if both decide that they are not competent to review it, or if a court decides that it is not qualified to review a case referred to it by the Public Prosecution, and this gives rise to a dispute over jurisdiction which impedes the course of justice as a result of the issuance of two contradictory decisions on the same case, the dispute must be resolved by designating the competent court.

**Article 175.** All parties in the case may demand the designation of the competent court in a summons presented to the Court of Cassation together with the document supporting the summons. If the demand relates to a dispute over which two conciliation courts belonging to one first instance court is better qualified than the other, the summons shall be presented to such court.

**Article 176.** If the demand for the designation of the competent court is made by the civil claimant or the civil defendant, the president of the court to which the demand is presented orders a copy thereof to be notified to the adverse party, and the Public Prosecution undertakes to serve a copy of the demand to each of the courts between which the dispute has arisen to express its opinion thereon.

**Article 177.** The Public Prosecution, the accused or the civil claimant must express an opinion on the demand for the designation of the competent court within one week of being notified thereof.

**Article 178.** If courts decide that they are qualified to review a case and are informed of the demand for the designation of the competent court, they must halt all procedures of the trial or the rendition of judgment until the competent court has been designated.

**Article 179.** If a dispute over jurisdiction arises as a result of the rendition of two judgments in one case, execution of both judgments is stayed until the decision designating the competent court is issued.

**Article 180.** If the civil claimant or the accused was not entitled to demand the designation of the competent court, the court to which the demand was presented may sentence him to a fine of not more than fifty Jordanian dinars or their equivalent in legal tender or award damages to the adverse party at such party's request.

**Article 181.** The court looks into the demand presented to it in detail and, after consulting the Attorney General, issues a decision designating the competent court and rules on whether the procedures taken by the court which pronounced its lack of jurisdiction were valid or not.

## **Chapter IV**

### **Transferral of the Case to Another Court of the Same Rank**

**Article 182.** The competent court of appeal may, in felony and misdemeanour cases, decide, on the basis of a request by the Attorney General, to transfer the case to another court of the same rank when its review in the circuit of the competent court could lead to a breach of public security.

**Article 183.** The court of appeal carefully considers the request for a transfer of the case and, if it decides to transfer it, indicates in the same decision the validity of the procedures taken by the court from which it was decided to transfer the case.

**Article 184.** Denial of a request for the transfer of a case shall not prevent the presentation of a new request for its transfer based on new reasons which appeared after its denial.

## **Part Two: Trial Procedures**

### **Chapter I**

#### **Service of Judicial Instruments**

##### **[Notification of Parties]**

**Article 185.** Judicial instruments are served by a process-server or a policeman on the person required to be notified or at his domicile, in accordance with the rules prescribed in the Law of Civil Procedure, without prejudice to the special provisions set forth in the present law.

**Article 186.** Subpoenas to appear in court are served on the parties one full day before the scheduled session in contraventions, and at least three days before it convenes in misdemeanours, with due regard to considerations of distance.

**Article 187.** Notices to detainees and prisoners are served by the warden of the correctional and rehabilitation centre [the prison] or by his deputy and to officers and soldiers by their command.

**Article 188.** The parties are entitled to see the documents of the case as soon as they are subpoenaed to appear before the competent court.

## **Chapter II**

### **Maintaining Order During the Proceeding**

#### **Article 189.**

1. The orderly progress and administration of a session is the responsibility of its president.
2. If a person present during the convocation of the session displays a sign of approval or protest, causes noise in any way, or otherwise disrupts the orderly progress of the session, the judge orders him evicted from the court.
3. If he refuses to comply or returns after his eviction, the president sentences him to imprisonment for a term of not more than three days. The sentence is mandatory.
4. If the disruption occurs from someone who performs a function in court, the president may impose such disciplinary penalty on him during the session as his superior is entitled to inflict.
5. The court may, before the end of the session, retract the sentence it has passed.

#### **Article 190.**

1. If a person commits a misdemeanour or contravention during the session, and the court exercises jurisdiction over such crime, it may try him on the spot and, after hearing the statement of the representative of the Public Prosecution and the defense of the person in question, sentence him to the penalty prescribed by law. Its judgment is amenable to the forms of challenge to which all the judgments it renders are subject.
2. If the crime lies outside the court's jurisdiction, it transcribes minutes of the incident and transfers the accused under custody to the Public Prosecution.
3. The trial of the accused in this case is not conditioned on a complaint, requisition or civil claim if the crime is of the sort whose prosecution is conditioned by law on meeting such requirement.

**Article 191.** If the crime is a felony, the president of the court has minutes of the incident transcribed and orders the accused to be transferred under custody to the Public Prosecution to take the required legal action.

**Article 192.** Crimes committed during a court session in respect of which the court does not pass judgment on the spot are reviewed pursuant to general rules.

**Article 193.** If, during or by reason of the performance of his duty, counsel for one of the parties commits an act which renders him criminally liable or which may be qualified as disruptive of order, the president of the court has minutes recording the incident transcribed. The court may decide to send the minutes to the Attorney General to conduct an investigation if the act gives rise to criminal liability or to the president of the Bar Association if it gives rise to civil liability. Neither the president nor the members of the session at which the incident occurred may serve as members of the court seized of the case.

## Chapter III

### Action for Recovery of Civil Right

#### Article 194.

1. Every person injured by a crime is entitled to submit an application to the deputy prosecutor or to the court seised of the case in which he expressly assumes the capacity of a civil claimant moving for the reparation of the injury he suffered as a result of the crime.
2. The application must be sufficiently reasoned and supported by facts and evidence.

#### Article 195.

1. The action for the recovery of a civil right may be instituted as an ancillary to the penal action before the competent court. It may also be instituted separately before the civil court, in which case proceedings in the action conducted before the civil court are suspended until final judgment is rendered on the penal action, unless judgment on the penal action has been suspended due to the insanity of the accused.
2. If the civil claimant institutes an action before the civil judiciary he may not thereafter institute it before the penal judiciary unless he has abandoned his action before the civil court.

#### Article 196.

1. Claims for the recovery of a civil right may be raised before the court of first instance at any stage of the penal action and until the close of pleadings.
2. Claims for the recovery of a civil right may not be raised if the case is returned to the court of first instance for any reason whatsoever.
3. A civil claim may not delay pronouncement of judgment in the penal action, otherwise the court orders it inadmissible.

**Article 197.** The civil claimant may withdraw his claim at any stage of the proceedings without such withdrawal having any effect on the penal action.

**Article 198.** The civil claimant is held to pay the judicial fees and expenses necessary for the action unless the court decides to exempt him therefrom or to postpone payment thereof.

**Article 199.** If the Public Prosecution decides to dismiss the charge or the court decides to acquit the accused, the civil claimant may be exempted from or reimbursed for the fees and expenses.

**Article 200.** In the event a decision to dismiss the charge is issued or a judgment of acquittal is rendered, the accused may claim damages from the civil claimant before the competent court, unless the civil claimant is of good faith.

**Article 201.** The competent court may, at the request of the Public Prosecution, appoint an attorney for an injured party devoid of or with diminished capacity if he has no legal representative to claim recovery of a civil right on his behalf. This shall not entail charging him with judicial expenses.

**Article 202.** The civil claimant must take an elected domicile within the jurisdictional limits of the court before which his action was instituted, unless he lives within such limits, for purposes of service of process.



**Article 203.** If the civil action is brought before the civil courts, judgment thereon must be suspended until a final judgment is rendered on the penal action that was instituted either before it was filed or during its pendency, unless proceedings in the penal action were suspended by reason of the insanity of the accused.

**Article 204.** The accused may protest during the trial session against the admission of the civil claimant if the civil claim is unwarranted or inadmissible.

## **Chapter IV**

### **Evidence**

**Article 205.** In passing judgment, the judge may not rely on his personal knowledge.

**Article 206.**

1. Evidence is established in penal actions by all measures of proof-taking, unless the law specifies a particular measure.
2. If evidence is not established against the accused, the court acquits him.

**Article 207.** The judgment shall not be predicated except on the evidence presented during the trial and openly discussed at the session in the presence of the parties.

**Article 208.** While the case is in progress, the court may, at the request of the parties or *sua sponte*, order the presentation of any proof it deems necessary for a manifestation of the truth and may hear the testimony of any person who appears voluntarily to offer information on the case.

**Article 209.** An accused shall not be condemned on the basis of the testimony of another accused, unless such testimony is substantiated by evidence that is convincing to the court. The accused against whom another accused has testified may discuss with such other accused the testimony he presented.

**Article 210.**

1. The court is held to apply the provisions of the Law of Evidence in Civil and Commercial Matters to actions for the recovery of a civil right brought before it as an ancillary of the penal action.
2. In its review of a civil action, the court shall apply, in respect of procedure, the rules laid down in the said law.

**Article 211.** No fact may be evidenced by means of the correspondence exchanged or the conversations held between the accused and his counsel.

**Article 212.** The minutes drawn up by judicial officers in misdemeanours and contraventions which they are statutorily charged with evidencing are deemed conclusive in respect of the facts established therein, unless evidence emerges to refute such facts.

**Article 213.** For the minutes to have probative force, they must fulfill the following conditions:

1. They must comply with formal requirements.
2. They must be transcribed by the person who investigated the incident himself or who was personally notified thereof.
3. The person who transcribed them must have acted within the limits of his authority and in the performance of the functions of his post.

**Article 214.** For a confession to be valid, it must fulfill the following conditions:

1. It must be made voluntarily and freely, without material or moral pressure or coercion, promise or threat.

2. It must correspond to the circumstances of the incident.
3. It must be an express and conclusive acknowledgment by the accused that he committed the crime.

**Article 215.** Confession is a measure of proof-taking that is subject to the discretion of the court.

**Article 216.** The probative force of the confession is limited to the accused who made it and to none other, without prejudice to the provisions of article (215) hereof.

**Article 217.** The accused has the right to remain silent, and his silence or refusal to answer shall not be construed as a confession.

**Article 218.** The accused may not be punished for untrue statements he made in self-defense.

**Article 219.** Admissible measures of proof-taking during the investigation or the trial are fingerprints, palmprints and footprints. Photographs may also be admitted as a means of recognizing their subject in order to identify the accused and any person connected to the crime.

**Article 220.** Among the admissible measures of proof-taking in penal actions are all the reports issued by or officially approved and signed by the employee responsible for government laboratories, and which include the results of the chemical tests or analyses he conducted himself on any suspicious substance. This does not entail summoning him to take an oath in this regard, unless the court deems his appearance necessary to guarantee the proper course of justice.

**Article 221.** The ascendants and descendants of the accused, as well as his relatives by blood or marriage up to the second degree and his spouse or former spouse may refuse to testify against him, unless the crime was committed against any one of them.

**Article 222.** If the ascendants, descendants or spouse of the accused are invited to testify in his defense, their testimony – whether delivered in the interrogation or during the discussion with the Public Prosecution – may be relied on to establish the crime imputed to the accused.

**Article 223.** The testimony of an informant who was present at the time the crime occurred or just before or shortly after its commission is admissible if his testimony is directly connected to the crime or to any incident related thereto and when the informant is a witness in the case.

**Article 224.**

1. When the informant is the injured party, his testimony is admissible if it is related to the act, if he reported the act to the authorities during or shortly after its occurrence or as soon as the opportunity presented itself or if he is on his death bed.
2. The non-appearance of the informant as a witness in the case, or his inability to attend the trial session due to his absence from Palestine does not render his testimony inadmissible.

**Article 225.**

1. Before testifying, the witness takes the oath in the following form: "I swear by Almighty God to tell the truth, the whole truth, and nothing but the truth."
2. The provisions of article (90) of this law are applicable if the witness is a man of religion.
3. If the court is persuaded that swearing a witness in would violate his religious convictions, it may transcribe his testimony after he gives an assurance that he will tell the truth.

**Article 226.**

1. Persons below the age of fifteen may be heard for information only, without taking the oath.
2. A statement taken for information only is not sufficient in itself to establish guilt unless it is substantiated by other evidence.

**Article 227.** The statement made by the accused to judicial officers in which he confesses to the crime is admissible if the Public Prosecution presents proof of the circumstances in which it was made and the court is convinced that it was made voluntarily and freely.

**Article 228.** The civil claimant is heard as a witness after taking the oath.

**Article 229.**

1. The court may decide to have the testimony given under oath in the preliminary investigation read out if the witness cannot be brought before it for any reason, or if the accused or his attorney so accept.
2. If the accused cannot be brought before the court because of his disability or illness, the court may visit him to hear his testimony.
3. If the witness referred to in the preceding paragraph is domiciled within the jurisdictional limits of another court, the competent court issues a rogatory commission to such other court to hear his testimony.
4. If the court discovers the excuse mentioned in the two preceding paras to be false, it may refer the witness to the Public Prosecution to take the required legal procedures.

**Article 230.** If the witness declares that he does not recall a specific fact, the part relating to such fact in his testimony during the investigation or in the evidence-gathering minutes may be read out to him. This provision also applies in the event the testimony given by the witness in the session contradicts his previous testimony or statement.

**Article 231.** If the witness is properly notified and does not appear at the designated time to testify, the court issues a writ of summons or attachment against him and may sentence him to a fine of fifteen Jordanian dinars or their equivalent in legal tender.

**Article 232.** If the witness sentenced to a fine appears during or after the trial and furnishes an acceptable excuse, the court may relieve him of the fine.

**Article 233.** If the witness refuses without legal justification to take the oath or to answer the questions directed at him by the court, the court may sentence him to imprisonment for a term of not more than one month. If, during his incarceration in the correctional and rehabilitation centre [the prison] and before the close of proceedings, he agrees to take the oath and to answer the questions addressed to him, he is released promptly upon so doing.

**Article 234.**

1. The court assesses the value of the testimony given by witnesses and may mention their behaviour and comportment in the minutes.
2. If the testimony does not correspond to the case or if the statements of witnesses contradict one another, the court considers only that part thereof which it is convinced is true.

**Article 235.** The witness delivers the oath orally and may not avail himself of memoranda except with the permission of the president of the court.

**Article 236.** Witnesses may not be recused for any reason whatsoever.

## Chapter V

### Trial Procedures Before First Instance Courts

**Article 237.** The trial is public unless the court decides to conduct it in closed session for considerations of public policy or morality. In all cases, the court may bar minors or other categories of persons from attending the trial.

**Article 238.**

1. The president conducts the trial and takes all measures as are necessary for its proper administration.
2. The hearings of the court of first instance are attended by the deputy prosecutor and the clerk.

**Article 239.** The deputy prosecutor reads out the charges to the accused indicted for the crimes set out in the charging instrument, and may not, on pain of nullity, allege acts that are not cited in the charging instrument.

**Article 240.** No person shall be presented for trial in a penal action unless a charging instrument is made out against him by the Attorney General or the person acting in his stead.

**Article 241.** The charging instrument must include the name of the accused, the date he was apprehended, the nature and legal qualification of the crime committed, the date of its commission, a detailed account of the charge and the circumstances in which it was made, the articles of law applicable thereto, the name of the victim and the names of the witnesses.

**Article 242.** The clerk of court undertakes to serve a copy of the charging instrument on the accused at least one week before the date of the trial, subject to extension to accommodate factors of distance.

**Article 243.** The accused appears at the trial free from restraint or chains; he shall, however, be kept under sufficient guard. The accused may not be excluded from the session while the case is in progress unless he creates a disturbance entailing his exclusion. In such case, proceedings will continue until they can be conducted in his presence. The court is held to inform him of all the procedures taken in his absence.

**Article 244.** The court asks the accused if he has chosen a defense counsel and, if he has not done so because of the paucity of his financial resources, the president of the court appoints one for him from among the lawyers who have practiced at the bar for at least five years or who, before being admitted to the bar, worked in the Public Prosecution or in the judiciary for not less than two years.

**Article 245.** The court determines the fees of the counsel appointed pursuant to the preceding article and disburses them from the court registry.

**Article 246.**

1. The court asks the accused his surname, given names, occupation, place of birth, age, place of abode and marital status.
2. The court cautions the accused to listen attentively to all that is read out to him and orders the deputy prosecutor to read out the accusation and the charging instrument.

**Article 247.** If the accused does not appear in court on the date and at the time designated in the writ of summons, he is renotified and, if he again fails to appear, a writ of attachment is issued against him.

**Article 248.** If separate charging instruments are issued against the perpetrators of one crime or against some of them, the court may decide to join the cases, either *sua sponte* or at the request of the representative of the Public Prosecution or of the defense.

**Article 249.** If the court determines, at any stage of a trial for crimes which are not concurrent, that it would be appropriate to try the accused on each count or more of the counts imputed to him, it may order that he be tried separately on each of the counts listed in the charging instrument.

**Article 250.** Without prejudice to the provisions of Articles (214) and (215) hereof:

1. After the deputy prosecutor reads the charge out to the accused in simple language that he is capable of understanding, and after the civil claimant explains his demands, the court asks the accused to answer the charge imputed to him and the civil claim.
2. If the accused confesses that he has committed the crime, his confession is recorded in wording as close as possible to the wording he used in confessing to the crime.
3. If the accused denies the charge, refuses to answer or remains silent, the court proceeds to hear the evidence.

**Article 251.** The court may, at any stage of the proceeding, direct any question to the parties as it deems necessary for revealing the truth or permit the parties to do so. It is held to forbid directing questions at the witness that are not related to the case, and to hold the witness harmless against any explicit or implicit talk or any reference that could confuse or alarm him. The court may refuse to hear the testimony of witnesses in respect of facts it deems sufficiently clear.

**Article 252.**

1. The court may prevent the accused or his counsel from indulging in prolixity if he digresses from the subject of the case or makes redundant statements in his pleading.
2. The court may direct the deputy prosecutor and defense counsel to submit written pleadings within the period it prescribes. On the prescribed date, the pleadings are read out and joined to the minutes after being signed by the panel of judges.

**Article 253.** The clerk records all the facts of the trial in the minutes which are signed by the panel of judges.

**Article 254.**

1. The Prosecution may not call any person to testify whose name is not included in the list of witnesses unless the accused or his counsel were notified of the name of such witness or waived the right to be so notified.
2. An accomplice in the charge who was previously acquitted or condemned is exempt from the condition of notification referred to in para (1) above, as is any person summoned to prove that a witness whose testimony was heard in the preliminary investigation was unable to appear in court by reason of his death, illness or absence from Palestine.

**Article 255.** The court takes measures to prevent the witnesses from conferring during the trial and administers the oath to each witness separately.

**Article 256.**

1. The court asks the witness his name, given names, age, occupation, domicile or residence and his connection to the victim. The witness takes the oath and delivers his testimony orally.
2. The adverse parties are entitled to question the witness on his testimony.

**Article 257.** The court shall, at the request of the witnesses, estimate the expenses to which they are entitled by reason of their appearance to testify, and shall disburse same from its registry.

**Article 258.**

1. After hearing the statements of the Public Prosecution, the court asks the accused if he wishes to make a statement and to call witnesses. If he chooses to make a statement, the deputy prosecutor may question him thereon, and if he expresses a wish to present evidence in his defense, the court shall hear it.

2. The court calls defense witnesses at the expense of the accused, unless it decides otherwise.

**Article 259.** No question may be addressed to the accused in the aim of establishing his guilt for a previous crime, unless he voluntarily delivers a statement on his past history.

**Article 260.** The court may, *sua sponte* and at any stage of the trial, order any person to retestify or order a rehearing of the statements made by any witness who previously testified before it.

**Article 261.** If it appears during the trial that the testimony given by a witness under oath in respect of a fact related to the case substantively contradicts his testimony in the preliminary investigation, he is deemed guilty of perjury and the court may condemn him for such crime and, in the light of the circumstances of the case, sentence him to the penalty prescribed therefor.

**Article 262.** The witness is not allowed to leave the courtroom without permission from the judge.

**Article 263.** The civil claimant may question any witness for the prosecution or the defense in connection with his claim, and may present his evidence after the prosecution presents its evidence or at any time thereafter during the trial as the court orders. However, he may not present evidence or address the court in connection with the culpability of the accused nor question or enter into a discussion with any witness for the prosecution in this connection except with the court's permission.

**Article 264.**

1. In case the accused, the witnesses or any one of them does not speak the Arabic language, the president of the court appoints a licensed interpreter who takes an oath to translate the statements conscientiously and honestly.
2. Non-compliance with the provisions of the preceding paragraph entails the nullity of the procedures.

**Article 265.** Pursuant to the provisions of law, the accused and the deputy prosecutor may demand the recusal of the interpreter, provided they give reasons for their demand, and the court shall rule on the matter.

**Article 266.** The interpreter may not, even with the consent of the accused or of the deputy prosecutor, be chosen from among the witnesses or the members of the court seised of the case.

**Article 267.** If the accused or the witness is a deaf-mute and does not know how to write, the president of the court appoints as interpreter the person who is most accustomed to communicating with him or with others like him through sign language or other technical methods.

**Article 268.** In case the deaf-mute knows how to write, the court clerk writes down the questions or observations and hands them to him and he shall give his answers thereto in writing. The whole is then read aloud by the clerk and joined to the minutes.

**Article 269.**

1. If the court establishes that while committing the crime imputed to him the accused was affected by a disease which impaired his mental faculties and rendered him incapable of comprehending his actions or of realizing that he is prohibited from committing the act constituting the crime, the court rules that he is not penally liable.
2. If the court establishes during the trial that the accused is mentally deranged or demented to a degree that prevents him from standing trial, it issues a decision to place him in a mental institution for the period it deems necessary to observe him.
3. If it is established as a result of such observation that the accused is of sound mind pursuant to a certificate from two specialized government doctors, the court proceeds with his trial or else orders him placed in a mental hospital.
4. The provisions of this article are applicable before the penal courts.

**Article 270.** The court may amend the charge provided such amendment is not predicated on facts not included in the evidence presented. If the amendment exposes the accused to a severer penalty, the case is adjourned for the period the court considers necessary to enable the accused to prepare his defense for the amended charge.

**Article 271.** After the evidence has been heard, the deputy prosecutor delivers his pleading then the civil claimant cites his claims and the accused and the party liable to make civil reparation deliver their defenses, after which the trial closes. In all cases, the accused must be the last to speak.

## Chapter VI

### The Judgment

**Article 272.** After the close of the trial, the court retires to the deliberation chamber and conducts a detailed examination of the allegations made before it. The judgment is handed down unanimously or by majority vote, except when it imposes the death penalty, in which case it must be rendered by unanimous opinion.

**Article 273.**

1. The court rules on the case according to the inner certainty it forms in complete freedom. It may not predicate its judgment on any proof not presented to it in session or that was obtained in an illegal manner.
2. In the event it is established that a statement made by one of the accused or one of the witnesses was obtained by coercion or under threat, such statement is disregarded and not held against him.

The judgment is rendered at an open session, even if the case was heard *in camera*.

**Article 274.**

1. The court shall acquit the accused for lack or insufficiency of evidence, for absence of liability, if the act does not constitute a crime or if it does not entail a penal sanction.
2. The court shall pronounce a judgment of conviction when the accused has been proved guilty of an act punishable by law.

**Article 275.** If the court decides to convict, it hears the statements of the deputy prosecutor and the civil claimant followed by those of the accused and his counsel and then pronounces sentence and awards civil damages.

**Article 276.** The judgment includes a summary of the facts as established in the charging instrument and the trial, of the demands of the Public Prosecution and the civil claimant and of the defense of the accused, as well as the reasons entailing acquittal or conviction, the articles of law applicable to the act in the event of conviction, the determination of the penalty and the amount of civil damages.

**Article 277.** The judgment is signed by the judges and read aloud in the presence of the deputy prosecutor and the accused. The president of the court advises the accused of his right to appeal the judgment within the statutory time-limit.

**Article 278.** If the court acquits the accused, he is released immediately, unless he is detained for another reason.

**Article 279.** The court may order an accused who is convicted of a crime – other than those for which it sentences him to the death penalty or life imprisonment – to pay the costs of the trial and the expenses arising therefrom.

**Article 280.** A civil claimant who loses is liable for costs. Nevertheless, he may be exempted therefrom in whole or in part if he acted in good faith and if the penal action was not initiated on the basis of his complaint.

**Article 281.** If the court decides that the act imputed to the accused does not constitute a felony but only a misdemeanour or contravention, it rules to amend the charge and pronounces judgment on the amended charge.

#### **Article 282.**

1. Following its rendition, the judgment is docketed in the court's judgment roll and the original of the judgment is kept with the documents of the case on which it was rendered.
2. The court sends a list of the judgments it renders to the Attorney General.

**Article 283.** If a material error that does not entail nullity occurs in the judgment, the court which rendered such judgment undertakes to correct the error either *sua sponte* or at the request of the parties. The correction is made in the deliberation chamber. The court may also, at the request of the deputy prosecutor, correct any material errors in the charging instrument.

### **Chapter VII**

#### **Procedures for a Stay of Execution of the Penalty**

**Article 284.** The court may, when sentencing the accused in a felony or misdemeanour to a fine or to imprisonment for a term of not more than one year, rule in the same judgment to stay execution of the penalty if the character of the convicted person, his past record, his age, or the circumstances in which he committed the crime is conducive to the belief that he will not violate the law again. It must indicate in the judgment the reasons for the suspended sentence and the suspension may include any ancillary penalty and all penal effects arising from the sentence.

**Article 285.** The order to stay execution of the penalty is issued for a period of three years running from the date on which the judgment becomes final. The stay of execution may be cancelled if:

1. The accused is sentenced during such period to imprisonment for a term of over one month for an act he committed either before or after the stay of execution order.
2. It transpires during such period that prior to the stay of execution order the sentence referred to in the preceding paragraph was pronounced against the accused and the court was not apprised thereof.

**Article 286.** The order to cancel is issued by the same court which ordered a stay of execution at the request of the Public Prosecution after summoning the convicted party to appear. If the penalty on which the cancellation order is predicated was imposed after the stay of execution, the cancellation order may be issued by the court which imposed such penalty, either *sua sponte* or at the request of the Public Prosecution.

**Article 287.** Cancellation entails execution of the suspended sentence as well as of all ancillary penalties and penal effects that were suspended.

### **Chapter VIII**

#### **Trials of Fugitives**

#### **Article 288.**

1. In the event the Attorney General prefers a felony charge against a person who has not been arrested and who does not turn himself in, an arrest warrant is issued against him.
2. After the documents of the case are referred to the deputy prosecutor, he issues a charging instrument, inclusive of the names of witnesses, and sends it to the last domicile of the accused for notification. He then refers the case to the court for trial.
3. On receiving the file of the case, the court is held to issue a decision granting the accused a grace period of ten days in which to surrender to the judicial authorities. The decision cites the type of felony, refers to the arrest warrant and enjoins all persons who know the fugitive's whereabouts to come forward with such information.



4. The decision granting a grace period is published in the Official Gazette or in a local newspaper. It is also affixed to the door of the accused's residence and posted on the court's bulletin board.
5. If the accused is unable to present himself for trial, his relatives or friends may furnish an excuse on his behalf together with proof of its legitimacy.
6. An accused who does not turn himself in during the grace period is deemed a fugitive from justice.

**Article 289.**

1. In those cases where sufficient evidence of the validity of the charge in a crime perpetrated against public funds is established by the investigation, the Attorney General may, upon deciding that the matter entails taking conservatory measures against the funds of the fugitive, present the matter to the penal court empowered to place his funds and assets under attachment to prevent him from disposing thereof.
2. The court may, at the request of the Attorney General, include in its decision the funds and property of the spouse and minor children of the fugitive when it has sufficient proof that such assets are the fruit of the crime under investigation.
- 3.(a) The court determines who will administer the attached funds after they are inventoried in the presence of the concerned parties, the representative of the Public Prosecution and the court-appointed expert.  
  
(b) The person so appointed is held to preserve the attached funds, to administer them properly and to restitute them, together with their proceeds, at the end of the attachment period.
4. Any interested party may protest against the court's decision referred to in paras (1), (2) and (3) above within three months of its rendition before the court which rendered it.
5. During the period in which the funds of the fugitive are under attachment, his spouse, children, parents and those he is under a legal obligation to support will be given a monthly allowance, in the amount determined by the competent court, from the revenues of his assets. The civil claimant may obtain a decision from such court granting him an advance from the damages awarded to him, with or without the furnishing of a guarantee.

**Article 290.**

1. The Attorney General immediately notifies the court's decision to the director of the land registration department to affix the attachment sign on the properties of the fugitive.
2. If the assets under attachment are subject to rapid deterioration, or if the court decides that their sale would be beneficial to their owner, it may, where appropriate, order them sold. The sale price is deposited in the court registry.

**Article 291.**

1. If the fugitive does not turn himself in, the court tries him *in absentia* after ascertaining that the decision granting him a grace period was notified and published. The trial is conducted in accordance with the procedures prescribed in the present law.
2. No counsel may represent a fugitive who is being tried *in absentia*.

**Article 292.**

1. A fugitive convicted *in absentia* of a crime against public funds is prohibited from disposing of or administering his funds and is subject to the provisions of article (289) hereof.
2. The decision prohibiting disposition or administration shall not be lifted except after completion of execution of the pecuniary penalties imposed on the accused.

#### **Article 293.**

The Public Prosecution notifies the judgment rendered against the fugitive within ten days of its rendition by publishing it in the Official Gazette and a daily newspaper, affixing it to the door of the fugitive's last domicile and posting it on the court's bulletin board. The judgment is also notified to the director of the land registration department.

#### **Article 294.**

The judgment becomes executory on the day following its publication and may be appealed by the Public Prosecution in case of acquittal.

#### **Article 295.**

1. The absence of one of the accused does not entail adjourning the trial or postponing a review of the case in respect of the other accused.
2. The court may, after trying the accused, decide to deliver the objects kept in the depository of attached goods to their owners or to those entitled to them by means of minutes indicating the type, number and description of such objects.

**Article 296.** If the fugitive turns himself in or is arrested before the penalty has been extinguished by prescription, the judgment and the proceedings which have taken place since the order to appear are *ipso facto* cancelled and he shall be retried in the usual manner.

**Article 297.** If the court acquits a fugitive who turned himself in and was prosecuted anew, he is exempted from the costs of the trial *in absentia*. The judgment of acquittal is published in the Official Gazette.

**Article 298.** The provisions of this chapter are applicable to an accused who escapes from a correctional and rehabilitation centre [a prison] or from the statutorily designated place of detention.

### **Chapter IX**

#### **Trial Procedures Before Conciliation Courts**

**Article 299.** The conciliation court is composed of a single judge who is seised of the cases falling under his jurisdiction.

**Article 300.** The conciliation court exercises jurisdiction over all contraventions and misdemeanours, in the absence of a contrary legislative provision.

**Article 301.** No person shall be referred to trial before the conciliation court in a misdemeanour case unless a charging instrument is presented against him by the Public Prosecution.

**Article 302.** Hearings of the conciliation courts in misdemeanour cases are held in the presence of the deputy prosecutor and the clerk.

#### **Article 303.**

1. When the charging instrument is deposited with the clerk of the court, memoranda of appearance are made out and notified to the Public Prosecution, the accused, the civil claimant and the party responsible to make civil reparation.
2. The memorandum of appearance comprises the day and hour when the case will be heard.

#### **Article 304.**

1. If the accused does not present himself in court on the day and at the hour designated in the memorandum of appearance notified to him in accordance with prescribed procedure, he shall be tried *in absentia*.

2. If the accused attends a session of the trial from which he withdraws for any reason, or if he absents himself from the trial after attending one of its sessions, the court may proceed with its review of the case or continue to review it as though the accused is present, and its judgment may not be challenged except at appeal.

**Article 305.** The accused in a misdemeanour case that is not punishable by imprisonment may delegate counsel to admit that he committed the incident or to take such other procedures as may be necessary, unless the court decides that he must appear in person.

**Article 306.** In trials conducted before the conciliation courts and in which the law does not require the presence of a representative of the Public Prosecution, the complainant or his counsel may attend the trial and present evidence.

**Article 307.** The provisions of chapter V of this Part Two apply to trial procedures before conciliation courts.

## **Chapter X**

### **Simplified Procedures**

**Article 308.** The simplified procedures referred to in this chapter apply to contraventions of laws and regulations related to municipal affairs, health and road traffic.

**Article 309.**

1. On the occurrence of a contravention of the above-mentioned laws and regulations that is punishable only by a fine, the documents establishing its occurrence are sent to the competent judge to impose the penalty exigible for the act or to send them back to the Public Prosecution to institute an action in the usual manner.
2. The judge renders his judgment within ten days, unless the law requires its rendition within a shorter period.

**Article 310.** The judge gives full faith and credit to the facts set forth in the documents establishing the occurrence of the incident when such are in conformity with required procedures.

**Article 311.** The judgment imposing a penalty must mention the act, its legal qualification and the legislative text applicable thereto.

**Article 312.** The judgment is notified to the accused and the Public Prosecution by due service of process.

**Article 313.** The simplified procedures prescribed in this chapter are not applicable when there is a civil claimant in the case.

## **Book Three: Means of Challenging Judgments**

### **Part One: Objections to Default Judgments**

**Article 314.** A person against whom a default judgment is rendered in a misdemeanour or contravention is entitled to object to the judgment within ten days of being notified thereof. The time-limit is extended for considerations of distance.

**Article 315.** An objection is not admissible from the civil claimant.

**Article 316.**

1. The objection is presented in an application to the clerk of the court which rendered the judgment, after it is signed by the party against whom it was rendered or by his counsel.
2. The application contains the full text of the judgment objected to, as well as the grounds on which the objection is predicated.

**Article 317.** The court which rendered the default judgment is held to schedule a session to look into the objection and to notify the parties thereof.

**Article 318.** The death of the person against whom a default judgment was rendered before the lapse of the time-limit for the objection or before a decision is issued thereon, entails the arrest of the judgment and the extinction of the penal action.

**Article 319.**

1. If the objector fails to appear at the session scheduled to review his objection without an acceptable excuse, the court rules to dismiss the objection and he is barred from raising another objection.
2. The judgment dismissing the objection is amenable to appeal, and the time-limit for filing the appeal commences to run from the day following its rendition if it was pronounced in the presence of the accused and from the day following its rendition if it was pronounced *in absentia*.

**Article 320.** The court rules to dismiss the objection in form if it is raised after the time-limit, for lack of capacity or for any other defect of form.

**Article 321.** If the court finds the objection admissible in form, it proceeds to review the case in accordance with the legally prescribed procedures.

**Article 322.** If the court finds that there are no grounds for the objection, it rules to dismiss it.

## **Part Two**

### **Appeals**

**Article 323.**

1. The parties may appeal judgments rendered or deemed to have been rendered in their presence in penal actions as follows:
  - a- If rendered by the conciliation courts, they are appealed before the courts of first instance in their appellate capacity.
  - b- If rendered by the courts of first instance in their capacity as courts of original jurisdiction, they are appealed before the courts of appeal.
2. Judgments and decisions which are appealable under the provisions of any other law are appealed in accordance with the procedures prescribed in the present law.

**Article 324.** Interlocutory decisions which do not settle the essence of the dispute may not be appealed except with the final judgment disposing of the matter in controversy. An appeal of the final judgment inevitably entails an appeal of the interlocutory decisions. However, decisions dismissing pleas moving for the non-competence of the court or the non-admissibility of the case by reason of prescription may be independently appealed if such pleas were invoked at the start of the trial and before any pleas on the merits.

**Article 325.** Judgments rendered on civil actions may be appealed if they are appealable when rendered by a civil court. The appeal is limited to the civil provisions of the judgment.

**Article 326.** A judgment dismissing an objection may be appealed.

**Article 327.** Judgments imposing the death penalty or life imprisonment are appealed by operation of law, even if not appealed by the parties.

**Article 328.** The appeal is filed by depositing a writ of appeal with the clerk of the court which rendered the judgment, or with the clerk of the court of appeal, within fifteen days running from the day following the date of rendition of the judgment if it was pronounced in the presence of the parties or from the date of its notification if it was deemed to have been pronounced in their presence.

**Article 329.** The Public Prosecution may appeal judgments rendered by the conciliation and first instance courts within thirty days running from the day following rendition of judgment.

**Article 330.** The writ of appeal includes the full text of the judgment under appeal, the number of the case on which it was rendered, the respective capacities of the appellant and the respondent, the reasons for the appeal and the demands of the appellant.

**Article 331.** If the writ of appeal is deposited with the clerk of the court which rendered the judgment, the said court is held to send it to the clerk of the court of appeal, together with the file of the case under appeal, within three days.

**Article 332.** The convicted party, the civil claimant and the party liable to make civil reparation is not prejudiced by his appeal.

**Article 333.** Appellate trials are subject to the provisions of the articles concerning the public nature of the trial, its procedures, the form of the final judgment, costs and fees, imposition of penalties and objections to default judgments. The court of appeal is vested with the prerogatives prescribed in the chapter on the trial of an accused who is at large, either because he is a fugitive on the run or a contumax who failed to appear in court after being notified of the trial, if the case is under review before the court of appeal.

**Article 334.** The court of appeal may hear any witnesses who should have been heard before the court which rendered the judgment under appeal and may complete any other deficiencies in the investigation procedures.

**Article 335.** The court upholds the judgment under appeal if it decides that the appeal is inadmissible in form or groundless on the merits.

**Article 336.** If the court rules to reverse the judgment under appeal because the act does not constitute a crime, because it does not entail a penalty or because the evidence is insufficient for a conviction, it renders a judgment of acquittal.

**Article 337.** If the judgment is reversed for its violation of law or for any other reason, the court calls up the case and adjudicates it on the merits or returns it to the court which rendered the judgment with instructions on how to proceed with its review.

**Article 338.** If the court which rendered the judgment under appeal confined itself to ruling itself incompetent or to dismissing the case, and the court of appeal reverses the judgment and rules the court competent or dismisses the plea of non-admissibility and rules the case admissible, it must return the case to the court which rendered the judgment under appeal to adjudicate it on the merits.

**Article 339.** The appeal filed by a person against whom a judgment imposing an executory deprivation of liberty penalty curtailing liberty has been rendered lapses if the convicted person does not present himself for execution of the judgment before the session.

**Article 340.** The court may postpone execution of the judgment under appeal until the appeal has been adjudicated if the party against whom it was rendered expresses his wish to appeal it.

**Article 341.** If an appeal is not filed within the prescribed time-limit, and the appellant requests an extension of the time-limit within fifteen days from the date of its expiry, the court of appeal may grant him a grace period of not more than ten days if it determines the existence of a legitimate excuse justifying the delay.

**Article 342.**

1. If the appeal is filed by the Public Prosecution, the court may uphold, reverse or amend the judgment, either in favour of or against the accused.

2. The court may not impose a severer penalty nor reverse a judgment of acquittal except by the unanimous opinion of the judges of the court reviewing the case.

**Article 343.** The appeal is dismissed if it is filed after the prescribed time-limit, if it transpires that the appellant has no standing to sue or for any other defect of form.

**Article 344.** A plea of nullity of the procedures is not admitted before the court of appeal unless it relates to public policy or was invoked before the court of first instance.

**Article 345.** The director of the correctional and rehabilitation centre [the prison] receives the inmate's appeal and raises it to the court of appeal within one week of receiving it.

### **Part Three: Cassation**

#### **Chapter I: Cassation of Judgments**

**Article 346.** Judgments rendered on felonies and misdemeanours by the court of first instance in its appellate capacity and by the court of appeal are amenable to challenge at cassation, in the absence of a contrary legislative provision.

**Article 347.** Judgments rendered by the court of first instance in its appellate capacity and by the court of appeal which rule for the dismissal of a plea of non-competence or for the inadmissibility of the case by reason of prescription pursuant to the provisions of this law, are amenable to challenge at cassation.

**Article 348.** Challenges at cassation are not admitted in respect of judgments and decisions that are amenable to objection or appeal.

**Article 349.** Challenges at cassation may be raised by the following:

- 1- The Public Prosecution.
- 2- The party against whom judgment was rendered.
- 3- The civil claimant.
- 4- The party liable to make civil reparation.

**Article 350.** Judgments imposing the death penalty or life imprisonment are challenged at cassation by operation of law, even if the parties do not petition for a revision of their sentence.

#### **Chapter II**

##### **Reasons for Challenges at Cassation**

**Article 351.** Without prejudice to the provisions of the preceding article, challenges at cassation are not admissible except for one of the following reasons:

1. If nullity occurred in the procedures such as to affect the judgment.
2. If the court which rendered the judgment was not constituted in accordance with law, or was not competent to adjudicate the case.
3. If two contradictory judgments are handed down at the same time on the same incident.
4. If the judgment exceeded the demands of the adverse party.
5. If the judgment is predicated on a violation of the law or on a mistake in its application or interpretation.

6. If the judgment does not contain reasons, or if its reasons are insufficient, ambiguous or contradictory.
7. If the rules of jurisdiction are breached or if the court oversteps its legal authorities.
8. In the event other procedures are contravened if the court does not heed the party's demand to observe them and fails to rectify them in the course of the subsequent stages of the trial.

**Article 352.** The party may not invoke a plea of nullity against certain procedures taken before the conciliation and first instance courts if he does not invoke such plea before the court of appeal.

**Article 353.** The party may not come forward with proof derived from facts not addressed in the reasons of the judgment under challenge.

**Article 354.** The court may quash the judgment in favour of the accused *sua sponte* if it finds from what is established therein that it is based on a violation of the law or on a mistake in its application or construction, or that the court which rendered it was not constituted in accordance with law or was not competent to adjudicate the case, or if the provisions of a law enacted after the judgment under challenge are applicable to the case.

### Chapter III

#### Procedures of Challenges at Cassation

**Article 355.**

1. The time-limit for the presentation of a petition of challenge at cassation by the Public Prosecution, the convicted party, the civil claimant and the party liable to make civil reparation is forty days.
2. The time-limit for challenges at cassation runs from the day following the rendition of a judgment pronounced in the presence of the parties or from the day following its notification if it is deemed to have been pronounced in their presence.

**Article 356.** The petition of challenge at cassation is presented to the clerk of the court which rendered the judgment or to the clerk of the court of cassation.

**Article 357.** The petition is signed by the petitioner or his counsel and includes the reasons for the challenge and the names of the parties. It must be accompanied by a receipt evidencing payment of the prescribed fees and the date of its registration is noted thereon by the clerk of court.

**Article 358.** If the petition is not presented by the Public Prosecution or by the convicted party detained under a sentence depriving him of liberty, its admission is conditional on the petitioner depositing the sum of fifty Jordanian dinars or their equivalent in legal tender in the court registry, unless he was exempted from judicial fees. This sum is deemed an insurance which is refundable to the petitioner if his challenge is well-founded.

**Article 359.** If the petition of challenge at cassation is deposited with the clerk of the court which rendered the judgment, he is held to send it to the clerk of the court of cassation, together with the file of the case, within one week.

**Article 360.** The chief clerk of the court of cassation notifies the petition of challenge at cassation to the party petitioned against within one week from the day following the registration date of the petition.

**Article 361.** The party petitioned against is entitled to submit a responsive pleading to the reasons of the challenge at cassation within fifteen days from the day following his notification.

**Article 362.** When the papers of the challenge at cassation are complete, the chief clerk of court sends them, together with the file of the case, to the Public Prosecution.

**Article 363.** The papers are registered in the register of the Public Prosecution and are sent, together with the file, to the Attorney General, who reviews them and returns them within ten days of receiving them.

**Article 364.** If the petitioner is detained, he submits the petition of challenge at cassation to the director of the correctional and rehabilitation centre [the prison] in which he is detained and the director shall, in his turn, send it within twenty-four hours to the clerk of the court of cassation.

**Article 365.** The challenge raised by an accused sentenced to a penalty that deprives him of liberty lapses if he does not come forward to execute the sentence before the session scheduled to hear the challenge.

**Article 366.** The court examines the challenge in detail and may, at its discretion, schedule a session to hear the statement of the Public Prosecution and the counsels of the parties.

**Article 367.** If the court refuses all the reasons for the challenge at cassation presented by the petitioner, and if it does not, *sua sponte*, find a reason for the challenge, it rules to dismiss it on the merits.

**Article 368.**

1. If the petition of challenge is not presented by the Public Prosecution, the judgment is not extinguished except as towards the party who presented it.
2. If the petition of challenge is presented by one of the parties against whom the judgment under challenge was rendered, and the reasons on which such party bases the challenge are related to another of the parties sentenced in the case, the judgment is quashed as towards them as well even if they did not move for its cassation.

**Article 369.**

1. If the reasons of the judgment under challenge are based on a mistake in citing legislative texts, in the legal qualification of the crime or in the capacity of the convicted party, the judgment may not be quashed if the penalty it imposes is the one prescribed by law for the crime in accordance with the facts established in the judgment. In such case, the court corrects the mistake in the judgment and rejects the challenge.
2. The convicted party may not rely on the challenge to abstain from executing the judgment under challenge.

**Article 370.** A judgment is quashed only in that part thereof that was challenged, unless it is not susceptible of division.

**Article 371.** If the judgment under challenge admitted a legal plea interdicting the continued prosecution of the case and the court of cassation quashes the judgment and returns it to the court from which it originated to look into the merits, such court may not render a judgment contrary to that rendered by the court of cassation.

**Article 372.** If the court accepts one of the reasons for the challenge at cassation or establishes a reason therefor *sua sponte* pursuant to article (354) of this law, it quashes the judgment under challenge and returns the case to the court which rendered it to adjudicate it *de novo* with a different panel of judges.

## Chapter IV

### Effects of Court of Cassation Judgments

**Article 373.** If the court of cassation rejects a petition of challenge at cassation, the judgment becomes final and the person who challenged it may under no circumstances raise another challenge against the same judgment for any reason whatsoever.

**Article 374.** If the judgment rendered after the first cassation is challenged, the court of cassation looks into the merits of the case.



## Chapter V

### Cassation by Written Order

**Article 375.** The Minister of Justice may request the Attorney General in writing to submit the file of a case to the court of cassation if the judgment rendered thereon is contrary to law and has acquired a binding force, and if the case was not previously adjudicated by the court of cassation, and move for the nullity of the procedure or the cassation of the judgment or decision.

**Article 376.** If the court of cassation accepts the reasons mentioned in the preceding article, it nullifies the procedure, judgment or decision under attack.

### Part Four

#### Retrials

**Article 377.** Retrials may be sought in respect of binding judgments on felonies and misdemeanours in the following cases:

1. Where, after a conviction for homicide, evidence is produced to prove that the alleged victim of the homicide is still alive.
2. Where, after a person is convicted for a given crime, a new judgment convicts another person for the same crime, and the two judgments being irreconcilable, their contradiction proves the innocence of one or the other of those convicted.
3. Where the judgment was predicated on the testimony of a witness who is convicted of perjury or on a document which is condemned as a forgery after the judgment was rendered.
4. Where, after a conviction, new facts are revealed or documents and evidence unknown at the time judgment was rendered are produced, when such are of a nature to establish the innocence of the convicted person.
5. Where the conviction is predicated on a judgment rendered by a civil court or one of the Personal Status courts and such judgment was annulled.

**Article 378.** The application for a retrial is submitted to the Minister of Justice by any of the following:

1. The convicted person, his counsel, his legal representative if he is devoid of capacity, or the person liable to make civil reparation.
2. The spouse or children of the convicted person or his heirs or legatees if he is deceased or if his death is established by a court judgment.

**Article 379.**

1. The application for a retrial is presented to the Minister of Justice within one year from the date on which the persons entitled to apply learn of the reason entailing a retrial, otherwise the application is denied.
2. The Minister of Justice refers the application for a retrial to the Attorney General, who is held to raise it, within one month of his receipt thereof, to the court of cassation, together with the results of the investigations he found it necessary to conduct, his opinion and the reasons on which it is predicated.

**Article 380.**

1. The application for a retrial does not entail a stay of execution of the judgment, save where it imposes the death penalty.

2. The court of cassation may order a stay of execution of the judgment in its decision ruling to admit the application for a retrial.

**Article 381.** If the court of cassation decides to admit the application for a retrial, it refers the case to a court of the same rank as the one which rendered the judgment at the initial trial.

**Article 382.** If a retrial is impossible as towards all the parties by reason of the death of the convicted party or of the lapse of the case by prescription, the court of cassation looks closely into the merits of the case and nullifies such aspects of the judgment or of previous judgments as were erroneously rendered.

**Article 383.**

1. If, as the result of a retrial, the convicted party is acquitted, the judgment of acquittal is posted on the door of the court or in the public areas in the town in which the judgment of conviction was rendered, as well as at the scene of the crime, at the last domicile of the party who applied for a retrial and at the last domicile of the convicted party, if deceased.
2. The judgment of acquittal is *ipso facto* published in the Official Gazette and is also published, if the applicant for a retrial so demands, in two local newspapers of his choice. The costs of publication are borne by the State.

**Article 384.** Reversal of the judgment attacked entails the reversal of the judgment awarding damages and the reimbursement of any damages that were paid, without prejudice to the rules related to the prescription of rights with the expiration of the time-limit.

**Article 385.** If the application for a retrial is denied, it may not be renewed on the basis of the same facts on which it was predicated.

**Article 386.** A judgment rendered on the merits of the case by other than the court of cassation on the basis of an application for a retrial may be challenged by all the means prescribed by law and may not impose a severer penalty on the accused than that previously imposed on him.

**Article 387.**

1. A convicted person who is retried and acquitted is entitled to claim damages from the State for the injury he suffered as a result of the conviction.
2. If the convicted party is deceased, the right to claim damages belongs to his spouse, his ascendants and his descendants.
3. The State is entitled to claim such damages from the civil claimant, the informer or the perjured witness by whose fault the conviction was pronounced.

## Part Five

### The Force of Final Judgments

**Article 388.** A judgment rendered on the merits of a penal action is not amenable to review by other than the means of challenge prescribed by law.

**Article 389.** A penal action may not be retracted after a final judgment has been rendered thereon on the basis of a change in the legal qualification of the crime.

**Article 390.**

1. A judgment rendered by the competent court on the merits of a penal action, whether of acquittal or conviction, has the force of *res judicata* before the civil courts in cases on which no final judgment has been rendered in respect of the occurrence of the crime, its legal qualification and its attribution to its perpetrator.

2. A judgment of acquittal has this force whether it is predicated on the extinction of the charge or the insufficiency of the evidence.
3. A judgment of acquittal does not acquire the force of *res judicata* if it is based on the fact that the act is not punishable by law.

**Article 391.** Judgments rendered by the civil courts do not have the force of *res judicata* before the criminal courts in respect of the occurrence of the crime and its attribution to its perpetrator.

**Article 392.** Judgments rendered by Personal Status (Shari'a) courts within the limits of their jurisdiction have the force of *res judicata* before the penal courts in matters on which the final ruling on a penal action is contingent.

## **Book Four: Execution**

### **Part One**

#### **(Executory Judgments)**

**Article 393.** The penalties prescribed by law for any crime may not be imposed except pursuant to a judgment rendered by a competent court.

**Article 394.** Judgments rendered by the penal courts are not executed unless they become final, in the absence of a contrary legislative provision.

**Article 395.**

1. The Public Prosecution undertakes to execute judgments rendered on penal actions in accordance with the provisions of this law and may, when necessary, directly requisition the police force.
2. Judgments rendered on civil actions brought for reparation of the injury caused by a crime, a misdemeanour or a contravention are executed at the request of the civil claimant pursuant to the provisions of the Law of Civil Procedure.

**Article 396.** If an accused held under provisional detention is acquitted, fined or given a suspended sentence by a preliminary judgment, he must be released immediately, unless he is detained for another reason.

**Article 397.** A person sentenced to a term of confinement must be set free when the time he has spent under provisional detention is equivalent to the term to which he was sentenced.

**Article 398.** A challenge at cassation does not entail a stay of execution, unless the judgment under challenge imposes the death penalty.

**Article 399.** Any person sentenced to imprisonment for a term of not more than three months may petition the Public Prosecution to put him to work outside the correctional and rehabilitation centre [the prison] instead of executing the sentence of imprisonment against him, unless the judgment deprives him of that option.

**Article 400.** If the accused is acquitted of the crime for which he was detained, the period of provisional detention must be deducted from the term to which he is sentenced for any other crime that he committed or for which he was investigated during the provisional detention.

**Article 401.** In the event multiple sentences have been passed against the accused, the period he spent under provisional detention is deducted first from the lighter sentence then from the more severe sentence.

**Article 402.** If the person sentenced to prison is pregnant, execution of the sentence may be postponed until she gives birth and three months pass after the delivery. If it is decided to proceed with executing the sentence or if the condition of pregnancy is established during its execution, she must be treated in the correctional and rehabilitation centre [the prison] as a provisional detainee.

**Article 403.** If the person sentenced to prison is afflicted with a life-threatening disease, or if executing the sentence would expose his life to danger, its execution may be postponed.

**Article 404.** If the person sentenced to prison is stricken with insanity, the Public Prosecution orders that he be committed to a mental institution until he is cured. In such case, the period of his commitment in the institution is deducted from his sentence.

**Article 405.** If a man and his wife are sentenced to prison for a term of not more than one year, even for different crimes, and they have not been previously imprisoned, the execution of the sentence against one of them may be postponed until the other one is released, if they are responsible for a child who has not attained the age of fifteen and if they have a domicile in Palestine.

**Article 406.** The court may, in all the cases in which it decides to postpone execution of the sentence against the accused, order him to post bail to guarantee that he will not evade execution of the sentence when the reason for its postponement disappears. The amount of the bail is determined in the order of postponement, which may also make the postponement of execution conditional on whatever precautionary measures it deems necessary to prevent the accused from fleeing.

**Article 407.** In other than the cases set forth in the law, the party sentenced to imprisonment may not be released before serving his sentence.

## **Part Two**

### **Execution of the Death Penalty**

**Article 408.** As soon as a death sentence becomes final, the Minister of Justice is held to immediately raise the documents of the case to the Head of State.

**Article 409.** The sentence of death may not be carried out until after it has been ratified by the Head of State.

**Article 410.** The Attorney General or an assistant he delegates oversees the execution of the death sentence. The sentence is carried out in the presence of:

1. The Attorney General or his delegated assistant.
2. The director of the correctional and rehabilitation centre [the prison] or the person he delegates for this purpose.
3. The chief of police in the governorate.
4. The clerk of the court which passed the sentence.
5. The doctor of the correctional and rehabilitation centre [the prison].
6. A religious dignitary belonging to the same faith as the person condemned to death.

**Article 411.** The condemned person's relatives may meet with him before the date scheduled for execution of the sentence, provided the meeting is held far from the place of execution.

**Article 412.** If the condemned person belongs to a religion which imposes on him the requirement to make confession or to carry out any other ritual before dying, the necessary facilities must be provided to enable him to meet with a religious dignitary.

**Article 413.** The ruling of the judgment imposing the death penalty and the offense for which it was imposed must be read aloud to the condemned person at the place where the sentence of death is to be carried out. It must be heard by the persons attending and, if the condemned person wishes to make a statement, the Attorney General or his assistant transcribes minutes recording the statement.

**Article 414.** The death sentence may not be executed on a pregnant woman. If she gives birth to a live infant, the court which passed sentence on her commutes the death sentence to life imprisonment.

**Article 415.** The death sentence will be carried out on civilians by hanging and on the military by firing squad.

**Article 416.** The court clerk transcribes minutes of the execution of the death penalty which are signed by the representative of the Public Prosecution, the director of the correctional and rehabilitation centre (the prison), the doctor and the clerk. The minutes are kept by the Public Prosecution.

**Article 417.** The death penalty may not be carried out on official holidays or on the religious feast days observed by the condemned person's religion.

**Article 418.** The death penalty is carried out inside the correctional and rehabilitation centres [the prisons] of the State.

**Article 419.** The government buries at its own expense the body of the person on whom the death sentence was carried out if his relatives do not claim the body for private burial. No celebration may accompany the burial.

### **Part Three**

#### **Contestation of Execution**

**Article 420.** Every contestation of execution by the convicted party is raised to the court which rendered judgment against him.

**Article 421.** The contestation is expeditiously presented to the court by the Public Prosecution, and the concerned parties are notified of the date scheduled to look into it. The court rules on the contestation after hearing the demands of the Public Prosecution and the concerned parties. It is entitled to conduct the necessary investigations and may order a stay of execution until the dispute is adjudicated.

**Article 422.** The Public Prosecution may, when necessary, and before presenting the dispute to the court, stay execution of the judgment temporarily for health reasons.

**Article 423.** A dispute that arises over the identity of the convicted person is adjudicated in the manner and pursuant to the procedures prescribed in the preceding articles.

**Article 424.** If a dispute is initiated by other than the accused in respect of the property to be executed against in the event of the execution of a money judgment over the property of the convicted person, the matter is raised to the civil courts pursuant to the provisions of the Law of Civil Procedure.

### **Part Four**

#### **Extinction of the Penalty by Prescription and the Death of the Convicted Person**

**Article 425.**

1. Penalties and conservatory measures lapse by prescription.
2. Prescription does not apply to penalties and conservatory measures involving alienation of rights, deportation or confiscation in kind.
3. The penalty lapses with the death of the convicted person.

**Article 426.** The death of the convicted person does not prevent the execution of pecuniary penalties, damages, restitutions and death duties.

**Article 427.**

1. The prescription period for the death penalty is thirty years.
2. The prescription period for the penalty of life imprisonment is twenty years.
3. The prescription period in any other penalty is double the period of the sentence, to a maximum of fifteen and a minimum of ten years.

**Article 428.**

1. Prescription runs from the date of the judgment if it was rendered *in absentia*, and from the day the convicted person evaded execution of the judgment if it was rendered in his presence.
2. If the convicted person evades execution of a penalty involving deprivation of liberty, half the term of his sentence is deducted from the prescription period.

**Article 429.** The prescription period commences:

1. In a judgment rendered in the presence of the convicted person, from the date of its rendition if it is at last resort, and from the date it becomes final if it is in the first degree.
2. If the convicted person is sentenced to provisional detention, then from the day he evades execution of the sentence. In such case, half the term of his sentence is deducted from the prescription period.

**Article 430.**

1. The period of prescription for conservatory measures is three years.
2. Prescription does not commence except from the day on which the conservatory measure becomes enforceable or after the prescription of the penalty accompanying such measure, provided no decision is issued by a judge before the expiration of seven years from that date determining that the convicted person still represents a threat to public safety. In such case, the judge orders the execution of the conservatory measures.

**Article 431.** A correctional measure whose execution has been neglected for one year may not be executed thereafter except by a decision of the court that issued it on the basis of a request from the Public Prosecution.

**Article 432.**

1. The period of prescription is calculated from the day following the day on which the crime is committed.
2. Prescription is interrupted by every legal or material constraint rendering execution of the penalty or measure impossible and which does not emanate from the convicted person. The postponement of execution of the judgment is deemed a legal constraint interrupting prescription.
3. Prescription is interrupted by the following:
  - a) The arrest of the convicted person.
  - b) The procedures of investigation or trial taken by the competent authorities.

- c) The procedures of execution taken as towards the convicted person or touching on his place of business.
- d) The commission by the convicted person of another crime of the same or greater magnitude than the crime for which he was sentenced to the penalty or measure.

The period of prescription may not be extended in any of the above-mentioned cases to more than double its length.

**Article 433.** The foregoing articles shall not prevent the application of the provisions of prescription set forth in other laws concerning certain crimes.

**Article 434.** If a person is sentenced *in absentia* and his penalty lapses by prescription he may not request a retrial.

**Article 435.**

1. The obligation to pay damages awarded in a penal action is extinguished in accordance with the provisions of prescription set forth in the Civil Law.
2. The obligation to pay fees and costs to the Public Treasury is extinguished in accordance with the rules relating to public funds, and prescription is interrupted in respect thereof by the presence of the convicted person in the correctional and rehabilitation centre [the prison] in execution of any judgment.

## **Part Five**

### **Rehabilitation**

**Article 436.** The effects of a judgment imposing a penal sanction remain in force until the convicted person is rehabilitated by operation of law or by a court judgment. Legal or judicial rehabilitation entails the expungement of the judgment of conviction in respect of the future and the extinction of all the penal effects arising therefrom. However, it has no effect on third party rights.

**Article 437.** Any person convicted of a felony or misdemeanour may be rehabilitated. A judgment to that effect is issued, at his request, by the court of first instance within the jurisdictional limits of which his domicile is located.

**Article 438.** Rehabilitation is subject to the following conditions:

1. That the penalty was executed in full, that a pardon was issued in respect thereof or that it lapsed by prescription.
2. That five years have elapsed since the execution of the penalty or the issuance of the pardon in the case of a penal sanction and one year in the case of a penalty for a misdemeanour. The period is doubled in the case of recidivism or of the lapse of the penalty by prescription.

**Article 439.** For the court to issue a judgment of rehabilitation, the convicted person must have discharged all that he was condemned to pay in the way of fines, restitutions, damages or expenses. The court may waive this condition if the convicted person is able to prove that he is not in a position to make payment discharge.

**Article 440.** If multiple judgments were rendered against the person seeking rehabilitation, he shall not be rehabilitated unless the conditions set forth in the preceding articles are satisfied in respect of each such judgment, provided the time-limit is calculated by reference to the most recent one among them.

**Article 441.** The request for rehabilitation is presented in a petition to the Attorney General. The petition must include the particulars necessary to identify the petitioner; it must also indicate the date of the judgment rendered against him and the places at which he resided since that date.

**Article 442.**

1. The Attorney General conducts an investigation in connection with the petition to verify the dates of the petitioner's sojourn at each of the places he stayed in since judgment was passed against him and the duration of each such stay, to look into his conduct and means of livelihood and, in general, to gather whatever information he deems necessary. He annexes the investigation report to the petition and raises both to the court within one month from the date the petition is presented to him, together with a report stating his opinion and the reasons on which it is predicated.
2. The following are annexed to the petition:
  - a) A copy of the judgment rendered against the petitioner.
  - b) A certificate of his previous convictions.
  - c) A report on his conduct during his internment at the correctional and rehabilitation centre [the prison].

**Article 443.** The court considers and rules on the petition for rehabilitation in the deliberation chamber. It may hear the statements of the Public Prosecution and the petitioner and obtain such information as it deems necessary. Notice to appear is served on the petitioner at least eight days before the session. The judgment rendered by the court on the petition may be challenged through an appeal if it is predicated on a mistake in the application or construction of the law, and the challenge is subject to the provisions and time-limits prescribed for challenges in this law.

**Article 444.** Without prejudice to the provisions of article (463) hereof, the court issues a judgment of rehabilitation if it deems the behaviour of the petitioner since his conviction is conducive to the belief that he will reform.

**Article 445.** The Attorney General sends a copy of the rehabilitation judgment to the court which rendered the judgment of conviction in order to inscribe the rehabilitation in the margin and to order that it be inscribed in the identity check register.

**Article 446.** A judgment of rehabilitation may not be rendered in respect of a convicted person more than once.

**Article 447.** If the petition for rehabilitation is denied for a reason attributable to the conduct of the convicted person, it may not be renewed before two years have elapsed. In all other cases, it may be renewed when the conditions that must be satisfied are met.

**Article 448.** The judgment of rehabilitation may be annulled if it transpires that other judgments were rendered against the convicted person of which the court was not aware, or if he is convicted after his rehabilitation for a crime committed previously. The judgment annulling the judgment of rehabilitation is rendered by the court which rendered the judgment of rehabilitation at the request of the Public Prosecution.

**Article 449.** Rehabilitation is effected by operation of law if the convicted person is not sentenced, within the following time-limits, for a crime or misdemeanour entailing registration in the identity check register:

1. In respect of a convicted person sentenced to a penalty for a felony or misdemeanour in a crime of theft, possession of stolen goods, fraud, swindle, breach of trust, forgery or for the attempted commission of any of these crimes, on the expiration of ten years from the date the sentence is executed, pardoned or prescribed.



2. In respect of a convicted person sentenced to a penalty for a misdemeanour other than those mentioned above, on the expiration of three years from the date the sentence is executed or pardoned, unless the sentence lapsed by prescription, in which case the time-limit is five years.

**Article 450.** If multiple judgments have been rendered against the convicted person, he is not rehabilitated by operation of law unless the conditions mentioned in the preceding article are fulfilled in respect of each judgment, provided the time-limit is calculated by reference to the most recent one among them.

**Article 451.** A judgment of rehabilitation entails the expungement of the judgment of conviction with regard to the future and the extinction of all the penal effects arising therefrom, in particular, loss of capacity and deprivation of rights and privileges.

**Article 452.** Rehabilitation may not be invoked as towards third parties in respect of the rights accruing to them on the basis of the judgment of conviction, in particular as relates to restitution and damages.

## **Book Five: Special Procedures**

### **Part One**

#### **Forgery Cases**

**Article 453.**

1. In all forgery cases, as soon as a document alleged to be a forgery is presented to the deputy prosecutor or the court, the clerk transcribes detailed minutes describing the document on its face. The minutes are signed by the deputy prosecutor, the judge or the president of the court, as well as by the clerk, the person who reported the forgery and his opponent in the case, if any. The above-mentioned parties also sign each page of the document to prevent substitution. The document is kept in the investigation chamber or with the clerk of the court.
2. If some of those present refuse to sign the minutes, or are unable to do so, this fact is noted in the minutes.

**Article 454.** If the document alleged to be a forgery is obtained from an official department, it is signed by the functionary responsible for such department pursuant to the preceding article.

**Article 455.** A plea of forgery may be invoked against a document even if it served as the basis for a judicial act or any other act.

**Article 456.** Any person with whom a document alleged to be a forgery was deposited is obligated to deliver such document to the competent authority if a decision to that effect is issued by the court or the deputy prosecutor, failing which he shall incur the penalties prescribed by law in this regard.

**Article 457.** The above provisions apply to documents presented to the deputy prosecutor or the court for purposes of comparison and collation.

**Article 458.** Official functionaries are obligated to present any documents in their possession that are amenable to comparison and collation; otherwise they shall incur the penalties prescribed by law in this regard.

**Article 459.**

1. When an official document needs to be procured, the person with whom it is deposited is given an exact copy thereof authenticated by the president of the court to which such person is subject, and on which an explanation of the procedure taken is noted.

2. If the document was deposited with a public functionary, the copy given to him serves as the original until the original document is restored to him. The said functionary may give copies of the authenticated copy bearing the explanatory formula as aforesaid.
3. If the document required to be procured is kept in a register from which it cannot be removed, the court may order the entire register brought before it.

**Article 460.** Ordinary documents are amenable to comparison and collation if they are authenticated by the parties.

**Article 461.** If one of the parties alleges that a document is a forged and that the person presenting such document committed or participated in the forgery, an investigation is conducted in the allegation of forgery in the manner prescribed in this law.

**Article 462.** If forgery is alleged in an interlocutory plea during the proceedings in a civil action, the pronouncement of judgment thereon is adjourned until the penal action in respect of the forgery has been adjudicated.

**Article 463.** If the adverse party declares that he does not intend to use the document alleged to be a forgery, the said document is withdrawn from the case; however, if he declares that he intends to use it, an investigation is conducted in the forgery case.

**Article 464.** If, in the course of reviewing a case, the court finds, *sua sponte*, grounds for the belief that forgery was committed in a document presented by a certain person, it refers the document to the Public Prosecution to investigate the matter and apprise the court of the results of its investigation.

**Article 465.** If it is established that an official document is forged in whole or in part, the court rules the document ineffective and returns it to its original condition by erasing what was added thereto and establishing what was removed therefrom. A summary of the final judgment is written at the end of the document and it is then returned for comparison and collation to the person who had it in his possession.

**Article 466.** Investigations into forgery cases are conducted in accordance with the rules prescribed for all crimes.

## **Part Two**

### **Hearing the Testimony of Officials**

**Article 467.** If the procedures of a case entail hearing the testimony of the Head of State, the investigator, the president of the court or the judge appointed by the president of the court proceeds, together with the clerk, to his residence, where his testimony is heard, transcribed in minutes in accordance with general rules and joined to the documents of the case.

**Article 468.** Members of the diplomatic corps are notified of the statement of claim of a case in order to give testimony through the Ministry of Foreign Affairs.

**Article 469.** If the person required to testify in court is a member of the regular army, the statement of claim of the case is notified to him by the commander of his division.

**Article 470.** Other than the official witnesses referred to in the preceding articles, all witnesses, whoever they may be, are summoned to testify before the judicial authorities in accordance with the procedures prescribed in this law for the hearing of witnesses.

## **Part Three**

### **On the Loss or Theft of Case Documents and Judgments**

**Article 471.** If the originals of judgments rendered on penal actions are lost or if the documents related to the procedures of the investigation or the trial are lost before a judgment or decision is rendered thereon, or if such documents are lost by reason of fire or

other extraordinary events, or if they are stolen and cannot be redrafted, the provisions set forth in the following articles of this Part Three shall be applied.

#### **Article 472.**

1. If a summary or an authenticated copy of the judgment exists, it is deemed as equivalent to the original of the judgment and is kept in its place.
2. If the summary or the copy referred to in the above paragraph is held by an ordinary person or an official functionary, the president of the court which rendered the judgment orders that it be delivered to the clerk of such court. If the person refuses to deliver the summary or the copy, he will be forced to do so in accordance with the procedures prescribed by law.
3. The person referred to in the above paragraph is entitled to obtain an identical copy free of charge.
4. The order to deliver the summary or copy of the judgment releases the person holding it from liability as towards the parties who have a connection therewith.

#### **Article 473.**

1. If the original of the judgment is lost and no authenticated copy thereof can be found, and if the means of challenging the judgment have not been used up and the charging instrument is found, trial procedures are instituted and a new judgment rendered.
2. If there is no charging instrument or if it cannot be found, procedures are repeated starting from the part of the documents that is lost.

### **Part IV**

#### **Nullity**

**Article 474.** A procedure is deemed to be null when the law expressly provides for its nullity or if it is clouded by a defect that leads to the non-realization of its object.

**Article 475.** Nullity arises from the non-observance of the provisions of law related to the composition, competency or jurisdiction of courts or to such other matters related to public policy, and may be invoked at any stage of the proceeding or pronounced by the court *sua sponte*.

**Article 476.** In other than the cases where nullity relates to public policy, it may only be invoked by those parties for whose benefit it is prescribed, unless they caused the nullity or waived the right to avail themselves thereof, either implicitly or explicitly.

**Article 477.** Nullity of a procedure does not entail the nullity of the procedures taken prior or subsequent thereto unless such procedures are based on the null procedure. Nullity that affects part of a procedure is pronounced in respect of that part only.

**Article 478.** In other than cases of nullity related to public policy, the right to invoke the nullity of procedures related to the gathering of evidence, to the preliminary investigation or to the examination during the session lapses if the accused is represented by counsel and the procedures were taken in his presence without an objection on his part. The right of the Public Prosecution to invoke nullity lapses if it does not avail itself of such right at the time nullity occurs.

**Article 479.** An accused who attends a session in person or through his attorney may not invoke the nullity of the summons ordering his appearance. However, he may request that it be corrected or that particulars missing therefrom be completed and that he be granted a time-limit to prepare his defense before the case is heard, and the court is held to acquiesce to his request.

## **Part Five**

### **The Calculation of Time**

**Article 480.** The day for penalties involving deprivation of liberty is twenty-four hours, the month is thirty days and the year is twelve months in accordance with solar time, and the duration of the penalty is calculated according to the solar calendar.

**Article 481.** The duration of a deprivation of liberty penalty begins to run from the day the convicted person is arrested on the basis of an executory judgment. Periods of provisional detention and arrest are deducted from the duration of the penalty.

**Article 482.** The day on which execution of the penalty commences is calculated in the duration of the penalty, and the convicted person is released at twelve noon on the day such duration ends.

**Article 483.** If the duration of the deprivation of liberty penalty to which the convicted person is sentenced is twenty-four hours, its execution ends on the day following his arrest.

**Article 484.** Official holidays are not calculated in the time-limits prescribed for the raising of challenges by means of objection, appeal or cassation or in other time-limits if these holidays fall at the end of the time-limit.

## **Book Six**

### **Final Provisions**

**Article 485.** The following laws and orders are hereby repealed:

## **Law No 6 of 1998 on The Reform and Rehabilitation Centers “Prisons”**

Chairman of the Executive Committee of Palestine Liberation Organization.

Chairman of Palestine National Authority

Upon review of the Prisons Law No. (3) for the year 1946 which is in force in Gaza Governorates, the Prisons Law No. (23) for the year 1952 which is in force in the West Bank Governorates and the draft law submitted by the Council of Ministers, and,

Upon the approval of the Legislative Council.

We have promulgated the following Law:

### **Part One**

#### **Article One**

The following words and expressions mentioned in this Law shall have the meanings assigned thereto hereunder unless the context provides otherwise.

\* Ministry: Ministry of Interior

\* Minister: Minister of Interior

\* Center: Any place which has been declared as a reform and rehabilitation center pursuant to the Law.

\* Inmate: Every person who is incarcerated in execution of a judgment which was passed by a penal or special court or detained under legal detention or any person who is referred to the Center in execution of a legal measure.

\* Director General: The Director General of the Reform and Rehabilitation Centers.

\* Director : The Director of the Reform and Rehabilitation Center who is entrusted with the assignment of supervising the Center or any other person who has been appointed to carry out the duties entrusted to the Director in whole or in part.

Center's Warden: Is the Officer who is entrusted to supervise the Center.

Directorate General : The Reform and Rehabilitation Centers Authority in Palestine which was been formed according to this Law.

Banned Items: It is every item which is banned from being taken into the inmate in the Center and covers money, clothes, spirit drinks, narcotics, poisons, machines, tools, sticks, blades, knives, weapons of various types, food before testing, every article which is harmful to the body and life and any article where the inmate is prohibited from possessing pursuant to the provisions of this Law, Regulation and Instructions issued pursuant thereto.

### **Part Two Centers and Supervision Thereof**

#### **Article Two**

The Centers shall be established and the locations thereof shall be set by a decision from the Minister who may cancel them and stop, when necessary, the utilization thereof.

### **Article Three**

The Centers shall be attached to the Ministry and the Directorate General shall manage and supervise them. The Director General shall be appointed by a decision from the Minister. However, the wardens of Centers shall be appointed by the Director General.

### **Article Four**

The Director of the Center shall manage and run the Center's activities as well as execute the provisions of this law or any other regulations or instructions which are issued pursuant thereto under the supervision of the Director General of the Reform and Rehabilitation Centers or any other official he authorizes thereof.

### **Article Five**

A numbered general register shall be kept for the inmates and daily book for the Center's incidents. A special file shall be established for every inmate. Such records and files shall be subject to the supervision and control of the Director who shall be responsible for their organization and fulfilling the particulars thereof.

## **Part Three Acceptance of Inmates**

### **Article Six**

- 1- The inmate admission into the Center shall be by a legal memo and it is prohibited to keep him in the Center following the expiry of legally fixed period in the memorandum.
- 2- The Center's warden should substantiate the inmate's identity and lawfulness of the memorandum.
- 3- A special file shall be opened in order to record the details pertaining to the inmate.

### **Article Seven**

Whoever is detained, arrested, kept in custody or his freedom is confined according to the law shall be kept in one of the places which is determined by a decision from the Minister pursuant to article two of this Law and the inmates in any Center shall be deemed to be under legal detention in the custody of the Center's Director and be subject to the Center's discipline and regulations of the Directorate General.

### **Article Eight**

- 1- The inmate shall be searched upon his entry into the Center and the banned items with him shall be impounded. The female inmate shall be searched by a female.
- 2- The Center's warden shall keep the inmate's money and luggage he brings with him or which are sent to him vide receipts to be returned to him immediately upon his release.
- 3- The inmate's money and luggage shall be handed over, in the event of his death, to his heirs.
- 4- The right of the released inmate or his heirs in the event of his death in claiming his money or luggage shall drop upon the lapse of three years from the date of release or death and the ownership thereof shall inure to the State if no one comes forward to receive same during that period.

### **Article Nine**

- 1- The inmate shall wear the Center's uniform.

- 2- The inmate's clothes shall be destroyed if it has been discovered that they are harmful to public health if the term of his imprisonment is one year or less, However, if it is more, they shall be handed over to whoever selected by the inmate.

#### **Part Four**

##### **Inspection and Searching of Centers**

#### **Article Ten**

- 1- The Ministers of Interior and Justice or whoever either of them delegates shall have the right of access into any Center for the purpose of inspecting it and expressing the comments or suggestions they deem proper provided they are recorded in a special register.
- 2- The Minister, in coordination with the Minister of Social Affairs, may appoint qualified social inspectors and specialists to study the inmate's psychological and social condition.

#### **Article Eleven**

The Attorney General or his deputies, Governors and Judges of the higher and central court may, each in his sphere of competence, enter into all places of the Center at any time to inspect it for the purpose of ascertaining the following:

- 1- Correctness of records , papers and entries relating to the Center's management, discipline and regulation.
- 2- Inspect the inmates food in so far as its quantity and quality.
- 3- Apply the stipulations of the laws and by-laws as well as take whatever they deem necessary in respect of the committed violations.
- 4- None presence of an inmate individual without legal aspect.
- 5- Execute the court's judgements and orders of the prosecution and investigation judge so as to be implemented in the manner shown therein. They may accept the complaints of inmates and express their comments. The Director should provide them with all the particulars they request in respect of the assignment entrusted to them.

#### **Article Twelve**

The Director General shall make periodical inspection visits to all Centers in order to ascertain the implementation of all regulations, instructions and decisions as well as submit his report in this regard to the Minister.

#### **Part Five**

##### **Health Care and Medical Services**

#### **Article Thirteen**

A clinic shall be set up in every Center and the Medical Services shall provide it with a physician and a number of nurses, necessary equipment and medicines. The physician shall carry out the following functions:

- 1- Examine every inmate upon his entry into the Center and prior to his release. He shall prepare a report on his health condition showing therein the date and hour of preparation of such a report.
- 2- Permanent health supervision of the inmates in the event of a food strike.

- 3- Care of the inmates health and submit a periodical report thereon to the Director comprising his recommendations in this respect.

#### **Article Fourteen**

- 1- The physician should inspect the sleeping places of inmates, solitary confinement, ascertaining the health condition of inmates, treating the sick persons thereof, transferring whose health condition require to the clinic or to the specialized hospital and isolate those who are suspected of being stricken with contagious or epidemical diseases until being cured and disinfect the clothes, beds and food .
- 2- The period spent by the inmate in the hospital shall be calculated from among the decided period of sentence.

#### **Article Fifteen**

- 1- The sick inmate shall be immediately referred to the hospital, if his condition requires so. The Center's management shall take the initiative to promptly notify the management's authority in whose competence his folks are living and shall be permitted to visit him. should he, i.e. the inmate, passes away, the physician shall prepare a report comprising the following :
  - a- Date of the inmate's complaint of the sickness or the date in which it was firstly observed that he is sick.
  - b- Type of work which the inmate was carrying out on that day.
  - c- The day of his admission into the hospital for treatment.
  - d- The day and time of the physician's notification of the inmate's sickness condition.
  - e- Type of sickness and the last time the sick inmate was examined before his demise.
  - f- The date and reason of death as well as any other observations which the physician notices on the deceased upon his examination of the corpse.
- 2- The inmate shall be considered during the period of his stay in the hospital or in any other place for treatment under legal custody and it shall be incumbent upon the warden to take the necessary measures to look after him while he is under treatment in a manner which would not touch on that inmate.

#### **Article Sixteen**

The Director or whoever acts for him must immediately notify the public prosecution or any competent authority of the death of any inmate who suddenly passes away or as a result of an accident or of his serious injury as well as of any crime which occurs by the inmates or against them or any serious accident whatsoever.

### **Part Six** **Notification of Inmates and Serving** **Judicial Papers Upon Them**

#### **Article Seventeen**

The Center's warden or whoever acts for him should advise the inmate of any judicial papers or any matters relating to him immediately upon its receipt by the Center's management and substantiation of its receipt in an official register.

#### **Article Eighteen**

The inmate has the right to submit any complaint or request. This shall be made through:

- 1- Submitting his request or complaint on the form provided for this purpose.



- 2- The recording of his request or complaint in a special register before forwarding same to the competent authority and shall be notified of the answer immediately upon its receipt.

## **Part Seven**

### **Cases of Use of Fire Arms**

#### **Article Nineteen**

It is prohibited for the Director or whoever acts for him or any member of the Center to enter into any cell where one of the inmates is in it unless he is accompanied by an escort.

#### **Article Twenty**

The members of the Directorate General are prohibited from carrying arms inside the Center except in the following necessary conditions:

- 1- For self defense after exhausting all other means such as tear gas, water hoses or clubs.
- 2- To prevent the escape of the inmate if he crosses the boundaries of the prisons and it was not possible to prevent him by other means.
- 3- To put an end to any mutiny, riot or acts of violence that threatens the breaking of the Center's gates , climbing its walls or fore warns of the serious breach of the security and discipline therein.
- 4- To ward off harm from the inmates or others who happen to be present in the Center upon being exposed to impending danger or harm and exhaustion of other means to save them.

#### **Article Twenty One**

If the fire arm is used to warn, scare or deter the inmate, three warning shots should be fired, if he does not comply , the fire arms should be shot towards his legs with due care, as far as possible, to avoid the serious injuries. The necessary first aid and treatment should be provided to the injured.

#### **Article Twenty Two**

The fire arms may not be used in the cases where the life of others is exposed to danger.

#### **Article Twenty Three**

The Director should notify the concerned authorities of the use of fire arms as well as commencing of the administrative investigation in order to learn of the reasons and motives of the incident.

## **Part Eight**

### **Classification of Inmates**

#### **Article Twenty Four**

The male inmates shall be placed in a section separate from the females whereby it would not be possible for them to talk, contact or see each other. The juveniles shall be placed in special centers for them.

#### **Article Twenty Five**

- The inmates from every sex shall be classified and distributed in separate sections in as much as it is permitted under the circumstances of every Center:

- 1- The detained inmates against whom no judgments have been passed by the competent courts.
- 2- The inmates in civil lawsuits such as the lawsuit of debt and maintenance.

- 3- The inmates with no precedents.
- 4- The inmates with precedents.

#### **Article Twenty Six**

The detained or judgment debtors inmates in civil lawsuits have the right to bring in special food, clothes or covers from outside the Center.

#### **Article Twenty Seven**

The pregnant inmate shall be given, from the time of appearance of pregnancy symptoms thereon and until sixty days after delivery, special treatment in so far as nutrition, time of sleeping, work and shall be afforded with medical care according to the recommendation of the physician. The necessary measures shall be taken so that she may deliver at the hospital.

#### **Article Twenty Eight**

If the inmate delivers her baby in the center, this fact shall not be mentioned in the official records nor in the birth certificate. The hospital shall be considered as the place of birth and the child shall remain in the custody of his mother until he reaches the age of two year. The Director should provide for the suckling mother a separate place from the remaining inmates.

#### **Article Twenty Nine**

- 1- If the inmate does not wish to keep her child with her after his delivery or if he reaches the age of two, he shall be delivered to the person who is legally entitled after the mother unless the physician decides that the health condition of the child does not permit same .
- 2- If there is no one who has the lawful right of the child's custody, he shall be placed in one of children care institution's provided the mother is notified of the place where her child was placed and she shall be permitted to see him periodically.

### **Part Nine Education & Culturing of Inmates**

#### **Article Thirty**

The Directorate General shall, in coordination with the competent education authorities, organize illiteracy fighting education courses to the illiterate inmates and shall provide the educational opportunities to other inmates in order to continue their education through the various educational stages whether in the schools attached to the Center or in the public or vocational schools outside same according to the available potentials, requirements of safeguarding the inmates and the Centers security.

#### **Article Thirty One**

The Directorate General shall, in coordination with the competent education authorities, provide the necessary pre-requisites to the inmates in order to enable them to study, memorize and find the means which would ensure the continuation of their university study as an exception from daily attendance and enable them to sit for the examinations under the direct supervision of the competent education authorities whether inside or outside the Center.

#### **Article Thirty Two**

The academic or vocational certificate awarded to the inmate should not contain any particulars which would indicate that it was awarded to him while he is in the Center or from a school annexed to the Center.

### **Article Thirty Three**

The Directorate General shall grant suitable encouraging incentives to the inmate who obtains the general or university certificates during his stay in the Center.

### **Article Thirty Four**

The Directorate General shall, in coordination with the Center's management, hold cultural seminars, deliver directive, moral, religious, educational and cultural lectures as well as provide the opportunity to all inmates to take part therein.

### **Article Thirty Five**

A public library shall be established in every Center aimed at culturing and refining the inmates provided that it contains useful printed publications whose circulation is legally permitted. The inmates shall be encouraged to read and make use of such books and printed publications at their leisure time and shall be afforded the appropriate opportunities for the realization of same.

### **Article Thirty Six**

The inmates may bring in, at their expense, books, magazines and newspapers whose circulation is legally permitted according to the controls determined by the Center's management in this regard according to the by-laws and instructions issued by the Directorate General.

## **Part Ten Inmate Rights**

### **Article Thirty Seven**

- 1- It is prohibited to put the inmate to work at the houses or in the private matters
- 2- It is prohibited to torture the inmate or to use force with him.
- 3- It is prohibited to address the inmate in nasty language or in degrading names.
- 4- It is prohibited for the members in the Center to eat with the inmate, his visitor or joke with him.
- 5- It is prohibited to enter into the inmate's room during the night unless it is necessary and in presence of the Director or whoever acts for him.
- 6- The inmate shall be afforded complete freedom to perform his religious rites and duties.
- 7- The inmate shall take a bath at least twice a week during the summer and at least once a week during the winter.
- 8- The inmate shall wash his face and extremities twice a day in the morning and evening.
- 9- The inmate shall wash his clothes at least once a week.
- 10- The inmate's hair shall be cut once a month.
- 11- The inmate's hair who is convicted by imprisonment for three months or more shall be removed.
- 12- The inmate shall shave his beard at least twice per week
- 13- The Center's management shall provide the inmate's room with the means of heating during the cold days.
- 14- The inmate's bed shall be comprised of a sponge mattress and five woolen blankets.
- 15- The meals shall be distributed to the inmate in the place provided for this purpose in his room at the specified times.
- 16- The dinner meal shall be distributed at sunset.

## **Part Eleven**

### **Transportation of Inmates**

#### **Article Thirty Eight**

The Director shall undertake the responsibility of executing every judicial order with respect to bringing an inmate or committing him to prison at the time set for this purpose.

#### **Article Thirty Nine**

The papers, effects and deposits of the inmate shall be transferred to the Center to which he is transferred.

#### **Article Forty**

- 1- Upon transporting the inmate, the following shall be prohibited:
- a- Expose him to the eyes of the public except to the least possible extent and measures must be taken to protect him from the insults and curiosity of the public as well as not to expose him to all forms of publicity.
- b- Transport him under bad conditions in so far as ventilation, lighting or by any means which would expose him to unnecessary physical hardship.

## **Part Twelve**

### **Inmate's Training and Employment**

#### **Article Forty One**

The Center shall seek to train the inmates professionally and develop their skills as well as make them acquire beneficial trades or professions during the period of execution of the punishment which would help them earn their living after their release. The theoretical and practical vocational training shall be carried out in the training and employment workshops inside or outside the Center according to the regulations and instructions issued by the Directorate General in this respect.

#### **Article Forty Two**

- 1- The convicted inmates may be put to work within or outside the area of the Center in any suitable job. It is not permissible to put the detained inmates to work unless they wish to do so provided that the daily working hours may not exceed eight hours and may not be put to work during their holidays.
- 2- The sick inmates and those who have reached the age of sixty shall be excluded from the application of the provisions of paragraph (1) above unless they wish to work and the physician has testified to their ability to do so.

#### **Article Forty Three**

- 1- The judgment debtor inmate by simple imprisonment may be put to work in light duty if he wishes to do so. The female inmate may not be put to work outside the Center.
- 2- Save those who are sentenced to hard labor, the work in or outside the Center may not be characterized with cruelty or pain.

#### **Article Forty Four**

The inmate shall be granted, in consideration of his work in or outside the Center, a wage to be fixed by the regulations and instructions.

## **Part Thirteen**

### **Commuting the Period of Punishment**

#### **Article Forty Five**

- 1- The inmate shall be released if he spends two thirds of the period of judgement passed against him and was during such a period of good conduct and behavior and his release will not constitute a hazard to public security.
- 2- If the punishment was life sentence, he shall be released if he spends twenty years in the Center and his conduct during same was good.

#### **Article Forty Six**

- 1- The release shall be according to the preceding article by a decision from the Minister upon a proposal by the Director General. The decision shall specify the reasons of release.
- 2- If the release is conditional, the released may be returned to the Center to complete the remaining period of sentence passed against him if his misconduct has been substantiated or if he violates the conditions of release by a decision from the Attorney General stating therein the reasons justifying the return.

#### **Article Forty Seven**

The Director should forward to the Director General a report on every inmate whose sentence is more than ten years following the lapse of the first six years showing therein all the particulars pertaining to the inmate provided that it is followed by a periodical report in every year which lapses from the remaining period.

#### **Article Forty Eight**

The Chairman of the National Authority may release some of the inmates on the national or religious occasions. The release shall be made at the time fixed in the pardon decision.

## **Part Fourteen**

### **Banned Items**

#### **Article Forty Nine**

The banned items may not be brought into the inmate in the Center. He may not possess or take same therefrom except within the extent permitted by the law.

#### **Article Fifty**

The Center's warden or whoever acts for him may inspect all things which are taken in or out of the Center. He may stop or order the stoppage of every person or inmate who is suspected of taking in or out or possesses any banned item to the Center. He may instruct his legal search. If such an item is discovered, he may impound same and refer the person with whom it was impounded to the competent authorities.

#### **Article Fifty One**

If no crime has resulted from the prohibited items the Director may:

- 1- Use it in the manner he deems proper to the benefit of the inmates.
- 2- Destroy it if it is of no use or value
- 3- Sell it and pay the cost thereof to the public treasury of the Authority if it is of value.

## **Part Fifteen Visits**

### **Article Fifty Two**

The visit to the inmate shall be permitted at regular periodical periods whose timings shall be set by the regulations and instructions provided that the first visit is permitted after the completion of investigations or lapse of a period of one month from the date of detention, whichever is earlier.

### **Article Fifty Three**

The inmate has the right to correspond with his family and friends as well as receive letters from them. The Center's management may review the incoming letters to and outgoing letters from him provided that the secrecy of letters is maintained.

### **Article Fifty Four**

The Attorney-At-Law of the detained or convicted inmate shall be permitted to meet with him in private whether the interview has been upon the invitation of the inmate or upon the request of the Attorney-At-Law.

### **Article Fifty Five**

The Director may allow the visit to the sick inmate upon the directives of the physician and may also allow the religious people to visit the inmates for the purpose of preaching and guidance or holding the religious rites at the times and places set by the regulations and instructions.

### **Article Fifty Six**

- 1- The Director may prepare a special visitors register wherein the name and address of every visitor who enters the Center shall be recorded.
- 2- He may search any visitor he suspects to possess banned items. If the visitor refuses to be subjected to search, he may be prevented from the visit and shall record the reasons of prevention in the said register.

### **Article Fifty Seven**

- 1- The Director may grant the inmate a three days contingent leave in the event of death or moving one of his relatives to the second degree to the hospital in a serious sick condition provided he provides a guarantor to guarantee him during the period of leave and return to the Center upon its expiry.
- 2- The Director may grant the inmate of good conduct a twenty four hours leave every four months at least provided that he should have spent one fourth the period of his sentence and provided a guarantor to guarantee him during this leave.

### **Article Fifty Eight**

The inmate shall be considered to be in an absconding state and referred to the competent court to try him for this crime if he does not return to the Center within twelve hours of the expiry of his leave.

## **Part Sixteen**

### **Inmates Sentenced to Death**

#### **Article Fifty Nine**

- 1- The inmates who is sentenced to death shall be isolated from the remaining inmates, placed under constant supervision and his visit barred except after obtaining a written permission from the Director General.
- 2- The Attorney General, his representative one of the clergymen or the Center's physician may visit him at any time.
- 3- The Director shall, upon receiving the decision sanctioning the death sentence, notify the inmate and his family or one of his relatives in order to visit him on the day preceding the day set for the execution of the judgement.
- 4- The Director shall read out the charge and pronouncement of the judgement at a hearing distance from the attendees provided that the Attorney General or his Attorney, Center's Physician, a representative of the police and two other persons selected by the Attorney General and one of the a clergymen to whom the convicted is affiliated and his Attorney-At-Law, if he wishes, be amongst them.
- 5- The death sentence shall be executed inside the Center upon the request of the Attorney General to the Director General. The corpse shall be handed over to the local authority where the Center is located in its circuit for its burial.

#### **Article Sixty**

- 1- The execution of the death sentence against the pregnant inmate who is sentenced to death shall be suspended until after delivery and the child becomes two years of age.
- 2- The said judgement shall not be executed during official holidays and religious and national feasts.
- 3- The execution of the death sentence may not be postponed after receiving the sanctioning decision on the judgement and notification of the convicted person and his family of the matter.

## **Part Seventeen**

### **Discipline and Punishments Regulation**

#### **Article Sixty One**

- 1- The Minister shall issue a by-law which would regulate the duties and activities which the inmate should comply with as well as the impermissible which should be avoided.
- 2- The inmate should be advised of the organizational by-law mentioned in the preceding item.
- 3- Without prejudice to the criminal liability, the inmate shall be disciplined if he violates the laws or regulations and instructions in force in the Center.
- 4- The articles relating to the crimes and punishments shall be recorded on a sign and placed in a conspicuous place on the outside door of the Center and in the inmates dining room in order to review same.

#### **Article Sixty Two**

The following disciplinary punishments shall be imposed against the inmate if he violates the regulations or instructions inside the Center:

- 1- Warning
- 2- Solitary confinement for a period not exceeding one week.
- 3- Deprivation from some of the established advantages for his category of inmates for a period not exceeding thirty days.

### **Article Sixty Three**

It shall not be permissible to impose any of the punishments mentioned in the foregoing article against the inmates except after conducting an investigation comprising his confrontation with the violation attributed to him, hear his statement and realize his defense. The decision for the imposition of the penalty shall be justified and the investigations shall be conducted with the knowledge of the investigator in writing. The penalties imposed against the inmates shall be recorded in the Penalties Register.

## **Part Eighteen Release of Inmates**

### **Article Sixty Four**

- 1- The Director should release the inmate in the afternoon of the day in which his sentence expired or the day preceding same. He may not be kept in the Center thereafter.
- 2- The inmate shall be released immediately if a general or special pardon is issued in his favour.
- 3- If the inmate is under a precautionary detention and a release order in his favour has been issued. The release order must be implemented immediately unless he is detained for another reason.

## **Part Nineteen General Provisions**

### **Article Sixty Five**

The Minister shall issue the regulations and instructions which are necessary for the implementation of this law.

### **Article Sixty Six**

Each of the Prisons Law No. (3) for the year 1946 in force in Gaza Governorates and Prisons Law No. (23) for the year 1952 in force in the West Bank Governorates as well as any other provisions which are contradictory with its provisions shall be repealed.

### **Article Sixty Seven**

All parties, each in so far as it is concerned, shall implement this law and shall be put into operation as of the date of its publication in the official gazette.

Issued at Gaza on 28<sup>th</sup> May 1998 AD. corresponding to 2/2/1419 AH.

Yaser Arafat

- Chairman of the Executive Committee of the Palestine Liberation Organization
- Chairman of the Palestinian National Authority.



## **Israel Military Order No. 378<sup>245</sup>**

### **Order Concerning Security Provisions**

In accordance with the jurisdiction vested in me as Commander of the Area, I hereby order as follows:

#### **SECTION I: GENERAL REGULATIONS**

- *Definitions and General Instructions*

1.

(a) In this Order:

- **MILITARY COURT** and **COURT**: established by virtue of this order.
- **INFLAMMABLE** or **EXPLOSIVE MATERIAL**: any thing or material, including liquids or gasses, intended or liable to cause an explosion or start a fire.
- **REDUCTION OF PENALTIES**: (including the shortening, substituting or postponing of execution, either totally or partially). This order shall consider a fine to be a lighter penalty than a term of imprisonment whatever its duration, so long as the substitution of a fine for a prison sentence does not exceed 30 Israeli liras for every day of imprisonment.
- **FIRE ARMS**: any weapon of any type which can inflict injury or death, or possesses a barrel from which a bullet or projectile may be fired. This term includes any part or section of such a weapon fitted or adapted to diminish the noise or flash caused by its firing.
- **PUBLIC OFFICIAL**: this includes the police, members of the security service, as defined by the Order Concerning Security Personnel in the Area, anyone employed by the Israeli Defence Forces or by local authorities, and any other employee in whom jurisdiction is vested by any legislation or security provision.
- **ORDER**: this includes every appointment, order, notification, instruction, request and authorization.
- **VITAL SERVICES**: essential services to insure law and public order in the area, to guarantee the safety of the public and soldiers of the Israeli Defence Forces, or to protect the lives of the public.

(b) Wherever reference is made in this Order to bombs or hand-grenades or explosives or incendiary material or ammunition, this reference shall be interpreted to include any part or parts of such ordnance as well.

---

<sup>245</sup> **Cancels:** Military Proclamation 3, Military Order 12, and Military Order 157

**Amended By:** Military Order 413, Military Order 422, Military Order 423, Military Order 431, Military Order 449, Military Order 464, Unnumbered Military Order (23 July 1971), Unnumbered Military Order (6 December 1971), Military Order 488, Unnumbered Military Order (1 July 1971), Military Order 496, Military Order 497, Unnumbered Military Order (2 July 1972), Unnumbered Military Order (2 July 1972), Unnumbered Military Order (10 August 1972), Unnumbered Military Order (29 December 1972), Military Order 517, Military Order 545, Military Order 546, Unnumbered Military Order (19 August 1973), Unnumbered Military Order (22 May 1974), Unnumbered Military Order (22 May 1974), Unnumbered Military Order (21 June 1974), Military Order 557, Military Order 585, Unnumbered Military Order (21 June 1974), Unnumbered Military Order (21 June 1974), Military Order 629, Military Order 682, Military Order 700, Military Order 726, Military Order 741, Military Order 801, Military Order 813, Military Order 815, Military Order 842, Military Order 852, Military Order 853, Military Order 859, Military Order 865, Military Order 870, Military Order 872, Military Order 876, Military Order 879, Military Order 913, Military Order 914, Military Order 918, Military Order 931, Military Order 948, Military Order 959, Military Order 964, Military Order 966, Military Order 987, Military Order 999, Military Order 1020, Military Order 1021, Military Order 1031, Military Order 1041, Unnumbered Military Order (15 August 1983) Military Order 1056, Military Order 1059, Military Order 1066, Military Order 1067, Military Order 1080, Military Order 1082, Military Order 1086, Military Order 1092, Unnumbered Military Regulation (15 March 1984), Military Order 1108, Unnumbered Military Regulation (17 September 1984), Unnumbered Military Regulation (4 February 1985), Military Order 1123, Military Order 1124, Military Order 1131, Military Order 1220, Military Order 1222, Military Order 1229, Military Order 1233, Military Order 1234, Military Order 1260, Military Order 1265, Military Order 1276, Military Order 1297, Military Order 1309, Military Order 1316, Unnumbered Military Order (30 December 1990), Unnumbered Military Order (16 December 1991), Unnumbered Military Order (30 June 1991), Military Order 1343, Military Order 1344, Unnumbered Military Order (7 July 1991), Military Order 1368, Military Order 1369.

- (c) Any subsequent order issued by virtue of the regulations which follow shall become effective from the date of issue.
- (d) Any order may be issued verbally if the appropriate authority sees fit.
- (e) The authority which creates and issues orders shall announce their implementation as quickly as possible and in whatever manner it sees fit. However, no order will be considered invalid on the grounds that it was not brought to the attention of the person whom it concerned.
- (f) The regulations of this article shall be applicable to every security legislation.

2.

- (a) It is permissible for the Area Commander to appoint a Military Commander to any region or district in the area. This appointment may be made by announcing the appointees name or by referring to the position. If a position is referred to, then the person occupying that position at the given time shall be deemed to be the Military Commander of that region or that district.
- (b) The Area Commander may grant an individual the jurisdiction of a Military Commander, in total or in part. In circumstances in which an issued order may be contradictory to an order issued by the Area Commander or by the Military Commander, then the order issued by the Area or Military Commander will take precedence.

## SECTION II - THE COURTS AND THE JUDICIARY

### *Establishment of Courts*

3. Military courts shall be established in the area; these are military courts as defined in article 4 and military courts presided over by a single judge, as defined in article 50.

### *Convening of Courts*

4. Every military court shall be convened by a court president, who is an officer in the Israeli Defence Forces, holding the rank of captain or a more senior grade, and possessing legal qualifications, and two magistrates who are also officers. The court shall be established by the Military Commander, who will also appoint the president and the two magistrates.

### *Substitution of a Judge*

5. In circumstances in which it is impossible for a single-judge military court, for whatever reason, to complete the proceedings, whether the court has begun to hear evidence or not, the Military Commander may appoint another judge in his place. The court, in its new form may take up the proceedings from the stage which they had previously reached. It may also, after granting the parties the opportunity to make their submissions, freely make use of the evidence heard before the previous court, or ask to hear the evidence once again, either in whole or in part.

### *Location of Courts*

6. The military court shall sit at a time and place specified by the president. The court president shall be responsible for appointing the time and place in which the military court shall hear the trial.

### *Jurisdiction*

7. The military court shall be granted the jurisdiction to try a crime specified in any security provision or other legislation without prejudice to the provisions of the security legislation.

### *Prosecutor and Defence*

8. Every case for the prosecution which is to be tried before a military court shall be conducted by a military prosecutor appointed by the Area Commander. The accused may be defended by an advocate.

### *Evidence*

9. Military courts shall conduct themselves in accordance with the same laws of evidence which apply in cases in which soldiers are tried. However, military courts may diverge from the laws of evidence in special circumstances which must be recorded, if they deem it to be in the interests of justice to do so.

#### *General Procedural Provisions*

10. A military court may, with regard to procedural matters not laid down by this order, adopt any course which it deems to be best calculated to ensure that justice is done.

#### *Trials to be Held in Public*

11. The military court shall hold cases brought before it in public. However, a military court may order that a case brought before it shall be conducted wholly or in part behind closed doors if it considers it appropriate to do so in the interests of the security of the Israeli Defence Forces, justice, or for public safety.

#### *Translator for the Accused*

12. If the accused does not understand Hebrew the military court shall appoint him an interpreter who will translate for him the statements made during the course of the hearing and the decisions of the court, unless the accused willingly renounces his right to have the proceedings translated wholly or in part. The accused has the right to object to a particular translator and to request that he/she be replaced.

#### *Swearing-in and Warning of Witnesses and Interpreters*

13.

(a) A military court shall warn a witness, prior to the giving of testimony, that he is obliged to tell the truth, and that he will be subject to punishment in accordance with security provisions should he fail to do so. The witness shall be required to swear to tell the truth. He is, however, entitled to make it known that, for reasons of conscience or religious belief, he does not want to swear, but would rather affirm, so long as the court is of the opinion that the reasons given by the witness are in good faith.

(b) The provisions of sub-clause (A) shall also apply, with the necessary modifications, to the warning and swearing-in of the interpreter.

#### *Adjournment of the Court*

14. A military court may adjourn at any stage during the proceedings and may reconvene at any place or time that the court orders. The court shall provide directives concerning the custody of the accused and order his appearance at the adjourned hearing.

#### *Recording the Trial*

15.

(a) The president of the court shall either record the case personally or use the services of a registrar.

(b) The record shall comprise a summary of the following matters:

- 1. The accused's reply to the allegations;
- 2. The testimony of witnesses;
- 3. Submissions presented;
- 4. Findings of law (findings and decisions taken by the court, regardless of whether they are to the accused's advantage or disadvantage);
- 5. The judgement and sentence.

(c) The president of the court shall sign every legal finding and sentence.

#### *Summoning the Accused and Witnesses*

16.

(a) A military court may summon, at the request of either party, any person to give evidence in the case if it considers that summoning him will assist in the clarification of any question pertaining to the hearing. The court may, of its own accord, summon a witness itself.

(b) A military court may at any time issue an attendance order to the accused, if it deems such a measure necessary to compel the accused's attendance at the hearing at the appointed time.

(c) A military court may, at the request of a party or at the suggestion of a court, order a witness who has been summoned, or any other person, to present to the court at the time fixed by it in the summons or order, any documents, specified in the summons or order, which are in his possession.

(d) A military court may order any person appearing before it to give evidence or to produce documents at any time which it sets. Such persons shall be subject to the same law which applies to individuals who have been summoned or ordered to produce documents before the court.

(e) Any person summoned to give evidence who fails to appear, or ordered to produce documents who does not so produce, may have an attendance order brought against him in order to compel his attendance in court.

(f) Any person against whom an attendance order has been brought, in accordance with sub-clause (B) or (E) above, is to appear as soon as possible before the military court, which shall determine whether to detain him in custody or to free him on conditions which it shall lay down.

#### *Imprisonment of Witnesses or the Accused for Failure to Obey a Summons. Contempt of Court*

17. Any person summoned to appear before a military court who, without reasonable excuse, has failed to attend, or to produce a document or evidence in his possession or control, or who, having attended court, leaves without having obtained the prior consent of the court, or who fails to appear after the adjournment of the court in spite of being ordered to attend, or any person who, in the presence of the court, refuses to obey any directive of the court, or insults the court, or any member thereof, or obstructs or hinders the proceedings of the court, may be immediately sentenced to imprisonment by the court, although the term should not exceed two years. Nothing contained herein shall affect the authority of the military court to try an offence, under this clause, by way of ordinary prosecutory proceedings fixed by this order, provided that no person shall be charged twice for the same offence.

#### *Examination of Witnesses*

18. All witnesses, other than the accused, who have chosen to make a statement rather than take an oath prior to giving evidence before a military court, shall be liable to examination, cross-examination and re-examination.

#### *Witnesses in Cases in which there are Several Accused*

19. In cases in which there are several individuals accused of an offence, the order of the examination of witnesses shall proceed as follows:

1. In cross-examination - witnesses shall be cross-examined by the prosecution or by their counsel in accordance with the order in which their names appear on the list of court proceedings;
2. Primary prosecution - a witness shall be first examined by the prosecution or the counsel who summoned him, and thereafter by the other members of the prosecution or defence in the order set out in sub-clause 1.

#### *Unanimous Determination of Guilt*

20. No person shall be found guilty in a military court other than by the unanimous decision of the president and its members.

#### *The Charge and Response thereto*

21.

- (a) Prior to the accused's appearance in a military court, the nature of the charges and details thereof shall be recorded in the charge sheet which shall be brought by the prosecutor before the court. A copy of the charge sheet shall be given to the accused before his hearing.
- (b) At the beginning of the hearing the charge sheet shall be read out in front of the accused.
- (c) The accused shall be asked if he pleads guilty as charged or admits to the facts or not.
- (d) The accused may answer such questions in one of the following ways:

- 1. He may admit the charge;

- 2. He may refute the charge;
- 3. He may refute the charge, but admit to certain facts, in whole or in part, raised in connection with the action which is the subject matter of the charge.

(e) If an accused does not answer the question put to him in accordance with sub-clause (D) above, he shall be deemed to have refuted the charge.

(f) With the consent of the court, the accused may at any stage of the proceedings until judgement is given, withdraw the response which he gave pursuant to sub-clause (D) above.

#### *Joinder of Charges*

22. Separate charge sheets shall be kept for each offence, but any number of charges may be brought at the same time and may be tried together or separately as the court deems fit. The accused shall make a separate and distinct plea to each charge.

#### *Amendment of the Charge*

23. At any stage in the proceedings, the court may at the request of the military prosecutor, or the accused, or of its own volition, amend the charge or cause the accused to be charged with another offence, provided that the accusation brought by the court as stated above shall be based on the evidence brought before it during the hearing. The court, before proceeding with the trial after the charge has been amended as specified above, may, at its own discretion if it deems it to be in the interests of the accused, grant an adjournment of the trial, or permit the prosecutor or the defense to recall and re-examine any witnesses.

#### *Joinder of the Accused*

24. If a number of people stand accused for the same crime or for crimes emanating from the same set of circumstantial facts, they may be charged and tried together or separately at the court's discretion.

#### *Separate Trials*

25. If, at any stage of the proceedings, the court decides that the case against the several accused parties should be tried separately, each individual hearing shall be permitted to take up the case against the accused person or persons whose trials were ordered to be separated, from the point at which the joint proceedings were halted when the court ordered the separation of trials, or in accordance with the decisions taken by the subsequent court hearing the trial.

#### *Procedure after Admission of Guilt*

26.

(a) If the accused admits to the facts of any charge, the court may, for reasons which it shall record, decide not to accept the plea and to continue with the trial as if the accused had refuted the charges, but admitted the facts outlined by the court.

(b) If the court does decide to accept the accused's admission then the accused shall be deemed guilty and the court shall hold him guilty in accordance with his admission.

(c) Before it acts in accordance with sub-clause (B) above, the court must be satisfied that the accused fully understands the nature of the charge brought against him and the implications of his admission of guilt.

(d) If there are several individuals accused in the case and only some of them admit the charge, the court may find these individuals guilty on the strength of their confession in accordance with this clause, and sentence the individual immediately, or the court may postpone the finding of guilt until judgement is passed on the other accused parties, provided that no accused person is called as a witness to give evidence in the case, before the court has made its finding of guilt against him, and sentenced him accordingly.

(e) The military prosecutor shall summarise before the court the facts which constitute the charge and the offence before the verdict is passed.

(f) If the accused takes exception to these facts, either in whole or in part, the court may allow for further evidence to be heard in connection with the facts in dispute.

*Provisions Relating to Offences Punishable by Death*

27. Where a person has been accused of a crime which carries the death sentence, the proceedings shall take place in accordance with clauses 21(C),(D),(E),(F) but the court will proceed as though the accused has refuted the charge.

*Proceedings after Admission of Facts*

28.

(A) In cases in which the accused has refuted the charge but admitted facts, in whole or in part, or where the court has decided in accordance with clause 26 to consider him to have done so, such facts shall be considered as proven with regards to the accused.

(B) Despite what has been stated in sub-clause (A) above, the court may require the military prosecutor to prove any facts which the accused has admitted to in his response to the charge, and, if the court so requires such facts shall not be regarded as proven until the military prosecutor has proved them.

*Procedure after Denial of Guilt*

29.

(A) If the accused does not admit the truth of any charge, or the court refuses to accept a plea of guilt, the court shall proceed to hear the case brought by the military prosecutor and his witnesses and any other evidence which it deems fit.

(B) If the accused does not employ an advocate the court shall, at the close of the examination of each witness for the prosecution, ask the accused whether he wishes to put any questions to that witness; the accused's answer is to be recorded.

*Acquittal at End of Case for the Prosecution*

30. If it appears to the court at the end of the Prosecutor's summing-up statement that no substantial case against the accused exists, then the court shall acquit the accused of that charge.

*The Defence*

31.

(A) If, at the close of the case for the prosecution, the court considers that a case has been made for the accused to answer the charge, the court shall explain to the accused that he is not obliged to give evidence, but that should he give evidence on oath, he shall be subject to cross-examination, and the court shall ask him if he wishes to say anything in answer to the charge, or wishes to give evidence, or call any witness in his defence; and, should the accused wish to give evidence, the court shall hear the evidence and that of any witness whom he summons.

(B) If the accused declares that he has witnesses to call but that they are not present the court may, at its own discretion, adjourn the trial and, if it sees fit, may order steps to be taken to secure the attendance of such witnesses at the appointed time.

*Summing Up*

32. Once the counsel for the defence has put its case before the court, the Prosecutor may sum up his case and then the accused or his counsel may sum up their case.

*Acquittal to be Pronounced Immediately*

33. If the court acquits the accused, the finding of acquittal shall be pronounced at once and the accused shall be freed if there are no other reasons to detain him in custody.

*Conviction and Sentence*

34.

(A) If the court convicts the accused on a charge, it shall pass sentence upon him.

(B) Prior to passing sentence on the accused the military court shall give the military prosecutor the opportunity to bring forward any further evidence at his disposal which may influence the nature of the

punishment or its extent. Thereafter, the accused shall have the right to make any statement or provide any testimony, reasons or evidence with a view to mitigating the sentence.

(C) At the end of the proceedings set out in sub-clause (B) above the prosecutor shall be entitled, and after him the accused or his counsel shall be entitled, to deliver a statement concerning the extent of the punishment; when the Counsel has summed up his statement, the court shall enable the accused to have a final say.

*Presence of the Accused During the Trial*

35.

(A) Every person tried before a military court shall be entitled to be present during the whole trial so long as he conducts himself properly.

(B) If the accused does not conduct himself properly the court may, at its own discretion, order his removal from the courtroom and continue the proceedings in his absence, provided that it makes provisions for informing the accused of what has occurred during the trial, and gives the accused the opportunity to defend himself.

(C) The court may, as it deems fit, permit the accused to be absent from the court during the whole or any part of a trial on such terms as it may set.

*The Accused Being of Unsound Mind*

36.

(A) In circumstances in which a military court decides that the accused being tried before it cannot be punished on account of suffering from a psychological illness at the time of the crime, the court may decide to detain him in a suitable establishment to be specified by the Area Commander, and to hold him in custody there so long as the Area Commander remains convinced that the accused is suffering from the above-mentioned illness.

(B) If, during the proceedings in a military court, it appears to the court that the accused is not capable of being tried because he is suffering from a disease of the mind, the court may order that the individual be detained for a period to be determined by the Area Commander. The Area Commander may, on the evidence of two military doctors that the individual detained in accordance with this sub-clause is now of sound mind, and if he deems it fit, determine that the accused be tried in accordance with the law for the offence for which he has been originally charged.

(C) The Area Commander may make provisions from time to time as he sees fit concerning the detention of individuals held in accordance with this clause.

*Medical Examination of the Accused*

37.

(A) In order to enable the military court to determine if it is appropriate to pass an order in accordance with clause 36, the court may at the request of one of the parties or of its own volition, order that the accused undergo a medical examination and if it is deemed necessary, that he be admitted to hospital.

(B) A hospitalisation order, passed in accordance with this clause, shall be executed by a psychiatrist appointed for the purpose by the Area Commander or by a person authorised by him; the court may not use its own judgement to specify to which particular hospital the sick individual is to be admitted, only the psychiatrist so appointed may specify the hospital which shall then admit the individual referred to in the order.

*Length of Detention*

38. In circumstances in which a military court has passed a sentence of imprisonment upon an individual who has been tried, the period in which the accused was held in custody for the offence prior to the trial shall be incorporated into the term of imprisonment.

#### *Confirmation of Sentence*

39. As soon as possible after the end of a trial the conviction shall be passed onto the Area Commander for his confirmation.

#### *Place of Custody and Imprisonment*

40.

(A) A person detained in accordance with this order shall be held in custody in a place specified by the Military Commander.

(B) A sentence of imprisonment shall be carried out in a prison specified by the Area Commander.

#### *Confirmation of Conviction and Sentence*

41. The conviction and sentence passed by the military court shall not be valid until it has been confirmed by the Area Commander. Where a sentence of imprisonment has been given to the convicted person, the court president shall order that the accused be detained until confirmation of the sentence is received, and such a period of detention shall be recorded and incorporated into the term of imprisonment should the sentence be confirmed.

#### *Powers of the Commander on Passing of a Sentence*

42. Upon passing of a sentence the Area Commander may:

1. Confirm the conviction and sentence; or
2. Reverse the finding of the court, acquit the accused and order his release; or
3. Confirm the conviction; or pardon the accused, or mitigate the sentence; or
4. Cancel the findings of the trial and order a retrial before the same or a different military court.

#### *Petitions to the Area Commander*

43. There can be no appeal against a judgment on jurisdictional grounds, however, the convicted person may apply to the Area Commander or the Military Commander, as the case may be, in order to appeal or make a petition in connection with the finding of guilt or the sentence. A military court, when passing sentence on a convicted person, shall bring to his notice his rights in accordance with this clause.

#### *Review of Sentence*

44. The Area Commander may at any time review the sentence of a military court which has been confirmed, and has the power to mitigate or remit the sentence.

#### *Conditions for Mitigating the Sentence*

45.

(A) The Area Commander, while acting under the powers conferred on him by clauses 42 and 44, and the Military Commander, while acting under the powers conferred on him by clause 50(C), (5), may impose conditions upon the convicted person before his punishment may be mitigated. Similarly, before the convicted person shall have his sentence mitigated, he may be asked to produce a surety guaranteeing that he will not commit an offence, or offences (hereinafter referred to as "further offences"), for a period which shall be determined by the Area Commander or the Military Commander by an order, but which shall not exceed three years (hereinafter referred to as "the period of surety"), from the date of giving the surety.

(B) If any of the conditions set for the mitigation of a term of punishment for the convicted person are subsequently broken, any military court may, upon being so requested by the military prosecutor, make provisions for the execution of the sentence as though no mitigation had been passed, with the exception of any part of the sentence which was served prior to the mitigation.

(C) Where the Area Commander or the Military Commander has mitigated a convicted person's sentence through the offices of a surety, the following provisions shall apply:



- 1. The bail shall be a personal bond undertaken by the convicted person either alone, or through the offices of a surety, or by a cash deposit, or partly by a bond and partly by a cash deposit, as the Area Commander or the Military Commander may direct;
- 2. The amount of the surety may not exceed the maximum fine which the military court is able to impose for the offence of which the accused has been found guilty;
- 3. If the accused is found guilty of a further offence committed during the period of surety the court which tries the accused for the subsequent offence shall pass an order which concerns the realisation and forfeiture of the surety in whole or in part;
- 4. If the accused is found guilty of a further offence committed during the period of surety and the court does not make provisions referred to in sub-clause 3, any military court may, upon being requested to do so by the military prosecutor, make provisions by order concerning the realisation and forfeiture of the surety in whole or in part;
- 5. Any surety for which an order has been passed in accordance with the terms of sub-clauses 3 and 4, shall be treated as a fine which has not been paid on time;
- 6. Sub-clause (B) shall not apply to the conditions of mitigation of punishment referred to in this sub-clause.

#### *Execution of Confirmed Sentence*

46.

(A) Confirmation by the Area Commander in accordance with clauses 42 or 44 shall be regarded as granting permission to any authorised person to execute the sentence of the court, or the provisions made by the Area Commander as the case may be.

(B) In circumstances in which an individual, in accordance with a sentence confirmed by the Area Commander, is obliged to pay a fine and does not do so, the Area Commander may order the seizure of the individual's property and its sale in order to secure the payment of the fine.

#### *Punishment*

47.

(A)

- 1. In circumstances in which an individual is convicted before a military court, the court may impose upon him any sentence which does not exceed the maximum sentence fixed for that offence by law or by security provisions as the case may be, or any lighter sentence, including a sentence which combines a term of imprisonment with a fine, provided that the court does not impose a fine in excess of five thousand Israeli liras in cases where only a prison sentence has been specified in existing legislation.
- 2. A military court may impose a sentence of imprisonment, for as long a term as it sees fit, for non-payment of a fine, provided that such a term does not exceed two years in prison, in addition to any term of imprisonment already imposed by the court.
- 3. In circumstances in which a military court does not pass a ruling to impose a term of imprisonment upon the convicted person for non-payment of a fine, as stated in sub-clause (2), it is permissible for the military court to issue an imprisonment order at the request of the military prosecutor brought after the fine has not been paid within its due time.
- 4. A term of imprisonment for non-payment of a fine shall begin to be served after the convicted person has served his other term of imprisonment.
- 5. In circumstances in which a military court has imposed a sentence of imprisonment for non-payment of a fine, if part of the fine is paid before the convicted person has

served his punishment, the period of imprisonment shall be shortened in the same proportion which the sum paid bears to the total fine

- 6. Notwithstanding the provisions of sub-clause 1, no death penalty shall be passed upon a convicted person by a military court unless at least two of its judges are officers with legal qualifications and the sentence is unanimous.

(B) In circumstances in which a person has been sentenced to a term of imprisonment, except for reasons of non-payment of a fine, if, before the end of the punishment, he is sentenced to another term of imprisonment for a different offence, the second period of imprisonment shall begin immediately and run concurrently with the first unless the military court directs otherwise.

(C) In circumstances in which a military court in a single judgment sentences the convicted person to two terms of imprisonment for different periods, it may stipulate that the convicted person serve all or part of one term after another. If no such provision is made all terms of imprisonment shall begin on the same day.

(D) A court which imposes a sentence of imprisonment, except imprisonment for non-payment of a fine, may stipulate that the convicted person shall serve "hard labour" for either part or the entire period of imprisonment; the Area Commander shall determine from time to time the nature of the labour to be imposed upon the convicted person as stated.

(E)

- 1. A military court which imposes a sentence of imprisonment for a fixed term, except imprisonment for non-payment of a fine, may stipulate that the punishment, in whole or in part, shall be suspended.
- 2. Any person sentenced to a suspended term of imprisonment shall not serve his punishment unless, during the period fixed by the sentence (hereinafter referred to as "the suspended period") he commits one of the offences specified in the sentence (hereinafter referred to as "further offence").
- 3. In circumstances in which a suspended sentence has been imposed, and the convicted person is found guilty during the suspended period or thereafter of a further offence, the court shall order that the suspended sentence be put into effect.
- 4. In circumstances in which a person is found guilty as stated and the court does not order the implementation of the suspended punishment, the military prosecutor may, not later than two months after the sentence has been passed, petition the court for the execution of the suspended sentence.
- 5. Any person sentenced to imprisonment for a further offence, and against whom a suspended prison sentence has been enforced, shall serve the two terms, either in whole or in part, consecutively unless the military court directs otherwise for reasons to be recorded.
- 6. An order made under sub-clauses 3-5 shall be deemed for all purposes as a sentence of a military court.

*Pledge by the Accused to Refrain from Committing a Subsequent Crime*

48.

(A) A military court which makes a finding of guilt against any person may, in addition to the punishment which it imposes or in substitution thereof, order the convicted person to be bound over not to commit an offence for a period which the court shall specify but which shall not exceed three years; the binding over shall be with or without sureties and for a sum which shall not exceed the maximum penalty which the court is permitted to impose for the offence for which the convicted person has been found guilty, as the court shall order.

(B) In circumstances in which a military court passes an order, in accordance with sub-clause (A), to bind over a convicted person from committing an offence, the military court may compel the accused's obedience to the binding over order by imposing a sentence of imprisonment upon him for a period which shall not exceed three months.

(C) In circumstances in which a person is found guilty of an offence which he had, in accordance with sub-clause (A), pledged not to commit, and if he fails to pay the amount of the surety for the said offence, this amount shall be deemed by the court which imposed the original surety as a fine which has not been paid. The court may exact the amount which the accused owes from the bondsman in the same way as if it were a fine which was not paid in time.

#### *Enforcement of Compensation*

49.

(A) A military court which finds an accused person guilty may oblige him, in addition to any punishment, to pay damages for the offence which he committed, or any part of such a sum, as compensation for the damage or suffering caused by him.

(B) A military court shall not pass a compensation order, as stated in sub-clause (A), unless the victim and the accused have both been given the opportunity to present evidence relating to the extent of the damage.

(C) Sub-clause (A) shall be applied only to the category of damage defined in clause 2 of Military Order 164 (Order Concerning Local Court) (The Status of Army Authority) 1967.

(D) The same laws which are applicable to the late payment of a fine shall be applied to unpaid damages.

#### *Single-Judge Military Courts*

50.

(A) Single-judge military courts shall be set up by the Area Commander and shall be presided over by an officer with legal qualifications who shall be appointed by the Area Commander (such courts are hereinafter to be referred to as "single-judge courts").

(B) The provisions of this order shall apply to single-judge courts as if they were military courts set up in accordance with clause 4, and wherever the word "court" appears in this order it will be interpreted to mean single-judge courts as well unless any provision exist which stipulates the contrary.

(C)

- 1. Single-judge courts shall sit at such times and in such places as they are instructed to.
- 2. A single-judge court shall not have the jurisdiction to pass the death sentence.
- 3. A single-judge court shall not have the jurisdiction to pass any sentence of imprisonment which exceeds five years or a fine which exceeds three thousand Israeli liras or a combination of this degree of fine and term of imprisonment.
- 4. The conviction and sentence passed by a single-judge court shall not be subject to the confirmation of the Area Commander but shall be valid upon pronouncement.
- 5. In relation to a judgement and sentence passed by a single-judge court, a Military Commander may of his own volition or upon application of the convicted person:
  - a. invalidate the finding, acquit the accused and order his release;
  - b. mitigate the punishment or commute the sentence.
- 6. The record of every case brought before a single-judge court shall contain the following information:
  - a. the charge or charges;

- b. the plea of the accused;
  - c. a summary of the evidence;
  - d. the court's verdict and sentence.
- 7. Any authorised person shall be entitled to enforce the sentence passed by a single-judge court, or at the order of a Military Commander in accordance with sub-clause 5.
  - 8. If an individual has, by sentence from a single-judge court, been ordered to pay a fine and fails to do so, then the Military Commander may order the seizure and sale of the convicted person's property in order to secure payment of the fine.

(D) At any time prior to the court issuing its final judgement, a single-judge court shall have authority to transfer any charges to a military court, set up in accordance with clause 4 above, to place the accused in custody or free him on conditions which it shall set in order to secure his appearance before such a military court; and thereafter the military court shall have the jurisdiction to hear the case and reach a verdict in the same way as if the accused has been brought before it from the beginning.

(E) An accused brought to trial before a single-judge court may request at the beginning of the case that the case be transferred to a military court set up in accordance with clause 4 and the single-judge court is obliged to fulfill such a request. A single-judge court shall inform the accused at the beginning of the case of his rights in accordance with this clause.

(F) In circumstances in which a single-judge court is prevented for whatever reason from completing a trial, whether it has already begun to hear evidence or not, the Military Commander may order that another single-judge court should continue to try the case, picking up the proceedings from the point at which the previous single-judge court left off, and it may, after granting the parties the opportunity to be heard on the matter, conduct itself in accordance with the evidence heard by the previous court as if such evidence was presented to it, or it may request that such evidence either in whole or in part, be presented before it again.

### SECTION III - OFFENCES

#### *Sabotage and the Causing of Death*

51.

(A) Any person who intentionally causes the death of another or carries out an act of sabotage against any military target shall be subject to the death sentence or any other punishment to be determined by the court.

(B) No death sentence may be passed by a court if the accused was under the age of eighteen at the time of committing the offence.

#### *Carrying of Firearms, Explosives, etc.*

52.

(A) No person may carry any firearm, ammunition, bomb, grenade, explosive or incendiary device without a permit granted by the Military Commander, or his delegate, or other than in accordance with the terms of the permit.

(B) Membership is not permitted of any group, any of whose other members have committed an offence in accordance with clause 51 or sub-clause (A) of this order.

(C) Any person committing an offence under the terms of this clause shall be liable to life imprisonment or any other punishment to be determined by the court.

#### *Offences against the Maintenance of Public Order*

53.

(A)

- 1. No person may have in his possession any firearm, ammunition, bomb, grenade, explosive or incendiary device or any instrument article or thing designed or adapted for causing death or serious injury unless he carries a permit granted by the Military Commander or his delegate and unless he has fulfilled all the conditions of the licence or permit which he holds.
- 2. No person shall manufacture any firearm, ammunition, bomb, grenade, explosive or incendiary device without a permit granted by the Military Commander or his delegate or other than in accordance with the terms of such a permit.
- 3. No person shall destroy, endanger, interfere with, or do any act or omission calculated to destroy, damage, obstruct, endanger or interfere with the security of the area or of the Israeli Defence Forces and its soldiers, or its activities or the safe operation of the following equipment - ship, airplane, port, quay, pier, mooring, railway, waterway, road, track, railway engine, carriage, truck or any other means of public transport or public communication or any works, plant or equipment used for or designed for the manufacturing, supply, storage, transporting, transmission or distribution of water, fuel, gas or electricity, or any property of the State of Israel or of the Israeli Defence Forces.
- 4. No person may approach or be in the vicinity of any such property as is defined in sub-clause (3) or enter thereon for the purpose of carrying out any act prohibited by that sub-clause.
- 5. Membership is prohibited of any group, any of whose members have committed or are planning to commit any offence as defined in this clause.

(B) Any person who has committed an offence under this clause shall be sentenced to a term of life imprisonment or any other punishment which the court shall determine.

#### *Contact with the Enemy*

54. No person may make contact either in writing, orally or in anyway whatsoever with any person who, there is reason to suspect, is working for the enemy, whether they be in the employ of an enemy organisation or in any other way connected to the enemy.

#### *Disguises*

55.

(A) No person shall adopt any disguise in any circumstance calculated to prejudice or endanger public safety, or the security of the Israeli Defence Forces, or the defence of the area, or the maintenance of public order.

(B) Any person committing an offence under this clause shall be sentenced to a term of imprisonment which should not exceed five years.

#### *Impersonation*

56. Any individual who, while not a public servant, impersonates a public servant shall be guilty of an offence under this order.

#### *Harbouring Criminals*

57. No person shall assist or harbour anyone who has committed an offence against the security provisions or who is, or has been, engaged in any activity prejudicial to public safety, to the safety of the Israeli Defence Forces and its soldiers, and to the maintenance of public order, or when there are reasonable grounds to suspect that he has done so, whether by providing information, shelter, food, drink, money, clothes, weapons, ammunition, supplies, provisions, means of conveyance, fuel or petrol of any kind whatsoever, or by any other means.

#### *False or Contradictory Evidence*

58.

(A) Any person who knowingly gives false evidence in any proceeding before a military court or behaves in an unseemly manner before any such court shall be sentenced to a term of imprisonment of up to five years.

(B) Any person who knowingly gives false evidence before any person authorised by any law or by the security provisions to hear evidence shall be sentenced to a term of imprisonment of up to two years.

(C) Any person who, during the course of giving evidence before a military court, contradicts in an important detail evidence which he previously gave before another military court or before any other court or person authorised by any law or security provision to hear evidence, and if the court proves that there was an intention in so doing to deceive those before whom evidence was given, shall be sentenced to a term of imprisonment of up to two years, irrespective of whom the accused intended to deceive. For the purpose of this clause 'evidence' shall be taken to mean any statement given under oath, under affirmation or otherwise.

#### *Non-Prevention of an Offence*

59. Any person who knows or has reasonable ground for suspecting that another person is committing or intends to commit an offence against an existing law or the security provisions the punishment for which exceeds three years of imprisonment, and who does not forthwith inform the Military Commander or the nearest police station or any officer in the Israeli Defence Forces, or does not act in any other reasonable manner in order to prevent the act or its continuation or completion shall be guilty of an offence under this order.

#### *Licenses and Authorisations Issued under the Security Provisions*

60.

(A) Any licence-holder shall act in accordance with the request of a soldier.

(B) No person shall break any condition laid down in a licence.

(C) No person shall alter or permit another to alter any document issued in accordance with security provisions.

(D) No person shall use or allow another to use any such document to which alterations have been introduced in contravention of sub-clause (C).

(E) No person shall lend any document issued in accordance with the security provisions.

(F) No person shall keep in his possession or control any document similar to a document issued under the security provisions with the intent of misleading.

(G) For the purposes of sub-clauses (B)-(F), any act committed outside the region shall be regarded as though it was done within the region.

#### *Evasion of Obligatory Payment*

61. Any person who intentionally evades the obligation to make any monetary payments to the Area Commander, or any of the authorities in the area, such a sum being imposed by law or by the security provisions and constituting one of the actions hereinafter set out, shall be sentenced to a term of up to five years imprisonment or to a fine of ten thousand Israeli liras and/or one-and-a-half times the sum the payment of which was evaded or intended to be evaded, or both such punishments together. These actions are as follows:

1. Deleting from any document, which is to be presented in accordance with a law or the security provisions, any sum recorded in that document;
2. Transmitting in any document, which is to be presented in accordance with a law or the security provisions, any false written statement;
3. Making a false reply orally or in writing to a question or a request for information put to him in accordance with a law or the security provisions;

4. Preparing or maintaining or permitting the preparation or maintenance of false account books or other false statements or falsifying or permitting the falsification of account books or statements;
5. Using deceit, cunning or tricks or permitting the use thereof.

*Meddling with the Affairs of the Israeli Defence Forces*

62. Any person who:

1. Commits any act which it is reasonable to assume is liable to prevent the Defence Forces of Israel or any person occupied in the execution of essential services from carrying out their duties; or
2. Knowingly commits any act intended to cause any soldier or person occupied in essential services to be unable efficiently to carry out his duties, shall be deemed to be guilty of an offence under this order.

*Information of Military Value*

63.

(A) Any person who, without legal authority,

- 1. obtains; or
- 2. records; or
- 3. communicates with any other person or publishes; or
- 4. has in his possession any certificate or record containing any information purporting to be in respect of the following subjects: the number, description, armaments, equipment, disposition, movement or condition of the Israeli Defence Forces, their vehicles, aircraft and fleets or their operations, completed or projected, or their prisoners of war, materials or any measures for the defence or fortification of any place, or any other information of military value or purporting to be of such value; shall be guilty of an offence against this order and shall be sentenced to fifteen years imprisonment.

(B) Without prejudice to the generality of clause 3 (A) above any person who passes, sends or signals any information whatsoever by any means, or who communicates with any other person in a manner or in circumstances or by means likely to convey information, shall be deemed to have communicated the information within the meaning of clause 63 (A) to another person.

*Obstruction*

64. Any person who obstructs a soldier in the execution of his duty, or any person exercising any powers or performing any duties conferred or imposed on him by the security provisions, or discharging any duty in connection with public safety, the security of the Israeli Defence Forces, the defence of the area, the maintenance of public order or the maintenance and supply of services; shall be guilty of an offence under this order.

*Insults and Threats*

65. Anyone who:

1. Behaves in an insulting manner towards any of the authorities of the Israeli Defence Forces within the region or any of its representatives; or
2. Threatens another person or insults him in a manner likely to disturb the peace or public order; shall be guilty of an offence under this order.

*Attacking a Soldier*

66.

(A) Any person who attacks a soldier or uses violence towards him shall be guilty of an offence under this order.

(B) "Soldier" in connection with this clause shall be interpreted to include any person invested with the authority of a soldier in accordance with the security provisions.

*Attacking Service Personnel*

67. Any person who attacks or uses violence toward a person in the service of, or previously in the service of, the Israeli Defence Forces or any of its authorities, or who causes damage to its property; shall be guilty of an offence under this order.

*Activity against Public Order*

68. Any person who commits any act which disturbs or is likely to disturb the peace or public order shall be guilty of an offence under this order.

*Offences concerning Military Equipment*

69.

(A) In this clause "military equipment" shall be interpreted to mean weapons, ammunition, explosive material, clothing, uniforms, personal equipment of soldiers or any item of equipment supplied for the use of the Israeli Defence Forces, or which is the property of the Israeli Defence Forces, or vested by law in the Israeli Defence Forces, or forming part of the supplies of the Israeli Defence Forces, or brought to the region for their use.

(B) No person shall keep in his possession any military equipment without permission or reasonable justification, and whereof the burden of proof shall be upon him.

(C) No person shall purchase, or exchange, or keep in his possession, or receive military equipment from a soldier or on behalf of a soldier or in his name, nor shall a person request military equipment, take it, or remove it from the hands of a soldier in order to sell or transfer possession therein in any way whatsoever.

(D) No person shall knowingly and unlawfully remove military equipment from the possession of the army.

(E) Any person committing an offence under this clause shall be sentenced to up to ten years imprisonment.

*Entry to a Prohibited Area*

70.

(A) Any person who enters a prohibited area, attempts to penetrate the same, remains therein, attempts to investigate its structure or what occurs therein, or without reasonable explanation wanders nearby without being authorised to do so, and also any person who attempts to disturb or deceive a guard or watchman keeping guard over the prohibited area shall be sentenced to up to ten years imprisonment.

(B) In this clause "prohibited area" shall mean a place occupied by the Israeli Defence Forces or used for security purposes or for the provision of essential services.

*Escape from Custody*

71. Any person who escapes from custody to which he is subject by law shall be guilty of an offence under this order.

*Intimidation*

72. Any person who:

1. Threatens to injure the person, or reputation, or property of an individual, or of any other person to whom the individual is beholden for his property or his status, with intent to cause the said individual to commit any act which he is not legally obliged to do, or to omit to do any act which he is legally entitled to do; or

2. Threatens in like manner and with a similar intention any persons generally, or any class or description of persons, shall be guilty of an offence under this order.



#### *Authority to Obtain Information*

73. Any person who does not comply with the directives given by the Military Commander, or on his behalf, to produce or reveal information or articles which are in his possession to the authority or person specified in such a directive, shall be guilty of an offence under this order.

#### *False Information*

74. Any person who makes a false declaration or representation, or makes use of any document containing false information, to any of the authorities of the Israeli Defence Forces or to any authority acting under the auspices of the Israeli Defence Forces in the area, or to anyone authorised by order of the Area Commander of the Israel Defence Forces, shall be guilty of an offence under this order.

#### *Offences involving Bribery*

75.

(A) In this clause:

- 1. "Bribe" shall mean money, things of monetary value, services or any other gain.
- 2. "Receipt" shall include receipt on behalf of another person or from another person directly or indirectly.

(B) A public servant who accepts a bribe in connection with any activity connected with his duty shall be liable to a sentence of seven years imprisonment or a fine of ten thousand Israeli lira or both punishments together.

(C) The law which applies to anyone proffering a bribe also applies to any individual who accepts a bribe. A person who offers or promises a bribe, even if it is not carried out, shall be deemed to be a person who has given a bribe.

(D) A person who receives money in order to bribe a public servant shall be guilty of an offence under this order, whether the money is given for his intercession with one person or another or not, and irrespective of whether there was an intention to bribe or not.

(E) Any person receiving money in order, either himself or through another directly or indirectly, to cause a public servant wrongly to act, desist from acting, delay, be inactive, act slowly, favour or to discriminate against, shall be guilty of an offence under this order.

(F) Any person who gives money to a person in circumstances set out in clauses (D) and (E) shall be considered to have given a bribe.

(G) There shall be no distinction in matters relating to bribery:

- 1. In what manner the bribe is given;
  - 2. Whether it is in connection with wrongful actions, inaction, delay, preferment or discrimination;
  - 3. Whether it is given with a particular job in mind or in order to pervert fairness in general;
  - 4. Whether it is for an action of the taker himself or to buy his influence over the actions of another;
  - 5. Whether it is actually given by the giver or through the offices of a third party; whether it is given to the acceptor or to another person on the acceptor's behalf either before or after the event; whether the person benefitting from the bribe is the acceptor or another individual;
  - 6. Whether the position of the acceptor is one of power or subservience; whether the performance of his job is paid or not paid; whether voluntary or by virtue of an obligation.
- (H) In any case concerning an offence under this clause the military court may reach a guilty verdict on the evidence of one witness alone, even if the witness was a party to the offence.

(A) Any person who negligently causes damage to the property of the security forces shall be guilty of an offence under this order.

(B) For the purposes of this clause "property of the security forces" shall mean property in the ownership or use of any one of the category of persons set out in clause (2) of Military Order 164 Concerning Local Courts (Status of the Authorities of the Israeli Defence Forces) 1967.

*Causing Damage due to Negligence*

77. Any person who negligently causes damage to the person of a soldier or a worker in the service of or on a mission for the Israeli Defence Forces or any of the authorities appointed or authorised to act in the area by the Area Commander or the Military Commander, shall be guilty of an offence under this order.

## **SECTION IV - ARREST, SEARCH, SEIZURE AND FORFEITURE**

*Arrest*

(A) Any soldier may, without a warrant, arrest any person contravening the provisions of this order or who, there is reason to suspect, has committed an offence under the terms of this order.

(B) Any person arrested under sub-clause (A) shall be brought as soon as possible to a Police Station or a place of detention specified in this order.

(C) A warrant of arrest must be made within a reasonable time against any person arrested in accordance with sub-clause (A); if such an arrest warrant is not issued within ninety-six hours of an individual's arrest, then he shall be released.

(D) Any police officer is authorised to issue an arrest warrant in writing, which shall not exceed seven days.

(E) A Police officer, not being below the rank of "Pakad", who is of the opinion that the investigation material collated against a person, in respect of whom an arrest warrant has been taken out in accordance with the terms of sub-clause (D), necessitates continuation of his detention, may extend the period for not more than seven days.

(F)

- 1. A military court is authorised to issue an arrest warrant for a period not exceeding six months;
- 2. In circumstances in which an arrest warrant is issued for a period of less than six months a military court may extend it from time to time, provided that the total period of detention shall not exceed six months.

(G) In circumstances in which a charge has been brought before a military court, the court shall be authorised to order the continued detention of the accused until the end of his case.

(H) An arrest warrant, under the terms of sub-clauses (D) to (G), shall be executed by a soldier.

(I)

- 1. A military court or a police officer is authorised to order the release of any person arrested in accordance with this clause; no person arrested by virtue of an arrest warrant issued by a court shall be released except by a court order emanating from the court which originally ordered the arrest, in accordance with sub-clause (G);
- 2. No police officer may release any person detained in accordance with Military Order 52 - Police Forces Working in Conjunction with the Israeli Defence Forces, 1967.

(J) 'Police officer' in this article shall be taken to include any other officer defined in Military Order 52 - Order Concerning Police Forces Working in Conjunction with the Israeli Defence Forces, 1967.

#### *Release on Bail*

79.

(A) Release on bail, in accordance with clause 78, may be by way of a personal bond on the part of the person arrested or charged, either undertaken alone or in conjunction with the bond of a surety, or by way of monetary deposit, as the police officer or court, which ordered the provision of a surety as a condition of release, shall deem fit.

(B) Release on bail shall be conditional upon the arrested or charged person presenting himself for questioning and for the hearing of the case at any time that he is requested to do so.

(C) In circumstances in which a person has been released on bail, any soldier may, either on his own initiative or at the request of the surety, if he has reasonable grounds to suspect that the person released is about to evade justice, arrest the released person without an arrest warrant. A released person arrested accordingly shall be dealt with in accordance with the terms of clause 78 (B).

(D)

- 1. At the request of the military prosecutor, the military court may, upon it being proved to the court that the person released has broken any one of the conditions of his release, order the arrest of the released person. Thereupon it may order:
  - (i) Payment of the whole amount of the bond, or part thereof to the funds of the Area Command, and any such order shall be regarded as a fine which has not been paid in due time;
  - (ii) The forfeiture of the deposit, either in whole or in part, in favour of the Area Command.
- 2. At any time after the issuing of an order, in accordance with subclause (A), a military court may, for reasons which it shall record, cancel or alter the order as it deems fit.

#### *Seizure and Forfeiture*

80. A military court may, with regard to procedural matters not laid down by this order, adopt any course which it deems to be best calculated to ensure that justice is done.

(A) Any soldier may seize and detain any goods, articles, documents or things which, he has reasonable grounds to suspect, prove that an offence against this order has been committed, or are the reward for the committing of any such offence, or the means by which an offence has been committed or ordered or facilitated, and which may serve as evidence that an offence against the terms of this order has occurred.

(B) Any goods, articles, documents or things which prove that an offence against this order has been committed, or which have been given as a reward for the commission of such an offence, or to commission or facilitate any such offence, shall be dealt with in whatever way the Area Commander shall direct.

(C) Any goods, articles, documents or things seized in accordance with this clause which, it is subsequently discovered, have not been used for the commission, rewarding, execution or facilitation of an offence under the terms of this order, and which cannot be used as evidence that an offence against this order has been committed, shall be released in accordance with directions of the Area Commander.

#### *Investigations*

81. An officer or soldier, authorised by an officer generally or specifically, may at any time enter any place, vehicle, ship or aircraft, which, he has reason to suspect, is being used or has been used for any purpose prejudicial to public safety, the security of the Israeli Defence Forces or its soldiers, the maintenance of public order, or for purposes of inciting rebellion, riot or disturbance, or in which he suspects that a person

who has committed an offence against the terms of this order may be hiding, and he may search the place, vehicle, ship or aircraft and any person found on the premises or leaving the premises.

#### *Personal Check*

82. Any soldier may detain and search any person who, he has reason to suspect, has been using any article liable to seizure under this order, or any animal on which, he has reason to suspect, any such article is hidden.

#### *Stopping Vehicles, Vessels and Aircraft*

83.

(A) Any person authorised by this order to enter any vehicle, ship or airplane may stop or detain the same using force if necessary.

(B) If any person in command or charge of any vehicle, ship or airplane, does not stop the said vehicle immediately when called upon to do so, either orally, or by signals, or by any other means, by any person authorised to do so, he shall be guilty of an offence under the terms of this order.

#### *Delegation of Jurisdiction*

84. The jurisdiction to arrest, seize, forfeit, search, conduct body searches, and stop vehicles, ships and airplanes, which is vested in a soldier in accordance with this clause shall be extended to cover any offences against security provisions, or any other law in effect in the area or in any other territory occupied by the Israeli Defence Forces.

## **SECTION V - RESTRICTION ORDER, SUPERVISION ORDERS AND ADMINISTRATIVE DETENTION**

#### *Restriction Orders*

85.

(A) A Military Commander may, in relation to any individual, pass an order for all or any part of the following purposes:

- 1. For ensuring that an individual is not allowed access to any region or area which the order specifies, except insofar as he may be permitted to enter by the order, or by the authority of any person who may be specified in the order;
- 2. For requiring that individual to notify the authority or person specified in the order of his movements in such manner and at such times as may be specified by the order;
- 3. Prohibiting or restricting the possession or use by that person of any articles specified in the order;
- 4. Imposing upon him restrictions in respect of his employment or business, or his association with other persons, or his activities in relation to the dissemination of information or opinions, as may be set out in the order.

(B) If any person contravenes the terms of this clause, he shall be guilty of an offence against this order.

#### *Special Supervision*

86.

(A) A Military Commander may direct by order that any person shall be placed under special supervision.

(B) Any person placed under special supervision in accordance with this clause shall be subject to all or some of the following restrictions as the Military Commander shall order:

- 1. He shall be required to reside within the limits of a particular area in the region, which shall be specified by the Military Commander by order;

- 2. He shall not leave the town, village or sub-district within which he resides without the written permission of the Military Commander;
- 3. He shall at all times keep the Military Commander or his delegate, informed of the whereabouts of his residence;
- 4. He shall be obliged to present himself, whenever requested to do so by the Military Commander at the place which he orders;
- 5. He shall remain within the doors of his house during such hours as the Military Commander may specify by order;

(C) A soldier may arrest any person against whom an order has been made in accordance with the terms of sub-clauses (A) and (B) and may convey him to the area in which he should be.

(D) Any person who contravenes an order in accordance with this clause shall be guilty of an offence against the terms of this order.

(E) The provisions concerning the right of appeal specified in clause 87 (E), (with such alterations as may be necessary in the circumstances), shall apply to any person against whom a supervision order has been made in accordance with this clause.

#### *Administrative Detention*

87.

(A) A Military Commander, or anybody to whom he delegates his authority in this capacity, may issue an order determining that an individual be detained in whatever place of detention specified by the order.

(B) When an order is issued in accordance with this clause against any person who, under the terms of clauses 85 or 86, is already subject to an order, the order issued under this clause shall be deemed to take precedence.

(C) Any person who issues a detention order in accordance with this clause shall immediately in writing and not later than ninety-six hours after passing the order, inform the legal advisor of the Area Commander and the legal advisor of the Military Commander thereof.

(D) Any soldier may arrest any person against whom an order has been issued, in accordance with the terms of this clause, by the Military Commander, and may convey him to the place of detention specified in the arrest order.

(E) An appeals committee shall be established for the purpose of this order appointed by the Area Commander and shall be presided over by a judge. The function of such a committee shall be to consider any appeal against an order issued in accordance with this clause and to inform the Area Commander of its recommendations. The committee shall examine the case of any person who is detained in accordance with this clause at least once every six months regardless of whether the individual has appealed or not.

(F) Any person held in a place of detention in accordance with the provisions of this clause who commits a breach of discipline and obedience while in detention shall be guilty of an offence under this order.

## **SECTION VI - RESTRICTIONS**

#### *Transport and Traffic*

88.

(A) A Military Commander, or a person acting under the general or specific authority of a Military Commander, may through the issuing of an order or instructions, or otherwise:

- 1. Prohibit, restrict or regulate the use of certain roads or set the routes to be followed by vehicles or animals or persons generally or of any specific class;

- 2. Require of any person owning or having in their possession, or under their control any vehicle, to use the vehicle for the conveyance of such goods at such times and by such routes as may be specified by him;
- 3. Prohibit, restrict or regulate the movement of people in general, or of people of any specified class, or particular individuals, in airplanes.

(B) Any soldier may issue an order requiring any of the inhabitants of any town, village, area or quarter, either in whole or in part, to remove from a road any barricade or obstruction, or any glass, nails or other obstacles which may prevent the use of such road.

(C) Any person who contravenes any order, provision or requirement issued in accordance with the terms of this clause shall be guilty of an offence under this order.

#### *Curfews*

89. A Military Commander may issue an order requiring every person within a specified area to remain within doors during the hours set by the order. Anyone who is found out of doors without a written permit issued by or on behalf of a Military Commander, in the area or during the hours set by the order, shall be guilty of an offence under this order.

#### *Closed Areas*

90.

(A) A Military Commander may issue an order declaring any area or place to be a closed area. Anyone who is found entering or leaving the area without a written permit issued by or on behalf of a Military Commander, or with a permit which was issued under false pretenses, shall be guilty of an offence under this order.

(B) Any person who enters a area or place closed in accordance with sub-clause (A) without a written permit issued by or on behalf of a Military Commander or with a permit which was issued under false pretenses, or who remains in the area or place subsequent to the expiry of the validity of such a permit or in contravention of the conditions set by the permit, may be removed from the area or place by any soldier.

#### *Opening and Closing of Premises*

91.

(A) A Military Commander may issue an order under the following circumstances:

- 1. If it appears to him to be necessary, in the interests of maintaining essential services, he may require any person who is in possession of business premises, an institute of learning, or any other place which is visited by the public or part thereof (hereinafter referred to as "the place") which he may have reason to believe to have been closed in pursuance of an organised or general closure of places, to open the place and carry on business as usual.
- 2. If it appears to him to be necessary, in the interests of maintaining normal administrative services, public order and the security of the Israeli Defence Forces, he may require any person in possession of a place to close it, and cease conducting business therefrom, and to keep it closed for such period as is specified in the order.

(B) In this clause

- "Business premises" shall include any workshop, factory, commercial premises, shop, restaurant, buffet bar, pharmacy, bakery, laundry and any business which manufactures or sell goods or provides services for the public;
- "Possesses" in relation to any place or business premise, shall include the proprietor, the manager, the clerk, the deputy or any person who has control of any place or is able to operate the same.

(C) Any person breaking the terms of this clause shall be guilty of an offence under this order.

## **SECTION VII - VARIOUS PROVISIONS**

### *General Punishment*

92. Any person contravening any provision of this order or failing to observe any provision or obligation specified in the security provisions, shall be liable to imprisonment for five years or to a fine of five thousand Israeli liras or to both such punishments together, if no other punishment is specified for the offence.

### *Offences by Corporations*

93. In circumstances in which a person convicted of an offence against the security provisions is a corporate body, every person who, at the time the offence was committed, was a director or officer of the corporate body shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his knowledge or that he exercised all reasonable means to prevent the commission of the offence.

### *Burden of Proof*

94. It shall be the responsibility of any person charged in connection with an offence against the security provisions to prove that his case comes within any exemption, or allowance or right which he pleads or that he is in possession of any licence, permit, consent or authorisation.

### *Repeals*

95. This order shall repeal:

1. Military Order 12 - Order Concerning The Application of Provisions (Yehuda and Shomron) 5727 - 1967;
2. Military Order 157 - Order Concerning the Extension of Warrants of Arrest (Temporary Provisions) (Yehuda and Shomron) 5728 - 1967;
3. Military Proclamation 3 - Order Concerning Security Provisions (Yehuda and Shomron) 5727 - 1967.

### *Commencement of Validity*

96. This order shall come into force on the twenty-eighth day of Nissan 5730 (1 st May 1970).

### *Name*

97. This order shall be called "An Order Concerning Security Provisions" (Yehuda and Shomron) No. 378, 5730 - 1970.

14th Nissan 5730 (20th April 1970)

RAPHAEL VARDI, TAT-ALUF,  
Area Commander  
Yehuda and Shomron

## **Defence (Emergency) Regulations 1945**