

# **HUMAN RIGHTS IN PALESTINE**

## **What has happened since Oslo?**

**Report of a Joint Mission to East Jerusalem, the West Bank  
and Gaza on behalf of  
the International Human Rights Committee  
the Law Society of England and Wales and  
the Bar Human Rights Committee of England and Wales  
from 7 to 14 June 1998**

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# HUMAN RIGHTS IN PALESTINE

## What has happened since Oslo?

Hopes for the resolution of the Palestinian/Israeli conflict were raised following a historic process of reconciliation between Israel and its neighbours commencing with the Madrid Conference in 1991, the September 1993 Declaration of Principles on Interim Self-Government Arrangements, which formed the basis for Palestinian self-rule in the areas of Jericho and the Gaza Strip, as well as the expectation of "early empowerment" and legislative action in the remainder of the West Bank. However, little substantive progress has been made in the recognition of greater Palestinian autonomy since then.<sup>1</sup>

1998 marked the fiftieth anniversary of the Universal Declaration of Human Rights and fifty years of the Palestinian/Israeli conflict. The significance of the two anniversaries was not lost on those who have consistently sought to ensure that the rights of Palestinian people are recognised by the State of Israel. Against this background a delegation from the International Human Rights Committee<sup>2</sup> of the Law Society of England and Wales and the Bar Human Rights Committee of England and Wales were invited to attend a conference organised by the Palestinian Society for the Protection of Human Rights and Environment (LAW) to address human rights issues in the area. The conference was held in East Jerusalem from 6 to 10 June 1998. The aim of the conference was to bring together academics, lawyers, human rights activists and the press in an initiative that would examine fifty years of human rights violations arising from the Israeli/Palestinian conflict. During the conference there was a series of workshops which facilitated the development of campaigning strategies and project ideas. Thereafter the delegation met a number of other human rights activists in the region.

We have prepared the following report on the basis of our discussions detailing the human rights violations in the region which have come to our attention. Whilst we have necessarily dwelt on Israeli violations because of their systematic and widespread nature and extent, we have also highlighted Palestinian human rights violations and stress that violations from any quarter are of equal concern and equally to be deplored.

The authors wish to thank all those who have assisted in the preparation of this report particularly Mel James, Secretary to the Law Society's International Human Rights Committee.

Geoffrey Bindman  
Bill Bowring  
Yasmin Waljee

<sup>1</sup> "The most recent US brokered "Wye Agreement" signed on 23 October 1998 has yet to take effect but provides for a three-stage Israeli pull back from another 13% of the West Bank in return for specific Palestinian security moves. The PLO Executive Committee has amended the Palestinian Charter and is to work with the US to present a plan to combat extremist violence. But already, disputes have arisen notwithstanding the agreement by Israel to refrain from any step that would change the status of the West Bank and Gaza, the Kiryat Arba settlement in Hebron will be extended as the Israelis have stated that the agreement does not cover expansion to meet the demand of natural population growth." *Reuters*, 3 November 1998.

<sup>2</sup> Formerly the International Human Rights Working Party

## 1. INTRODUCTION

This was the second such mission to the Palestinian territories occupied by Israel. The first, by Geoffrey Bindman and Bill Bowring, with the assistance of Oonagh Reitman, took place between 26 and 30 July 1994. Their report *Human Rights in a Period of Transition - The Case of the Occupied Territories, Jericho, and the Gaza Strip* was published jointly by the Law Society of England and Wales and the Bar Human Rights Committee of England and Wales in November 1994.

The aims of the previous mission were to investigate and report on the new situation brought about by the Declaration of Principles on Interim Self-Government Arrangements ("the Oslo Declaration") of 13 September 1993 and the Cairo Agreement of 4 May 1994, examining in particular the prospects for the rule of law and the protection of human rights in the Palestinian self-rule areas, which at that time were limited to Jericho and the greater part of the Gaza Strip but have since been extended to towns in the West Bank.

Having considered the depressing history of persistent human rights violations carried out by members of the Israeli security forces against Palestinians, the report examined the terms of the Oslo Declaration and Cairo Agreement in some detail: it reviewed the legal framework of the new situation in the context of Israel's obligations under international law; it considered the domestic legal systems in operation in the West Bank and Gaza, noting the severe difficulties already apparent in combining or co-ordinating the two systems; it considered the needs and prospects for the development of a unified legal profession. Finally it recommended steps to be taken by the legal profession in England and Wales to help Palestinian lawyers and to improve respect for human rights and the rule of law in the occupied and autonomous territories.

The recommendations in the previous report were as follows:

1. That the Law Society and the Bar Council inform the relevant United Kingdom authorities of the conclusions of this report, inviting them to make known what steps they are presently taking to promote human rights observance in the Occupied Territories and autonomous areas.
2. That formal and informal links should be established between the Law Society and the legal profession in the West Bank, Jericho, and the Gaza Strip with a view to assisting its future development and promoting its vital role in promoting the rule of law and the enforcement of human rights.
3. That financial and technical assistance should be offered to the Palestinian legal profession including donating up-to-date legal textbooks and providing training.
4. That steps should be taken through the legal press to keep the legal profession in the United Kingdom fully informed of developments in the legal system in Palestine.

Over the four year period since the earlier report fulfilment of these aims has been disappointing. The UK Government has, with its partners in the European Union, sought to implement the human rights obligations undertaken by the State of Israel in its trading agreements with the Union. In particular, there has been pressure within the Union to refuse to import goods manufactured in the Occupied Territories by Israeli settlers, on the ground that their residence violates international law.

Although some informal links have been established between the Law Society and the Bar Council and the Palestinian legal profession, no formal links have been developed. We were particularly concerned by the sense of isolation of the Palestinian judges and lawyers whom we met in Gaza. In contrast to the regular exchanges which take place between Israeli and United Kingdom judges and senior lawyers, the Gaza judges reported that they had had no contact whatsoever with their United Kingdom counterparts.

Following the previous mission, a successful initiative was launched by the Law Society and Bar to collect and transport textbooks to the Legal Centre at Bir Zeit University. The books are much appreciated

and this assistance is commemorated by a special plaque. The logistics of transporting the books proved to be complex and the programme needs more resources if it is to be revived. Training initiatives for Palestinian law students and young lawyers have been discussed but no effective programme has yet got off the ground.

Apart from occasional articles by authors of the previous report, little has appeared in the legal press about developments in the legal profession and legal system in Palestine. Plainly this should be remedied.

The previous report was, for the most part, fairly received as an independent and impartial contribution to public knowledge, especially that of the legal community. However, it was criticised in the *Jewish Chronicle*, especially by Lord Janner, for its account of human rights violations by Israeli security forces and for quoting a comparison of the autonomous territories with the "bantustans" created by the former apartheid regime in South Africa. It is not necessary for us in this report to defend the earlier report. We believe, however, that readers will agree that the facts described in this report vindicate the views expressed in the previous report.

## 2: DEVELOPMENTS SINCE 1994 AND THE "PEACE PROCESS"

The Oslo Declaration committed the parties to a solution based on UN Security Council Resolutions 242 and 338, respectively adopted by overwhelming majorities after the 1967 and 1973 wars. They called on Israel to withdraw from occupied territories in return for recognition by its neighbours. Undoubtedly the intention underlying these resolutions was that there should be complete withdrawal to pre-1967 borders. Furthermore, it is apparent that the Palestinian negotiators at Oslo had the same understanding. However, a semantic interpretation pressed by Israeli officials after 1971 argued that "occupied territories" did not mean "all occupied territories". The precise extent of withdrawal, which crucially included the continued existence of Israeli settlements in the Occupied Territories, was thus left unresolved by the Oslo Declaration, as were other central issues such as the status of Jerusalem.

The Oslo Declaration provided for a further agreement to be concluded within two months covering the withdrawal of Israeli military forces from the Gaza Strip and Jericho, the establishment of a Palestinian Interim Self-Government Authority led by an elected Council (later called the Palestinian National Council ("PNC")) which was to govern for a period not exceeding five years, and the preparatory transfer of powers until the inauguration of the PNC in the spheres of education and culture, health, social welfare and taxation.

The further agreement, concluded in Cairo on 4 May 1994, provided for the composition and jurisdiction of the Palestinian National Authority, Israeli withdrawal, and other interim measures.

The details are set out in the previous report.<sup>3</sup>

Within three weeks of the Cairo Agreement, Israeli troops withdrew, as agreed, from 65% of the Gaza Strip and from Jericho. The remaining 35% of the Gaza Strip was retained for the benefit of a small number of Israeli settlers, giving each Israeli on average 36 times as much land as each Palestinian with a comparably uneven distribution of the restricted water supply. Further withdrawal and increased autonomy for the Palestinians was provided for in the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip ("the Interim Agreement").<sup>4</sup> Within one month the Palestinian National Authority assumed control over the main cities and towns of the West Bank. Israeli troops withdrew from them apart from Hebron, where a small group of Israeli settlers have remained as a source of continual tension. Steps were also taken, in spite of the severe financial and skill shortages, faced by the Palestinians to transfer to the Palestinian National Authority those responsibilities provided for in the Oslo Declaration.

<sup>3</sup> *Human Rights in a Period of Transition – the Case of the Occupied Territories, Jericho and the Gaza Strip*, Law Society of England and Wales and the Bar Human Rights Committee of England and Wales, November 1994.

<sup>4</sup> Concluded in Washington DC on 28 September 1995

Although the commitment to UN Security Council Resolution 242 appears in the preamble to the Interim Agreement, as it had in the Oslo Declaration, Israeli equivocation was facilitated by the division in the agreement of the occupied territories into three zones. While those who took the commitment to Resolution 242 seriously expected that Israel would eventually withdraw from all three, as the Interim Agreement provided, it was accepted that withdrawal had to be carried out in stages. Zone A consisted of Palestinian towns and urban areas amounting to less than 2.8% of the occupied West Bank area. Zone B comprised Palestinian villages and less populated areas amounting to some 22.9% of the West Bank. Zone C comprised Palestinian agricultural lands and land confiscated by Israel for settlements and roads. This, the remaining 74.3% of the West Bank, contained key agricultural regions and water supplies.

Under the Interim Agreement in 1995 and 1996 Israel kept its promise to withdraw from Zone A (apart from Hebron) and ceded some control of civil affairs to the Palestinian Authority in Zone B. Up to now there has been no withdrawal from any part of Zone C.<sup>5</sup> While the agreement provided for ultimate withdrawal of Israel from Zone C, this did not include areas which related to "issues that will be negotiated in the permanent status negotiations". Apart from areas affected by permanent status issues, the Interim Agreement required withdrawal within 18 months of the inauguration of the Palestinian Legislative Council, ie by August 1997.<sup>6</sup> This was to be done in three six-monthly phases. In fact, by March 1998, Israel was still occupying 97% of the West Bank with no further withdrawal in sight.<sup>7</sup>

"Permanent status" discussions were envisaged as the final stage of the Oslo process. They were to be completed in not more than two years commencing not later than 4 May 1996. The basis of the Oslo strategy on both sides was to get early agreement on what could be readily agreed and thereby build up an atmosphere of trust in which the most contentious issues could be negotiated later. These issues were listed as follows: "Jerusalem, refugees, settlements, security arrangements, borders, relations and co-operation with other neighbours, and other issues of common interest". The whole of Zone C could arguably - and the Palestinians were in a weak position to argue - be retained under Israeli control under the rubric of security. Notwithstanding the stated aim of total withdrawal, therefore, the Oslo agreements gave Israel the right to keep some 75% of the West Bank and still claim to be acting in accordance with the agreements.

Furthermore, on the assumption that the aim of Oslo was ultimate withdrawal, the further expansion of Israeli occupation by the extension of existing settlements or the creation of new ones would seem pointless. However, Yitzak Rabin, Prime Minister of Israel at the time of the Interim Agreement, clearly had no doubt that the existing settlements at least were to remain and that they would grow. In the Knesset on 5 October 1995, he declared not only that the Interim Agreement allowed for "natural growth" of existing settlements, but that "activity for providing security measures for the Israeli communities - fences, peripheral roads, lighting, gates - will continue on a wide scale". He went on to say: "By-pass roads will be built, whose purpose will be to enable Israeli residents to move about without having to pass through Palestinian population centres".<sup>8</sup>

Following the tragic assassination of Yitzak Rabin and the formation of a new government by the Likud party under the leadership of Binyamin Netanyahu, the consolidation of Israeli occupation of Zone C and the creation of "facts on the ground" incompatible with withdrawal pursuant to Resolution 242 proceeded rapidly. Whereas Rabin had at least nominally drawn the line at the building of completely new settlements (as distinct from expanding the existing settlements), Netanyahu has recognised no such limitation. Not surprisingly, the dashing of the hope of total withdrawal (if it ever seriously existed in the minds of Israeli negotiators) has undermined the progress towards the permanent status envisaged at Oslo. As we have seen, the partial withdrawal meant to precede permanent status talks has not taken place. The permanent status talks have not yet begun, although they were meant to have concluded by 4 May 1998.

<sup>5</sup> Save as a result of the recent Wye Agreement - see above note 1

<sup>6</sup> Interim Agreement. Article XVII paragraph 2a

<sup>7</sup> Nicholas Guyatt *The Absence of Peace*, Pluto, 1998, page 46

<sup>8</sup> Guyatt, *ibid*, page 46, note 22

Israeli soldiers should have withdrawn from Hebron immediately after the Interim Agreement in September 1995 but the presence of the small but very militant settlement in the centre of the town created a dilemma for the Israeli government. It chose to break the Hebron Agreement by retaining an Israeli garrison within the town of Hebron. The peace process ground to a complete halt in March 1997 over the issue of the Israeli settlement in Jabal Abu-Ghnaim (Har Homa).

The creation by the Israelis of "facts on the ground" has also gone far to pre-empt the solution of the contentious issue of the status of Jerusalem. Against the spirit, if not the letter, of Oslo Israeli colonisation of East Jerusalem has been vigorously pursued while at the same time a variety of measures have been taken to discourage and drive out its Palestinian residents. Against a background of international protest, the Har Homa housing project was given the go-ahead by Netanyahu in March 1997, so as to complete the encirclement of East Jerusalem by Israeli settlements.

The prospect of an autonomous, let alone an independent Palestinian state, unifying the West Bank and Gaza, as the end-product of the process begun at Oslo, seems as far away as ever.

Those sceptics who do not believe that any Israeli government could ever agree to such an outcome have so far been vindicated.

The above account of recent political developments should be seen as essential background to an understanding of the human rights situation. In our next chapter we turn more directly to the human rights challenges to which these developments have given rise.

### **3: HUMAN RIGHTS OBSERVANCE BY THE ISRAELI GOVERNMENT**

In a later chapter we discuss the legal status of the occupation under international law. Separate from this issue is observance of international human rights norms by the Israeli authorities in their treatment of Palestinians both in the occupied territories and in Israel itself. Since the establishment of the Palestinian National Authority, the human rights record of that body also demands scrutiny.

Our previous report examined the history of the occupation from a human rights perspective<sup>9</sup> and agreed with the overwhelming consensus among outside observers that there had been a range of human rights violations which were continuing.

Since 1994 the picture has changed in some respects but remains extremely serious. On 31 July 1998, after our visit, the UN Human Rights Committee published in Geneva its observations on the implementation by Israel of its obligations under the International Covenant on Civil and Political Rights,<sup>10</sup> which it had ratified in 1991. The Committee expressed its deep concern that Israel continues to deny its responsibility to apply the Covenant in the Occupied Territories and called on Israel to include "all information relevant to the application of the Covenant fully in the territories which it occupies" in its next report which is due to be submitted by June 2000.

We review in the following paragraphs particular violations noting first the observations of the UN Human Rights Committee and then our observations drawn from our discussions during the mission.

#### **(a) Torture**

The UN Human Rights Committee stressed that Article 7 of the Covenant is a non-derogable prohibition of torture and cruel, inhuman or degrading treatment or punishment which is prohibited under all circumstances.

<sup>9</sup> *Human Rights in a Period of Transition*, *ibid*, pages 6 to 13

<sup>10</sup> *Concluding Observations of the Human Rights Committee: Israel*, UN Document CCPR/C/79/Add.93, 18 August 1998

In 1987, the Israeli government appointed a commission under Judge Landau, a former President of the Supreme Court in response to international protests at repeated complaints of torture carried out by security forces while interrogating Palestinian detainees. Remarkably, the Commission concluded that "moderate physical pressure" was permissible both under domestic and international law. Between 1987 and 1994 more than 23,000 Palestinians were interrogated and in 1995 Prime Minister Rabin admitted that 8,000 had been "violently shaken". This referred to the practice known as *shabeh* which, in addition to violent shaking, includes also sleep deprivation for lengthy periods, hooding, tying up in painful positions, and other inhuman and degrading acts. In 1994, the UN Committee against Torture said: "the Landau Commission Report, permitting as it does 'moderate physical pressure' as a lawful mode of interrogation, is completely unacceptable to this Committee". It repeated that view in 1997, having received evidence that the practice was still continuing. One human rights group, HaMoked, found in 1996 and 1997 that torture had occurred in 85% of a random sample of interrogations which they investigated. The Supreme Court of Israel has convened a special panel of nine judges to consider a large number of petitions brought by human rights groups on behalf of torture victims but has declined to make any interim orders stopping torture before the cases are decided by the Court.<sup>11</sup>

#### (b) Summary executions

The UN Human Rights Committee expressed its concern particularly at the use of rubber-coated metal bullets to disperse demonstrations. It noted that these bullets have been responsible for many deaths of Palestinians including children. This is a violation of Article 6 of the Covenant concerning the right to life, which like Article 7 must be respected under all circumstances.

A very large number of Palestinians have been shot and killed by Israeli security forces during the period of the occupation. Our previous report referred to a number of incidents in which live bullets had been fired, apparently in breach of the professed policy of the Israeli Defence Force to use live bullets only where the lives of soldiers are endangered. Of particular concern was the killing of large numbers of children. Since the partial withdrawal from the occupied territories, the number of deaths has reduced substantially but it remains considerable. Since the Oslo Declaration, 248 Palestinians have been killed by Israeli forces in the Occupied Territories.<sup>12</sup> Of these 35 were children.

#### (c) Punitive house demolitions

The UN Human Rights Committee deplored the demolition of Arab homes as a means of punishment. It considered this to conflict directly with the State's obligations under several articles of the Covenant.

Punitive demolition of houses owned or occupied by those convicted or suspected of offences dates back to the British Mandate (1922 to 1948). During the first five years of the Intifada, from 1987 to 1992, approximately 1,600 houses of alleged Intifada activists were demolished.<sup>13</sup> Between 1992 and 1996 only one house was wholly demolished though partial demolition and sealing of houses continued. From 1996 to January 1998, 15 houses were demolished as punishment in the Occupied Territories.<sup>14</sup>

The Supreme Court of Israel has uniformly rejected petitions seeking to stop these demolitions, save in one case where there was a procedural defect.

#### (d) Israeli settlement in the occupied territories

The Human Rights Committee recommended that urgent steps be taken to overcome the considerable inequality and discrimination which remains in regard to land and housing.

<sup>11</sup> B'tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, *Legitimising Torture* (B'tselem, 1997)

<sup>12</sup> B'tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, *A Decade of Human Rights Violations*, (B'tselem, 1998) page 14

<sup>13</sup> LAW Human Right Report 1997 page 16

<sup>14</sup> B'tselem 1998, *ibid*, page 21



The very existence of Israeli settlements under the control of the Israeli government in the occupied territories is a violation of international law. The settlements are also a central issue dividing the parties to Oslo and threatening any comprehensive peace agreement. Oslo left it in abeyance to be resolved in the permanent status negotiations. The extension of the land occupied by settlements by expropriation has continued since Oslo. An Israeli expert to whom we spoke, Michael Warshawski, said that the Palestinian negotiators at Oslo failed to press for agreement that the area actually occupied by settlements should not be expanded pending the permanent status negotiations. By creating 'facts on the ground' to pre-empt the permanent status negotiations, the Israeli government cannot easily be accused of breaking the letter of Oslo but they are clearly to be violating its spirit, quite apart from the fact that each act of expropriation or expansion plainly entails a further violation of international law.

We have neither the space nor the expertise to discuss the complexities of land ownership in the occupied territories. Suffice it to say that the acquisition of land whether by expropriation or purchase cannot assist any peace negotiation which might ensue. Planning and movement controls imposed by Israel are used to facilitate expansion. Thousands of Palestinians have been unable to obtain permits to build houses on their own land. Where, by necessity, they have built without a permit, Israel has carried out a policy of mass demolition, theoretically distinct from the punitive demolition described above, but often with the same effect. In the past decade more than 1,800 houses have been demolished in the West Bank, excluding East Jerusalem. The policy continues. By contrast, houses built by Israelis are not demolished; those built without permits have been retrospectively authorised.<sup>15</sup>

#### (e) East Jerusalem

The Human Rights Committee expressed concern that Palestinians who are resident in East Jerusalem face increasingly restrictive conditions to maintain their right to permanent residence in East Jerusalem, that requests for family reunification are denied, and that non-Jews experience difficulty in obtaining building permits and accommodation. These obstacles have forced increasing numbers to move to the occupied territories.

The disadvantages imposed on Palestinians in East Jerusalem are particularly acute. Since 1967 Israel has sought to pre-empt any effort to challenge Israeli sovereignty of the whole of Jerusalem.<sup>16</sup> Not only has building permission been routinely refused to Palestinians, residency permits for Palestinians have been strictly controlled and permits for family reunification refused so that those who wish to be united with their families have to move to the West Bank. Those who leave are usually not permitted to return.

Meanwhile, before and since Oslo, Israel has continued to expropriate land in East Jerusalem. It has built some 40,000 units of housing for Israelis and not a single one for Palestinians. The encirclement of East Jerusalem by Israeli settlements is now being completed by the building of the Har Homa settlement. The range of practices designed to exclude Palestinians from Jerusalem is manifestly discriminatory. Though Palestinians are not allowed to build, Israelis can build in East Jerusalem even in the midst of traditionally Palestinian neighbourhoods. Peaceful protests against this injustice have been harshly broken up by the police. While we were attending the LAW Conference, some foreign delegates who joined in one such protest were beaten by Israeli policemen.

#### (f) Arrest and detentions

The UN Human Rights Committee expressed concern about the relative difficulty experienced by Palestinians detained by Israeli military order in the Occupied Territories, to challenge the detention through judicial review as compared to those detained in Israel under ordinary law.

The use of administrative detention for extended periods is a major concern. This power, exercisable where state security is said to be at risk, excludes the right to charge or trial. It may also be extended

<sup>15</sup> B'tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, *Demolishing Peace: Israel's Policy of Mass Demolition* (B'tselem Information Sheet, 1997) and B'tselem 1998, *ibid* page 25

<sup>16</sup> B'tselem 1998, *ibid* p.30

indefinitely. Since 1991 the number held under this power has fluctuated between 100 and 500. On 2 December 1997 the number held was 410.<sup>17</sup> It has thus not decreased since Oslo. Among those held are Lebanese citizens, some held for as long as 11 years. In a recent challenge to their detention before the Supreme Court, it was admitted that they were not being held because they were themselves regarded as a threat to state security but as hostages available potentially for exchange with Israelis held in Lebanon. The Court led by the President, Judge Barak (but with Judge Dorner, a former State prosecutor, dissenting) held their detention lawful.<sup>18</sup>

**(g) Closures, curfews and restrictions on movement**

The Human Rights Committee considered that the continued restrictions on movement, which affects mostly Palestinians travelling in and between East Jerusalem, the Gaza Strip and the West Bank, raises serious issues under Article 12 of the Covenant concerning the right to freedom of movement.

During the Intifada curfews were commonly imposed by Israeli security forces on occupied towns and villages. Some villages were under permanent curfew during 1988 and 1989 and in Gaza a curfew was imposed from May 1988 until the Palestinian National Authority took office in May 1994.

Curfews are limited to certain times of day and night. More serious still has been the practice of closure which is not only a drastic restriction on personal freedom but can inflict devastating economic damage. Closures often result in the denial of basic human rights such as health, food, and in extreme circumstances, the death of individuals. For example, the death occurred of an infant in Hebron in November 1998 who was not allowed to leave the city to obtain medical care. In 1996 and 1997 the Israeli Defence Force twice imposed an internal closure on each of hundreds of towns and villages in the West Bank. The inhabitants were unable to leave, even to go to work. Notwithstanding that under the Oslo Declaration the West Bank and Gaza Strip are to be treated as a single territorial unit, the Israeli authorities have made no arrangements for passage for Palestinians between them or into Israel from either.

Since 1991 there has been an indefinite closure imposed by Israel on the West Bank and Gaza. This means that no Palestinian can enter Israel at all without a special permit. The Israeli Defence Force can also close the borders suddenly for arbitrary periods when, for example, an act of violence has taken place. The economic effect of such closures can be catastrophic. Large numbers of Palestinians have employment in Israel which is vital for their survival. By denying a permit, perhaps arbitrarily or as a result of mistaken identity, the livelihood of an individual can be destroyed. We were told that the cost in lost wages from closures outweighed the income received from foreign aid though we were unable to verify this. The former Commissioner General of the Palestinian Independent Commission for Citizens' Rights (PICCR), Dr. Eyad Sarraj, who holds a British passport, told us that he cannot travel to Britain or anywhere else abroad without an Israeli permit to enable him to get to Ben-Gurion airport. The same applies to any other Palestinian.

The effective severance of East Jerusalem is a distinct problem. Ever since 1967 the Jerusalem municipality has used its wide powers to plan new areas for Jews and to prevent the growth of the Palestinian areas - indeed wherever possible, to remove or exclude Palestinians from Jerusalem.<sup>19</sup> A permit must of course be held by a Palestinian seeking residence or entry into East Jerusalem. It is said that figures published by the Israeli Ministry of the Interior show that between 1967 and 1997 the residency status of 4,480 Palestinians has been revoked. Of these 1,290 were revoked in 1996 and 1997.<sup>20</sup>

17 B'tselem 1998, *ibid* p.18

18 In the matter of A.B. v. Minister of Defence, 13 November 1997

19 Guyatt, *ibid*, pages 124 to 146

20 B'tselem *Report* 1998 *ibid* page 31

**(h) Legal remedy for personal injury caused by the security forces**

The Human Rights Committee was particularly concerned about the introduction of a draft law which would deny victims compensation caused by the excesses committed by members of the security forces against the Palestinian residents of the Occupied Territories. The Israeli Government has proposed a law to deny compensation to Palestinians injured or killed by Israeli security forces. The Bill passed its first Knesset reading in July 1997 and is currently under discussion in the Constitution, Law and Justice Committee of the Knesset. If it is passed by this Committee, it returns to the Knesset Plenary for the second and third votes necessary to enact it into law.

As a result of the Bill civilians negligently maimed and injured by Israeli security forces, both in the past and in the future would not receive any compensation for medical care and rehabilitation. Families of those killed would not be able to sue in civil courts. Israeli forces would not be held accountable for human rights violations in the occupied territories.<sup>21</sup>

**Palestinian human rights violations**

Before the Oslo Declaration and the creation of autonomous Palestinian areas, Israel was the only government in Palestine whose human rights observance and record could be evaluated. Following the establishment of the Palestinian National Authority, its attitude to the human rights of those within its jurisdiction also became a matter of concern. In our previous report, we conveyed the concern expressed by Dr Hanan Ashrawi and others at the propensity of elements within the Palestinian National Authority to ignore or pay no more than lip service to human rights. While observance of human rights features prominently in the draft Basic Law still under discussion by Palestinians, there is much disturbing evidence that compliance with basic human rights norms is still inadequate. Below we describe in detail our meeting with Dr. Sarraj who was the then Commissioner General of the PICCR, having succeeded its founder Dr. Hanan Ashrawi, and we review the work of the commission.<sup>22</sup> In that chapter we describe reports we received of Palestinian human rights violations.

**4: ISRAEL, THE PALESTINIANS AND INTERNATIONAL LAW**

All the issues discussed in this report must be seen within the context of international human rights and humanitarian law. Each raises important issues, many of which can, of course, only be resolved through negotiation and political will. Clarity as to the framework of law applicable is, however, of the greatest importance. This section of the report analyses only three of the more important questions.

We derived the greatest assistance in preparing our mission from the excellent study prepared for LAW by Mustafa Mar'i, entitled *Guarantees for Respect of Human Rights in Palestine: Present Problems and Future Prospects*.<sup>22</sup> Mar'i refers often to our previous Report, especially with regard to issues of international law.<sup>23</sup> In turn, this section draws extensively from Mar'i's work, and from discussions with him at the LAW conference.

**(a) What is the status of the Palestinian Interim Self-Governing Authority (Palestinian National Authority) in international law?**

There can be no doubt that the Occupied Palestinian Territories constitute a "self-determination unit" for the purposes of international law. Thus, UN General Assembly Resolution 1541 of 1960,<sup>24</sup> working out

<sup>21</sup> B'tselem Report 1997

<sup>22</sup> See Chapter 9

<sup>22</sup> Mustafa Mar'i *Guarantees for Respect of Human Rights in Palestine: Present Problems and Future Prospects*, Jerusalem: LAW, December 1997

<sup>23</sup> *Human Rights in a Period of Transition: The Case of the Occupied Territories, Jericho and the Gaza Strip* op cit.

<sup>24</sup> General Assembly Resolution 1541 (XV), UN Document A/4684 (1960)

the consequences of the Declaration on the Granting of Independence to Colonial Territories and Peoples,<sup>25</sup> identifies, as a possible candidate for self-determination, a territory which is geographically separate, and distinct ethnically or culturally from the country administering it. From the 1970s, the UN General Assembly consistently recognised the right of the Palestinian people to self-determination; and has also recognised the role of the PLO as legitimate representative of that people. The international community thus now unanimously recognises the status of the Palestinians as a "people" for the purpose of international law, and their right to participate in the resolution of the question of Palestine, and most states recognise their right to self-determination. Furthermore, in 1993, Israel and the United States both consented to the PLO's participation in the negotiation process, as the representative of the Palestinian people.

The Palestinian National Authority was established with the authorisation of the PLO, and therefore of the Palestinian people. However, it remains largely a municipal authority over the affairs of the Palestinians in the Occupied Palestinian Territories.<sup>26</sup> It does not have the legal competence to make any decisions as to Palestinians outside the Occupied Palestinian Territories or even the ultimate destiny of Palestinians in the Occupied Territories. The Palestinian National Authority's authority within the Occupied Palestinian Territories derives from the transfer of powers and responsibilities from Israel; but its legitimacy derives externally from the PLO, and internally from the elections to the Palestinian National Council. In the words of Omar Dajani:

"Palestine is at present a people, a territory, a liberation organisation, with a legal status as something less than a liberation, a State with a legal status as something less than a State, and an Interim Authority of rather limited authority."<sup>27</sup>

But the legal and functional separation of the PLO and the Palestinian National Authority mean that taken together, they do not form a unit independent and unified enough to constitute a State. For example, while the Interim Agreement affirms the legal and territorial distinctness of the Occupied Territories - both sides regard the West Bank and Gaza as "a single territorial unit, the integrity and status of which will be preserved during the interim period"<sup>28</sup> - Israel continues to exercise many state functions in the Occupied Palestinian Territories, including the maintenance of overriding control over their infrastructure, borders and security; and it may, under the Oslo Declaration, veto any of the Palestinian National Authority's legislative enactments that it deems objectionable.

"While the PLO's independence is not compromised by the [Oslo Declaration] and subsequent agreements, the PLO does not, itself, possess legal authority over the OPT; under the [Oslo Declaration], that authority resides in the Palestinian National Authority and in Israel."<sup>29</sup>

In any event, the Interim Agreement states that:

"... to this end, the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law."<sup>30</sup>

This facilitates Israel's effective control over the Occupied Territories, including those areas under the jurisdiction of the Palestinian National Authority.

25 General Assembly Resolution 1514 (XV), Supp. 16, page 66

26 This argument is set out more fully in Omar M. Dajani *Stalled Between Seasons: The International Legal Status of Palestine During the Interim Period* (Fall, 1997) 26 *Denver Journal of International Law and Policy* 27

27 Dajani, *ibid*, p.74

28 Interim Agreement, Chapter 2, Article 11, paragraph 1 (36 *International Legal Materials* 551)

29 Dajani, *ibid*, page 89

30 Interim Agreement, Article XVII, paragraph 4b

This does not mean that effective self-determination in the future will not happen; indeed, it is very likely. How effective that self determination is depends on what form it takes. But the present situation presents considerable danger for both the Palestinian people and Israel, and is a fetter on the development of the rule of law in the Occupied Territories.

**(b) Who is responsible for human rights violations?**

It remains the case that the local applicable law in the Palestinian National Authority areas includes, *inter alia*, the Israeli military orders as well as the provisions of the pre-occupation local (Jordanian, Egyptian, British Mandate) law.<sup>31</sup> The Palestinian National Authority remains bound by the provisions of the Oslo Declaration and subsequent agreements. Moreover, the Palestinian National Authority only has limited authority to legislate in the areas for which it is responsible, because the Interim Agreement binds it to apply the relevant local law. Thus, as pointed out above, the Interim Agreement makes it clear that powers and responsibilities are shared between the Palestinian National Authority and Israel. Moreover:

"Israel shall transfer powers and responsibilities as specified in this Agreement from the Israeli military government and its Civil administration to the Council in accordance with this Agreement. Israel shall continue to exercise powers and responsibilities not so transferred."<sup>32</sup>

Joel Singer, legal adviser to the Israeli Ministry of Foreign Affairs, who negotiated the Interim Agreement for Israel, considers that this article provides the basis for the assumption of residual powers by Israel.

"If the agreement is silent on the question of where a particular power vests, then that power is retained by Israel."<sup>33</sup>

There are also a number of spheres of shared responsibility, for example issues connected with residency. First, the Interim Agreement creates a Joint Committee to decide the re-issuing of identity cards to those who have lost their cards. Second, the Palestinian National Authority may only grant permanent residency status to spouses and children with prior Israeli approval. Third, Israel has retained many powers with regard to the issuing of visit permits; these may only be issued by the Palestinian National Authority if cleared by Israel.

Some Israeli sources claim that human rights violations in the Palestinian National Authority areas are not Israel's responsibility. Eyal Benvenisti has claimed that Israel is not responsible for human rights violations in Palestinian areas, since Israel is not in a position to control them.<sup>34</sup> And *B'Tselem*, the Israeli Human Rights Information Centre in the Occupied Territories stated in 1994 that it would henceforth limit itself to monitoring the Israeli-held areas.<sup>35</sup>

Nevertheless, Mar'i argues that Israel should continue to be held accountable for violations, even if these occur in the Palestinian National Authority-controlled areas. He gives the following reasons. First, Israel maintains that it has both overriding authority, and the residual powers under the Interim Agreement. Second, Article 31(8) of the Interim Agreement effectively maintains the whole of the West Bank, Jerusalem, and the Gaza Strip as occupied territory under international law. Third, Article 6 of the Fourth Geneva Convention itself has the effect that to the extent that Israel 'exercises the functions of government', it remains responsible for the human rights and well-being of the local population. Fourth,

31 Mar'i, *ibid*, page 27

32 Interim Agreement, Article I (1)

33 Joel Singer *The West Bank and Gaza Strip: Phase Two*, JUSTICE - Association of Jewish Lawyers and Jurists, December 1995

34 Eyal Benvenisti *Responsibility for the protection of human rights under the Interim Israeli-Palestinian agreements* 28 *Israel Law Review* 297

35 Agence France Press *Israelis as well as Palestinians now suffer rights violations*, 12 September 1994

as Singer states, Israel has residual powers, then Israel should be held accountable for well being and human rights unless the contrary is proved.

Moreover, it can be argued against Benvenisti that Israel, in fact, has effective control within the Palestinian National Authority areas. Mar'i presents two pieces of supporting evidence. First, there is credible evidence that the raids carried out in February to April 1996, in which hundreds of Palestinians were arrested by Palestinian security forces, were based on lists provided by Israel. Second, during 1997, in response to information that Palestinian security forces in Ramallah were holding a Palestinian from Jerusalem, the Israeli security forces declared the city a closed military area, so that no Palestinian could enter or leave without a permit.

In Mar'i's view, with which we concur, the following conclusion should be drawn. Where the Palestinian National Authority has applied its own legislation and policy, and has committed human rights violations, it should be held accountable. But this does not mean that Israel has relinquished all responsibility.

As we argue elsewhere in this report, Israel's policies of extensive settlement, closure of Palestinian areas, and the consequent cantonisation of Palestinian society,<sup>36</sup> create an environment in which any Palestinian administration, however good its intentions, will find it hard to give adequate protection to human rights or well-being. This is not to say that the Palestinian National Authority is absolved from responsibility for arbitrary rule, ill-treatment, and torture. But Israel must also be held accountable.

**(c) Can the Palestinian National Authority be held responsible, given its current status as a non-state entity?**

Until Palestine attains the status and recognition as a state, it will not be eligible to become party to international human rights treaties although it is hoped that full attention will be given to their provisions. However, in the interim, a number of the expert bodies established by the UN Commission on Human Rights have been raising complaints of human rights violations with the Palestinian Authority.<sup>37</sup>

## **5: THE APPLICABLE LAW**

**(a) Historic Perspective**

Following the termination of the British Mandate over Palestine in 1948, the West Bank came under Jordanian rule. Jordanian legislative reforms were substantial transforming the overall legal system from the Anglo-Saxon model to the Latin civil model. Few of the British Mandate laws in force in the West Bank remained in force during the Jordanian period. In contrast, in the Gaza Strip, when under Egyptian control, little was done to reform the legal system. Therefore at the heart of the law in force in the Gaza Strip today is British Mandate law. In 1967, following the Israeli occupation of Gaza and the West Bank, contrary to international law, Israel issued over 1,400 orders for the West Bank and over 1,100 orders for the Gaza Strip in violation of Article 43 of The Hague Convention 1907 which states that an occupying power should ensure, as far as possible, public order and safety are maintained while respecting the laws in force of the occupied state.

The Oslo Declaration is premised on the maintenance of the legal *status quo*, notwithstanding Israeli withdrawal. It provides that any amendment to an Israeli Military Order is prohibited except by consent

<sup>36</sup> See Khalid Amaryeh *Slicing the West Bank in two* (3 July 1998) Middle East International - "an undeclared but clear goal inherent in the plan [the expansion of Greater Jerusalem] is the cutting of the West Bank into two separate chunks, north and south, lacking territorial continuity... [this] will leave the main routes between Hebron and Bethlehem and the central West Bank under Israeli control..."

<sup>37</sup> See, for example, reports of the Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention to the last session of the Commission on Human Rights (UN Documents E/CN.4/1998/43 and E/CN.4/1998/44).

of both parties. This is confirmed in the Interim Agreement under Article XVII (legislative powers of the Council), paragraph 4 of which states:

"Legislation including legislation which amends or abrogates existing laws or military orders which exceeds the jurisdiction of the Council or which is otherwise inconsistent with the provisions of the [Oslo Declaration] [or the Interim Agreement]...shall have no effect and shall be void *ab initio*."

At the inception of the Palestinian National Authority in 1994, the Palestinian National Authority President declared that the law in force was to be that in force prior to 1967. This declaration was open to different interpretations. The view initially taken was that there would be an immediate reversion to the legal status prior to the Israeli occupation in 1967 and all subsequent changes introduced by Israeli military orders would not longer be in force. However, despite the emotional need to dismantle any evidence of Israeli controls by the Palestinian National Authority, for pragmatic reasons the Palestinian National Authority continues to implement Israeli orders in some circumstances, for example in relation to VAT, government health insurance and traffic ordinances.

#### **(b) The International Legal Framework**

The Oslo Declaration (Article VI) transferred to the Palestinian National Authority certain agreed responsibilities which did not include the legal apparatus. Instead, under Article 7, matters concerning the "independent Palestinian judicial organs" are left for the Interim Agreement. However, in practice, judicial operations were assumed by the Palestinian National Authority in the year following the Oslo Declaration and prior to the Cairo Agreement. The Interim Agreement extended self-rule to the West Bank. The Palestinian National Authority areas now cover seven cities in addition to Jericho which was Palestinian National Authority-controlled by the Cairo Agreement. The Interim Agreement also confirmed the transfer of responsibilities for the administration of justice through the establishment of an independent Palestinian judiciary. Notwithstanding the apparent transfer of the legal apparatus to the Palestinian National Authority, the jurisdiction of the Palestinian judicial legal system remains limited in its application to the Palestinian National Authority areas.

The wording of the Interim Agreement is deceptive, insofar as it purports to confer on the Palestinian National Authority criminal jurisdiction over all offences committed in the areas under its territorial jurisdiction and confer on Palestinian courts jurisdiction in all civil matters. Closer analysis of the remaining provisions shows this is far from the case.

#### **(i) Impact on Criminal Jurisdiction**

Under the Oslo agreements, the criminal jurisdiction of the Palestinian Courts cover all offences committed under Palestinian National Authority territorial jurisdiction but this is subject to the overriding provision that Israel has sole criminal jurisdiction over offences committed in the settlements and offences committed in the Palestinian National Authority areas by Israelis. This would, of course, include Palestinian Israelis resident in the Palestinian National Authority areas.

#### **(ii) Impact on Civil Jurisdiction**

As regards civil jurisdiction, Palestinian Courts again have no jurisdiction over matters to which an Israeli is a party except for the following:

- (i) Where the subject matter of the action is an ongoing Israeli business situated in the Palestinian National Authority areas;
- (ii) Where the matter or the action is real property located in the territory; or
- (iii) Where the Israeli party has accepted the authority of the Palestinian Courts in writing.

Even where one of these situation arises, contractual disputes involving Israelis effectively fall outside Palestinian Court jurisdiction because, although Israelis conducting commercial activity in the Palestinian

National Authority areas are subject to the prevailing civil law, it is provided that any enforcement of judicial or administrative judgements and orders against Israelis and their property are to be effected by Israel within a reasonable time. This is clearly not adequate for the effective administration of justice.

### **(iii) Judicial Review**

Palestinian Courts have no jurisdiction over any emanation of the State of Israel including the statutory entities, organisations or agents and therefore cannot review the decisions and other activities of the occupation forces. In contrast, Article VII of the Interim Agreement provides for the right of anyone affected by a decision of the Palestinian Executive Authority to be reviewed by a relevant Palestinian court.

### **(c) Legislative Reform**

The Palestinian Legislative Council was formed following elections on 20 January 1996 in which Palestinians of Jerusalem, the West Bank and Gaza participated. The Palestinian Legislative Council has been given the authority to legislate. The Council issued 96 decisions in the year to 1997, a significantly lower number than the 130 in the previous year. However, the Palestinian National Authority President failed to ratify all but three of the laws proposed by the elected Palestinian Legislative Council preventing them from coming into force. The relationship between the Palestinian Legislative Council and the executive is difficult.

In summary, the Court system is failing to meet the needs of its citizens, particularly where it has limited jurisdiction in matters of security and where Israeli interests are involved. Legislative reform to reduce the disparity between laws in Gaza and the West Bank has stalled but this, at present, need not be a priority as we were continually told by lawyers that they were familiar with the difficulties: more important is the efficient running of the Court system and the application and enforcement of the law.

## **6: THE STRUCTURE OF THE PALESTINIAN JUDICIAL SYSTEM**

The judicial system in the West Bank and Gaza is largely a legacy of the difference in the governing authorities in these regions. The West Bank's legal system derives from the Jordanian system in existence prior to the Israeli occupation in 1967. The judicial system in Gaza was inherited from the British mandate period. Israeli occupation inhibited any development of the Palestinian legal system and served to entrench the existing differences in the legal system between the two areas.

### **(a) The judicial system in the West Bank**

The judicial system in the West Bank is divided into two levels. The first level embraces the Conciliation Courts, the Municipal Courts and the Courts of First Instance. The second level consists of the Court of Appeal. The Courts at the first level cover claims relating to property, tort, contract and criminal matters. The Municipal Courts have jurisdiction over public law matters relating to local ordinances, regulations and public health bodies.

There is one Court of Appeal in the West Bank situated in Ramallah. The Court sits in a minimum three judge panel to hear both criminal and civil appeals arising from the Courts of First Instance and Courts of Conciliation. Prior to 1967, a third higher court existed seated in Amman, Jordan: the Court of Cassation. Following the Israeli occupation, the Court of Cassation was abolished and the Court of Appeal took on the responsibilities of administering the Court system.

### **(b) The judicial system in the Gaza Strip**

Notwithstanding the fact that from 1948 to 1967 Egypt controlled the Gaza Strip, limited modifications were made to the overall legal system developed in the British Mandate period from 1922 to 1948.



The Court system in the Gaza Strip therefore follows an Anglo-Saxon model and is divided into two levels. The first level consists of the Courts of Conciliation, Municipal Courts, Central Courts as well as the Criminal Court. At the second level, there is the Supreme Court.

At the first level, all civil matters are adjudicated in the Courts of Conciliation. The Municipal Courts have jurisdiction to enforce local ordinances' regulations and public health codes. The Central Courts have jurisdiction on all criminal matters not falling within the criminal jurisdiction of the Criminal Court. The Central Courts also may take appeals from the Courts of Conciliation or Municipal Courts. The Criminal Court has exclusive jurisdiction over major criminal cases.

The Supreme Court has appellate jurisdiction over cases originating in the Central Courts and arising out of the Court of Conciliation and the Municipal Courts.

### (c) **Military and State Security Courts**

Co-existing alongside the civilian court system, there are the following additional security tribunals:

- Israeli Military Courts
- Palestinian Military Courts
- State Security Courts

#### (i) **Israeli Military Courts**

Israeli Military Courts continue to exist notwithstanding the transfer of authority to the Palestinian National Authority. Their jurisdiction has been carefully preserved. For example, on 27 September 1997 the Israeli commander of the West Bank and the Gaza Strip issued a new order giving the Israeli Military Courts jurisdiction over any person organising or participating in a demonstration, protest or any activity that could be construed as a threat to Israeli security or commit acts in the exclusively Palestinian controlled areas "A" (including the Gaza Strip) which might threaten Israeli security.

#### (ii) **Palestinian Military Courts**

With the establishment of the Palestinian National Authority, Palestinian Military Courts (also known as "Revolutionary Courts") assumed jurisdiction in relation to military matters. These Courts have been established pursuant to the 1979 PLO Revolutionary Code and the definition of "military matters" is interpreted widely. The Court may take jurisdiction over any civilian or military personnel suspected of committing an offence in violation of the revolutionary code. They operate outside the civilian legal system under the authority of the Palestinian National Security Forces headed by the director of the Military Judiciary. The decisions of these Courts cannot be appealed but are subject to the approval of the PLO President.

#### (iii) **State Security Courts**

The State Security Courts are a worrying development. They arose out of modifications made by the former Egyptian administration to the legal system they inherited from the British Mandate period. The existence of such a Court was confirmed in a special Presidential Decree of 7 September 1995 issued by Yasser Arafat, Chairman of the Executive Committee. This confirmed that such Courts had jurisdiction to deal with security related matters. The judges serving in these Courts are appointed on an *ad hoc* basis and are not required to have any legal or judicial experience. Hearings often take place at night. There is no appeal against decisions of the Court but all decisions must be confirmed by the Palestinian National Authority President.

We were informed that the State Security Courts had met four times between January and early June 1998.

**(d) The Prosecutorial System**

There is much to be concerned about in relation to the Israeli and Palestinian National Authority's handling of security matters. However, the failure of the prosecutorial system in meeting international human rights standards must be seen within the political context within which the Palestinian National Authority is forced to operate.

The security system set up to counter terrorism is not part of the Palestinian Attorney General's remit. No political/security cases are filed with the ordinary criminal courts but the executive handled these directly. The General Prosecutor is not involved. Therefore the entire security/political system is concealed from public scrutiny. The Assistant Attorney General in Ramallah told us that security matters are very difficult to handle. A special prosecutor is appointed and the Attorney General's office has no information as to when or where a trial will take place.

Any matter where security is invoked either by Israelis or by the Palestinian National Authority immediately takes the case outside the normal judicial system. The Director of the Attorney General's Office in Ramallah, Mr Asad Mubarak, told us that State Security Courts were often convened in haste because of Israeli pressure. Under the Protocol on Provision of Criminal Assistance the Palestinian National Authority is required to surrender the arrested individual to Israel if there is a delay in his trial. Failure to do so will result in Israel taking punitive measures such as tightening the closure of the Occupied Territories.

In May 1998, the Palestinian Attorney General Mr Fayez Abu Rahman resigned after less than one year in office, citing interference and obstruction in preventing him from doing his job. In a long interview with him we were told of disturbing violations of human rights.

In August 1997, the Attorney General ordered the release of 11 Palestinian prisoners held in Gaza Central Prison without trial. They were released for two hours and then re-arrested. In addition, the Head of the Military Court was also arrested by order of the Executive for allowing the prisoners to be released. The Attorney General asked to meet the Palestinian National Authority President 13 times in one month but received no response. He said that he suspected that he was expected to seek permission from the President before ordering the release of prisoners. Mr Rahman described the situation as "miserable".

Despite the fact that the law specifies that the Attorney General must oversee arrests, he was regularly not consulted about the detention of political prisoners and with at least five different Palestinian National Authority branches regularly detaining people it was impossible for him to keep the situation under control.

It was not clear to us who controls all the various security forces but it is clear that the Palestinian Chief of Police, Ghazi Jabali, controls the police, the biggest force.

**(d) Lack of accountable authority**

One of the main problems facing the Palestinian Independent Commission for Citizen's Rights, human rights organisations and the judiciary is the issue of widely overlapping jurisdictions of the various public authorities. This leads to difficulties in locating those detained and creates additional burdens in terms of permits to visit, and a more confused system of procedures to comply with. The Attorney General reported that when the High Court in Gaza ordered the release of a Hamas leader being held without charge, two representatives of the Attorney General's office in the Police Chief's office at the time said that the Police Chief threw the Court Order into the waste bin.

The prosecution of offenders outside the security or political context is also fraught with difficulties. There is only one forensic laboratory in the West Bank and no official forensic laboratory in Gaza. Again, the absence of trained personnel, record keeping facilities and basic office equipment render impossible the maintenance of a high standard of prosecutions.

## 7: THE PALESTINIAN JUDICIARY

An independent judiciary lies at the heart of civil society; the Courts are the guarantor of all rights and freedoms and the ultimate arbiter of competing interests ensuring equal treatment before the law. In Palestine, confidence in the judiciary has never been more important than it is now after the years of suffering arbitrary treatment and discrimination as a result of the Israeli occupation. Citizens of Palestine have the right to an effective judicial system. The former Palestinian Human Rights Commissioner, Dr Eyad Sarraj, illustrates the priority all Palestinians have for the rule of law by citing the example of conditions during the Intifada, during which time although there was a complete paralysis of the judicial system and civilian life was in turmoil, there was a continued respect for the law, property, personal safety and personal integrity. Throughout the years of the uprising, despite the lack of freedom of movement and whilst basic needs for food and housing went unmet, civil order prevailed amongst the Palestinian community.

### (a) Difficulties faced by the Judiciary

The Justice Minister, Freih Abu Meddin, in 1997 summarised the circumstances prevailing within the judicial system as follows:

"There are inequities in Judges' salaries. We have asked the Ministry of Finance to rectify their salaries but they have not done so. Consequently, we are unable to retain or place employees due to lack of funds. The Judicial Branch lacks independence, due to the interference of security services in the affairs of the Court and the Attorney General. The Chief of the Judicial Branch is ineffective. There is a dispute between the Ministry and the Chief of the Judicial Branch which has been an obstacle to co-operation. In addition, Judicial appointments are made on the basis of clear nepotism and favouritism. There were three judges appointed to the High Court in Gaza who have never served as judges in their lives. The High Court has a tendency to turn to the President when it is faced with a problem. There are also problems in the Attorney General's office. There are five new courts which are unable to open due to lack of resources."<sup>38</sup>

The reasons for its failures are attributable to a combination of the wilful neglect of the Palestinian legal structure by the Israelis during occupation; the lack of recognition of the judicial system as a priority by the Palestinian National Authority and the international donor agencies; and a lack of political will on the part of the major players in the international system. This has had the cumulative effect of a shortage of resources, personnel and leadership within the Palestinian judiciary which risks prejudicing the stability of civil society.

### (b) Absence of Leadership

The Chief Justice, head of the Judicial Branch was removed in January 1998 by the General Personnel Council of the Palestinian National Authority. The Chief Justice was informed by letter that he had reached the age of retirement and must resign his post. The removal caused grave concern prejudicing the principle of the separation of powers and undermining the judiciary. The removal of any judge in this manner deeply damages the integrity of the Court system. The head of the Court of Appeal for the West Bank stressed that in the past during the period of Jordanian rule, the Chief Justice had been appointed by a High Judicial Council whereas the appointment now was at the behest of the Executive and was open to abuse and influence. A new Chief Justice has not been appointed.

Supreme Court Judge, Mr Sami Soboh, is now effectively operating as acting Chief Justice without any formal recognition of his appointment. In the absence of even basic resources, he can barely keep the Court system working and certainly, without official confirmation of his appointment, he cannot provide direction to new initiatives.

<sup>38</sup> *Third Annual Report, 1 January - 31 December 1997*, The Palestinian Independent Commission for Citizens' Rights (PICCR), page 67.

**(c) Lack of Resources**

On 11 June 1998, we met four Judges of the Supreme Court in Gaza, including the acting Chief Justice. We were told of the extreme situation facing the judicial system arising from the shortage of personnel, inadequate Court infrastructure, information technology systems and even referenced material. It appears that most foreign aid has been pledged to the security services and the police, whilst projects to improve the rule of law have assumed a lesser priority.

**(i) Gaza**

In Gaza, a full plenary sitting of the High Court requires 15 Judges. At present there are only nine. This illustrates just one aspect of the inadequacy of resources. The shortage of personnel is evident at all levels of the Court system. The Judges felt that in these circumstances they could not be expected to deal with the whole range of legal matters being filed. The Court library lacks even basic research materials.

Except for the use of word processors to produce judgements there are no other computer resources. All records are kept by hand. There are no compilations of court decisions or any administrative systems to cope with the monitoring of cases. Court rooms are small, dilapidated and ill-equipped.

The Judges identified four particular areas requiring urgent attention:

1. English language and legal terminology, training for lawyers and judges in view of the inherited Anglo-Saxon legal system in Gaza.
2. Training for lawyers in the presentation and filing of cases.
3. Training in the administration of justice, the use of information technology and legal procedure for all in the legal system.
4. Training for judges in relation to Court procedure.

The report of the Office of the Special Co-ordinator in the Occupied Territories<sup>39</sup> highlights the urgent need for judicial training and the absence of any donor funding in this respect. No funds have yet been committed for judicial infrastructure equipment, furniture or materials.

**(ii) The West Bank**

We met Judge Sami Sarsour the Head of the Court of Appeal in Ramallah. He voiced his fears concerning the legal system in the West Bank. He outlined major shortages of judicial personnel. There is only one Court process server and one individual charged with enforcing judgments for the whole of the West Bank. As a result, the public was losing confidence in the system. Often the Magistrates Court and High Court do not sit as there is no Court recorder. The resulting backlog of cases is therefore substantial. He explained that many Judges did not have legal qualifications or experience. The Judiciary as a result was weak but the situation was not new, and it was still not improving. As an example, he cited the appointment of the general prosecutors by the Attorney General's office. Eight were appointed in the West Bank and seven in Gaza. Of those 15, one has not worked as a lawyer and one did not finish his legal training. He suspected that many Judges were strategic appointments and this was undermining the independence and impartiality of the Judiciary.

**(iii) Misallocation of resources**

The total amount of donor and agency funds thus far committed to the rule of the law sector is US\$72m. According to the Report of the Special Co-ordinator in the Occupied Territories, the Ministry of Justice is in receipt of 4.4% of the total committed assistance for the legal sector, whilst the Judiciary is in receipt of 4.2% of the assistance committed for the sector.<sup>40</sup> Yet a large proportion of the funding is not making its way into the judicial system to ease the problems.

<sup>39</sup> *Rule of Law Development in the West Bank and Gaza Strip*, Office of Special Co-ordinator in the Occupied Territories, July 1997

Of particular concern is the extent of the Ministry of Justice's budget. It has been noted that the Ministry of Justice's budget is substantially enhanced by Court fees. However, this does not appear to be reinvested into the judicial system. We were told the budget of the Ministry of Justice was not discussed at the Legislative Council meetings although many requests have been made for the Ministry of Justice to account for expenditure. In addition, the system of appointing Directors General appears to be on the basis of grace and favour appointments and is criticised heavily, particularly as there are reportedly 900 Directors General in the West Bank alone. Two Directors General are located in the High Court of Appeal in Ramallah but the Head of the Court of Appeal was not aware of their function.

#### (iv) Enforcement of Judgments

The lack of enforcement of judicial orders and judgments remains one of the principal obstacles facing the Judicial Branch impeding its role as the guarantor of the rule of law. In the absence of enforceable judgments, Palestinian citizens cannot have faith in the Judicial system. The Palestinian National Authority is said to regularly ignore orders of the High Court of Justice and the Court of Appeal in Gaza.

On several occasions, the High Court in Gaza has ordered the release of administrative detainees held without charge. These orders are openly defied by the Executive. For example, on 30 November 1997 the Court of Appeal in Ramallah called on the Palestinian National Authority to answer why Mahmud Misleah was arrested and why he was not entitled to visits whilst in detention. The Court issued a primary resolution requiring the Attorney General's office to respond within ten days. No convincing reasons were supplied and therefore his release was ordered. He remained in prison for over two months after the order.

The lack of respect for judgments of the Courts of the Palestinian National Authority must be seen against the background of the political pressure on the Palestinian National Authority. Throughout the series of negotiations for the transfer of power to the Palestinian National Authority, the Israelis have stressed and conditioned further progress on the need for the Palestinian National Authority to adopt strong and firm measures to protect the security of Israel. In response to its desire to keep the process alive, the Palestinian National Authority have adopted measures to strengthen its security powers at the expense of the rule of law. The Palestinian National Authority President has been commended in the international sphere for setting up the State Security Courts. These courts are set up on an *ad hoc* basis, often in the middle of the night where the defendants have no right to legal representation. There is a need to take effective steps to eliminate terrorist activity but the rule of law must be respected.

Unfortunately, it is not just in relation to security matters that judgments are not implemented. We were told of a recent case in which the High Court ordered eviction of a tenant for non-payment of rent which was reinforced with an order allowing the police to evict if necessary. The order was never carried out due to the intervention of the Police Commissioner who told his forces not to comply with the Order. Contempt proceedings are available but ineffective. The 1997 PICCR report relates other cases. For example in April 1997 the High Court of Gaza ordered the reinstatement of Dr Mansour Jadba to his position of chief of Gaza Municipal Health office. The Municipality of Gaza failed to do this and has appointed another doctor to the position.<sup>41</sup>

## 8: THE PALESTINIAN BAR ASSOCIATION

During the period of Israeli occupation, the Palestinian legal profession came under immense pressure and was forced to operate in difficult conditions. The strains proved uncontainable and resulted in the historical divisions between the organisations of lawyers in the West Bank and Gaza growing and the Bar in the West Bank splitting into two. Although the profession continues to face major considerable challenges arising from the occupation, the establishment of a unified Palestinian Bar Association in July 1997 marks an important step in the organisation of lawyers in the Autonomous Areas.

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<sup>40</sup> Ibid, page 19

<sup>41</sup> PICCR Report, op cit, page 78

**(a) Background**

Our 1994 Report drew particular attention to the disunity which existed within the profession at that time. In summary, prior to 1967, all West Bank lawyers were members of the Jordanian Bar Association, whilst in Gaza the profession was represented by the Gaza Lawyers Union. Following the occupation, all West Bank lawyers participated in a strike called in protest until 1971. Subsequently, a substantial proportion of West Bank lawyers formed the Arab Lawyers Committee and returned to work but were prevented from organising as a regulatory body. The Israeli authorities refused to grant them permission to establish an independent Bar association in the terms requested. Instead, the Israeli Civil Administration sought to regularise the position in 1986 by Military Order 528 with a view to creating a Bar association under Israeli authority. This proposal was rejected by the Arab Lawyers Committee which remained in existence, albeit unofficially.

**(b) Recent Developments**

The impact of the years of occupation resulted in a profession which was demoralised, ill-resourced and untrained. A report by the Institute for the Study and Development of Legal Systems in 1996 found that the "Occupying powers divested the Palestinian legal systems of institutional resources and development of professional expertise". The fragmentation of the legal community and the absence of a unified voice in an already turbulent environment impaired the effectiveness of the legal service. However, in 1995, the Arab Lawyers Committee and the Gaza Lawyers Union drafted a proposal for the establishment of the Palestinian Bar Association to be approved by the Ministry of Justice. The Jordanian Bar rejected the proposal initially and a new committee was formed in October 1996 to push the project forward and resolve the dispute. One of the primary difficulties in resolving the issues was attributable to the lack of freedom of movement of lawyers between Gaza and the West Bank. The inability of lawyers to obtain permission to travel to meet and discuss matters, severely hampered organisational developments.

The new committee comprised three representatives from each of the three lawyers' organisations. These representatives were chosen by each association from amongst its elected leadership. This successfully resulted in the establishment of the Palestinian Bar Association with supervising, training and licensing powers endorsed by a decree of the Chairman of the Palestinian National Authority (the "Decree") on 9 July 1998.

**(c) Organisation**

The Palestinian Bar Association has now successfully registered over 1,000 of 1,900 lawyers in the West Bank and Gaza. We were told the 900 that remain unregistered are lawyers working within the Palestinian National Authority Executive or are no longer practicing. Under the Decree, registration is required before a lawyer may undertake representation in any Palestinian National Authority Court. However, irrespective of the Court's location, once registered, a lawyer is free to represent his or her client anywhere in the Autonomous Areas. In order to register, a lawyer must have a university degree from any university plus two years' post-qualification experience. The Palestinian Bar Association has the usual powers required to regulate the profession including jurisdiction to adjudicate complaints which are considered by the Board of the Association and responsibility for disciplinary procedures. A code of practice has been developed and circulated.

The Head Office of the Palestinian Bar Association is located in Gaza staffed by an office of 12. A correspondent office is located in Ramallah in the West Bank. The Chairman is Mr Abd El Rahman Abu Nasr, a practitioner for 17 years and lecturer in international law at Al Azhar University in Gaza. In the West Bank, the Bar Association is represented by Mr Abu Leila.

**(d) Difficulties facing the Palestinian Bar Association**

**(i) Effectiveness**

Many lawyers we met expressed their support, in principle, for the unified Bar but were keenly aware that its existence had not had much impact on the legal environment in which they operated. This was also borne out by the Judges whom we met in Gaza who had very little contact with the Bar. In the West Bank communications between the Bar and the Court were improving. A list of registered lawyers had been provided to the Court and they were now being required to swear an Oath before the Court to enhance the profession's ethical standing. Nevertheless, the Bar's effectiveness is impaired by the lack of resources. The report of the Office of the Special Co-ordinator in the Occupied Territories surveying the developmental initiatives as at July 1997, highlighted the absence of any initiatives to develop professional education and continuing legal education.

The Chairman of the Bar Association noted also the need to:

- develop English language training and legal training in English law concepts, particularly for lawyers in Gaza given the roots of the legal system;
- develop professional and ethical training; and
- develop the administrative systems necessary to run a Bar Association efficiently and effectively.

Any programme for training would need to take account of the Israeli policy of closure. Certainly the Bar's unifying presence is severely hampered by this policy. The Chairman of the Bar must seek permission each time he wishes to leave Gaza. Permissions for him to travel are not refused but regularly subject to lengthy delays. Notwithstanding the Chairman's "VIP status", he explained that in the past he applied for a permit to meet Israeli lawyers but the application has been under consideration for over a year. Meetings with West Bank lawyers are difficult. Training sessions involving West Bank and Gazan lawyers would be nearly impossible as permits would not be granted for either the West Bank or Gazan lawyers to leave their areas of residence.

**(ii) Independence**

There is a strong desire, voiced by the Chairman of the Palestinian Bar Association, to endeavour to create a strong independent Bar Association that will protect the legal profession.

However, there is a growing concern amongst human rights lawyers in Gaza and the West Bank that the Governing Board of the Bar Association is not sufficiently independent of the Palestinian National Authority to be able adequately to represent the interests of the profession vis à vis the Palestinian authorities. Reference is made, in particular, to the absence of direct elections for the leadership of the Bar Association by the legal profession. The Constitution of the Bar Association acknowledges that the formation of the Board by appointment of the Board by the Palestinian National Authority Chairman was a temporary measure by requiring elections to take place in July 1998. We understand these have been postponed. Nonetheless, there is evidence of the Bar Association taking a stand against the Palestinian National Authority's violations of authority. The detention without trial of a prominent member of Hamas, and subsequent High Court decision requiring his release which was ignored by the Palestinian authorities, was the subject of a critical newspaper advertisement placed by the Bar Association.

The failure of the Bar Association, however, to take the lead on other issues is a cause for concern. For example, the Palestinian Legislative Council has prepared a draft Basic Law to be the foundation of the constitutional systems defining the responsibility of the Executive, Legislature and Judicature and guaranteeing fundamental rights. The failure of the Executive to ratify this law has caused much concern amongst lawyers. Notwithstanding this concern, the Bar Association has refused to endorse the consensus, arguing that a Basic Law would in effect amount to a defining document and an admission that the political and territorial boundaries of the Palestinian National Authority had reached their limit. This stance is obviously political and arguably should not be the concern of the Bar Association which should be seeking to endorse measures to protect the fundamental rights of citizens.

Our attention was also drawn to the Constitution of the Bar Association. In particular, from the wording of text it is evident that it has been based on a Jordanian precedent without amendment. It therefore states that members of the Palestinian Bar Association should hold Jordanian citizenship, which would exclude all Gazan lawyers. In practice, Gazan lawyers are registered without obstacle. However, in the eyes of some lawyers, such defects in the Constitution serve to reinforce their doubts as to the professional integrity of the Bar Association.

### (iii) Recognition

It is hoped that the Bar Association will be able to represent its members collectively, particularly in relation to the right of lawyers to visit their clients whether they be held in Israeli or Palestinian jails. At present, the Israeli legal system will not recognise the representations of the Palestinian Bar in this regard. Palestinian lawyers are required to possess special permits in order to visit Palestinians detained and imprisoned in Israel. These are valid for one year and must be obtained from the Israeli Civil Administration Officer in charge of legal affairs. Notwithstanding the transfer of power to the Palestinian National Authority and the absence of any jurisdiction of the Israeli civil administration in the Palestinian National Authority areas, Israel continues to require Palestinian lawyers to produce these permits.

Often applications from the Palestinian Bar Association, lawyers and human rights organisations are rejected without reason or not responded to. In addition, all Gazans require travel permits to enter Israel and therefore, even if a Palestinian lawyer is granted a special permit, he or she may not be granted a travel permit.

The Israelis will not grant *en bloc* permits to members of the Palestinian Bar Association. They require each permit to be considered on its merits. Members of the Israeli Bar have offered their assistance in making representations to the relevant authorities in order to secure permits for their Palestinian counterparts. However, this is a far from satisfactory approach.

In conclusion, the measures to strengthen and develop the Palestinian Bar Association are now more pressing than ever. At this time, it is important for the Bar Association to demonstrate to its membership and to the Israeli and Palestinian authorities that it is independent, efficient and effective in the protection of the legal profession of the Autonomous Areas. The Bar Association has taken some very important but tentative steps towards these aspirations and it is clearly an appropriate time for support to be given to the Association to allow it to participate in the rebuilding and refurbishment of the legal system of Palestine.

## 9: THE PALESTINIAN INDEPENDENT COMMISSION FOR CITIZEN'S RIGHTS (PICCR)

The delegates met Dr Eyad Sarraj, Commissioner General of the PICCR<sup>42</sup> at PICCR's office in Ramallah, together with Dr Ali Jarbawi, who was appointed to the post of Director General in 1997. They received a copy of the PICCR's Third Annual Report, covering the year 1997, and published shortly before the delegates' visit. This is an impressive and detailed document, and most of the detailed information in this section is drawn from it. It should be pointed out that the role of Commissioner General or ombudsman is not new in Arab-Islamic culture; the concept has long been known as the "Diwan al-Mathalim" or "Majlis al-Shakawi" (Council of Complaints).

The previous delegation in 1994 had met Dr Hanan A'shrawi, then Commissioner General, shortly after the establishment of the PICCR. She remains a member of the Board of Commissioners, but is presently on leave, in view of the fact that she has been appointed Minister of Higher Education. It is plain that the work of the PICCR has become ever more important, especially under the leadership of Dr Sarraj.

<sup>42</sup> Dr Sarraj has been replaced by Dr Haider Abdul-Shafi, a physician from Gaza, elected in September 1998. Dr Sarraj remains on the Board of the Commission and serves in its Executive Committee.



**(a) The legal basis of the PICCR**

The PICCR was established by Decree No.59 of 1993, issued by Yasser Arafat, Chairman of the Executive Committee of the Palestine Liberation Organisation and President of the Palestinian National Authority. It is an independent organisation charged with monitoring and working towards the integration of human rights into Palestinian legislation and institutions. Since it was created by Presidential decree, it is a state institution rather than a non-governmental organisation, and although to date it has been able to carry out its work and has consolidated its reputation and legitimacy, it remains vulnerable to the fact that it could be closed as easily as it was created, by Decree. This is one of many reasons why the adoption of a Basic Law is so urgent, since this could entrench the position of the PICCR.

At the request of President Arafat, the PICCR established an organisational framework including a Board of Commissioners, an Executive Committee, and a Commissioner General, who represents the PICCR and acts on its behalf. The PICCR has offices in Ramallah and Gaza.

**(b) Functions of the PICCR**

The PICCR has the following functions:

- The review and critique of draft laws issued by the Palestinian National Authority, the preparation of draft laws, and review of legislation currently in force in Palestine, to ensure their adherence to the principles of justice and human rights.
- Monitoring the activities of the Palestinian National Authority and other public institutions and agencies, to ensure their compliance with human rights principle.
- Taking up public cases and receiving complaints, investigating them with the concerned authorities and suggesting appropriate resolutions.
- Raising legal consciousness and informing citizens of their rights and how they may be preserved.
- Monitoring the preparations for general legislative elections and working to ensure free and democratic election results.
- Providing legal counsel and assistance in cases concerning the public welfare.
- Holding seminars, conferences and workshops related to citizens' rights and their empowerment.
- Presentation of legal commentaries to fill the legal gaps identified by the PICCR.
- Investigating complaints brought to it concerning the violations of citizens' basic rights and freedoms by the Palestinian National Authority, one of the security Forces, or any other public entity or institution.

This means that the PICCR may investigate the following types of cases:

- Physical violence and torture in detention facilities and prisons, illegal detention or arrest or death while in detention
- Discriminatory application of the law based on gender, religion or political opinion
- Misuse of public funds
- Violations of citizens' basic freedoms, such as the freedom of expression or political opinion
- Administrative incompetence, such as deception in the explanation of decisions or inappropriate application of the law
- Preparation of an annual Report summarising the work of the PICCR as well as special reports on its various activities.

**(c) Human rights violations by Israel**

The first chapter of PICCR's *Third Annual Report* details a large number of Israeli violations of Palestinians' right to life. There were 29 cases of "martyrdom" of Palestinian citizens, 22 from the West Bank, and seven from Gaza. Seventeen Palestinians were martyred by the Israeli army or Israeli settlers. Four died in Israeli prisons, while four more died in mysterious circumstances. Other Israeli violations

included widespread administrative detention, closure of territories amounting to collective punishment. Other grave problems identified are: the judaicisation of the Old City, confiscation of Jerusalem identity cards, and violations of agreements concerning the city of Khalil (Hebron).

Indeed, the PICCR considers that:

“The most fundamental violation of Palestinian citizens’ rights is the continued Israeli military occupation of Palestinian lands. This occupation is carried out according to a deliberate and methodical policy, aimed at stripping the Palestinian people of all their civil and political rights, impeding the development of Palestinian society, and thwarting Palestinian dreams of independence and self-determination.”

**(d) The PICCR’s case-work**

According to the Third Annual Report, the PICCR dealt with a total of 534 cases in 1997. Of these, 486 were initiated by citizens’ complaints and 48 were initiated by the PICCR itself. A total of 437 were new cases, and 97 were old cases carried over from 1996. The PICCR declined to consider 84 of these complaints, by reason of their subject matter. The total of 450 cases actually investigated during 1997 represented an increase of 99% over the number investigated in 1996. 390 cases were closed, and by 31 December only 60 cases remained under investigation. Thus, the PICCR was able to close about 87% of its cases in 1997.

The PICCR received 169 written responses from official agencies, that is, 14 responses per month. This compares with eight responses per month during 1996, and an average of five per month during the period of the First Annual Report.

In the 353 new cases investigated in 1997, 601 human rights violations were alleged. Violations were confirmed in a total of 374 of these. In most of these cases, official agencies co-operated with the PICCR, which contributed to the gathering of sufficient evidence in respect of 187 violations (50%).

While the PICCR found official agencies at fault in 240 of the confirmed violations (64%), it was unable to assign blame in 112 cases (30%). There was insufficient evidence to make a conclusive determination of fault in 22 cases (6%).

It is noteworthy that the Attorney General exercises supervisory authority over many of the agencies investigated by the PICCR. The PICCR investigated 87 of its new cases with the Attorney General’s office, that is, 21% of the 1997 cases. However, the Attorney General’s office failed to co-operate in 47% of these cases. The PICCR therefore expressed very strong criticism of the Attorney General and his office.

Other agencies investigated were as follows:

- The **General Intelligence Service** – 71 new cases (17%). 39 of these were closed and 32 remained open. Co-operation between this agency and the PICCR was good, especially at the start of 1997, but subsequently deteriorated.
- The **Civil Police** – 62 new cases (15%). 47 of these were closed, while 15 remained open.
- The **Preventive Security Forces** – 61 new cases (15%). 48 of these were closed, and 13 remained open. The PICCR made particular efforts to secure this agency’s co-operation, but achieved greater success in the West Bank than in the Gaza Strip.
- The **Ministry of Health** – 23 new cases (6%). 13 cases were closed, while 10 remained open. Co-operation between this Ministry and the PICCR was exemplary.
- The **Ministry of Local Government** – 19 new cases (5%). 15 cases were closed, and four remained open. Co-operation improved during 1997.
- The **Ministry of Education** – 11 new cases (3%). Six cases were closed, while five remained under investigation. The PICCR had particular problems with this Ministry which failed to respond.

- **Military Intelligence** – nine new cases (2%). Five cases were closed, and four remained under investigation. The PICCR had special criticisms of this agency for carrying out operations outside its jurisdiction and also for its minimal co-operation with the PICCR's investigations.
- **The National Security Forces** – Nine new cases (2%). Seven were closed and two remained open. There was a good level of co-operation
- The PICCR investigated between one and seven cases each with the remaining Ministries, agencies and public institutions, 14% of the total.

Of the total of 601 allegations of violations, the PICCR completed investigations of 374 allegations. It found that 112 (30%) of these allegations were false, and that there was no fault on the part of the implicated agency. However, the PICCR verified 240 of them (64%), and found that the agency was at fault. In the Second Annual Report, the PICCR monitored 542 alleged violations over the course of 18 months, 361 of which were recorded in 1996. It found official agencies at fault in 324 cases (81%). 74 (19%) were found to be false.

It follows that there was an increase in the number of violations alleged. But the PICCR attributes this primarily to an improvement in its monitoring ability. There had, in fact, been a noteworthy decrease in the percentage of violations where an official agency was at fault, as well as an increase in the number of allegations shown to be false. These are seen as "positive indicators". In view of the fact that it is difficult if not impossible for citizens to obtain compensation or other redress from the courts following such violations, this must indeed be the most positive outcome of the PICCR's work.

(e) **PICCR's analysis of Palestinian National Authority performance**

The Third Annual Report, as well as detailing investigation of individual cases, also contains strong criticism of all branches of the Palestinian authority.

- The PICCR commented that the **Legislative Branch**, the Palestinian Legislative Council's legislative powers had been greatly constrained during 1997, due to the lack of a clearly defined legal relationship between it and the Executive Branch. For example, the President had failed to ratify the draft Basic Law, or indeed to ratify any laws sent to him, except three at the end of 1997.
- 1997 witnessed activities and actions by a number of actors, including the executive Branch, which in aggregate had undermined the **Judicial Branch's** jurisdiction and independence and impaired its effectiveness. Although both the High Court of Appeals for the West Bank and the High Court for the Gaza Strip had increased their efforts to protect citizens' rights, both had been frustrated by the actions of the Executive Branch, refusing to execute decisions. The activities of the High Court for State Security, created on 7 February 1995, themselves constituted a violation of citizens' rights.
- As to the **Executive Branch**, the PICCR commented that the Palestinian Cabinet, despite the tremendous responsibilities and duties delegated to it, lacked a comprehensive national plan or even a headquarters. This weakened the cabinet's role in supervising the Ministries. There was not only the problem of interference in jurisdiction rooted in the legal differences between the West Bank and the Gaza Strip, but interference in the form of power-grabbing, as well as significant squandering of funds.
- Most of the complaints against the **Security Forces** concerned political detentions, the use of torture, and living conditions in interrogation and detention centres. Widespread arrest campaigns had been carried out among the Palestinian opposition, usually following attacks against Israel or Israelis. These did not follow sound legal procedures, and often did not result in charge or even interrogation.

(f) **The PICCR's conclusions**

The PICCR's conclusion, based on an analysis of the character of the violations, was that there had been:

“an unexpected improvement in the status of Palestinian citizens' rights in comparison to the recent past, and an increase in responsiveness by Palestinian agencies and public institutions to the PICCR's efforts to investigate cases; still, the situation is far from acceptable. Violations continue to occur, many of which are indeed grave.”

The PICCR therefore emphatically advised the President of the Palestinian National Authority and both the Legislative and Executive branches of the need to take basic and important steps to guarantee human and civil rights and public freedoms.

PICCR's report contains a large number of recommendations for each branch of government, and these are included as Appendix 2 to this report. We heartily endorse these recommendations.

(i) **Interview with the Commissioner General**

Dr Sarraj has a British wife, and himself has dual British citizenship. He is a psychiatrist by profession, is universally respected, not only for his probity and very good humour, but especially for his great courage and outspokenness in defending human rights principles. For example, in 1995 he stated that the then current situation under the Palestinian National Authority created “a terrible atmosphere in which every Palestinian feels very apprehensive, very scared”. This had the consequence that “many people are voicing concern that the majority is becoming a silent majority, afraid to speak.”<sup>44</sup> At this time and in 1996, as set out below, Dr Sarraj was arrested several times. We heard nothing but praise for Dr Sarraj and his work from their other interlocutors.

Dr Sarraj was pleased that the PICCR's report had been published, and that it had been possible to produce it in such impressive form. For this he thanked especially the British Council, and the UK Department for International Development. He and his staff had tried to be as objective as possible, pursuing the truth. Moreover, the response of the Palestinian National Authority had improved by at least 50% over the past year. In the first years there had been very little response. There had, however, been no response from the Palestinian National Authority, except to say that they had received it. There would be a special meeting of the Palestinian Legislative Council to discuss it. But he and his staff had not been permitted to speak about the report on Palestinian radio or television. In that area, nothing is decided without the President's approval. The President had only responded once, following the publication of the second report, and had then thanked PICCR for its good work.

He was critical of the foreign media. He had given an interview to CBS and spoke for 60 minutes, for 40 minutes about Israeli violations, and 20 minutes about Palestinian violations. The interview as broadcast was only eight minutes, and contained only criticism of the Palestinian National Authority. This does not help Dr Sarraj.

He has been arrested several times by Palestinian National Authority agencies. The first occasion was in December 1995, following a press conference. The second was in May 1996. On the last occasion, in June 1996, he was tortured. He still suffers pain as a result. He would like to take a case against the Palestinian National Authority, but has been advised that the Egyptian law prevailing in this field in the Gaza Strip would prevent him taking a case except through the Attorney General. The reason for his arrest was that he had written to the President, telling him that he should have the courage to apologise, and to pursue the truth about human rights violations and corruption, and to expose it. This letter had been reported on CNN.

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<sup>44</sup> *Los Angeles Times*, 25 August 1995, page 6; cited in Musatafa Mar'i *Guarantees for Respect of Human Rights in Palestine: Present Problems and Future Prospects*, December 1997, LAW page 33

The death penalty exists, and has been ordered by these courts, but until recently this has not been carried out. The President's past practice was to commute such a sentence to a long term of imprisonment. However, in August, two people were executed for murder. The executions took place four days after the murder took place. The decision was made by a Special Military Court, with no procedural guarantees to talk about. The executions came about as a result of public pressure especially from the Fatah movement. Sadly, papers were filled the next day with advertisements from various quarters congratulating the President for approving the death penalty.

Detention was one of the most serious problems faced by Palestinians. The last Attorney General, before his resignation, had freed a number of detainees, but they had been re-arrested immediately.

One case in particular illustrated the precarious nature of the rule of law. In October 1997, there had been a case in the High Court in which the Court ordered the release of someone who had been in detention for two years without charge. The case took eight months to come to trial. The applicant was not freed and the PICCR wrote to the Attorney General, the Ministry of Justice, and to the President. There was no response. Then Dr Sarraj met the President, and explained that this was not good for his or Palestine's reputation. The President did not respond. At the same meeting, the Chief of Staff said he would sort the matter out, but did nothing, despite chasing. Finally, Dr Sarraj asked a mutual friend to intervene with the Chief of Staff. The advice then was that Dr Sarraj should write a letter asking for the applicant's release, but without reference to the High Court, since the President would not like such a reference. Dr Sarraj wrote the letter, and the man was released. The President does not like to be seen to respond to any kind of pressure. In these circumstances, there is no legal framework within which the courts or the PICCR can work to protect citizens' rights.

Nevertheless, Dr Sarraj is full of hope for the future: much has improved in four years.

We believe that the PICCR is the most successful and most important institution in the protection of Palestinian human rights, and deserves the greatest possible support and encouragement from the United Kingdom, and from the legal professions of England and Wales.

## 10: CONCLUSIONS AND RECOMMENDATIONS

As we said at the beginning of this report, since the last report of Law Society and Bar Human Rights Committee was published in November 1994 progress in implementing its recommendations has been slow and insufficient.

We believe that it is now more important than ever to give support to the Palestinian legal system to ensure a sound, reliable framework within which human rights principles can become entrenched.

To that end, we make the following recommendations which can be implemented in the short term and would help to support other major developmental efforts in the region.

1. Extend formal links between the Law Society and the Palestinian Bar Association and improve lines of communication to enable assistance to be provided when required. This could be promoted by inviting a delegation from the Palestinian Bar Association to visit a local Law Society in England and Wales to see its methods of operation with a view to improving the effectiveness of the Bar Association.
2. Improve exchange links between Palestinian judges and UK judges and senior lawyers. Clearly, there is considerable scope for the exchange of knowledge and awareness of the conditions in which the judiciary operate in both countries.
3. Develop a Palestinian human rights network in England and Wales to inform the UK Government and the public at large of the problems in the Palestinian legal system, so that the resource needs of this area can be fully identified and, we hope, satisfied.

4. Strengthen links with the Palestinian Independent Commission for Citizens' Rights to support its efforts in monitoring the human rights observance of the Palestinian National Authority and, in particular, work with the Commission to assess the need for judicial and legal training.
5. Finally, we stress the vital need for Israel to comply fully with its international human rights obligations in relation to the occupied territories of Gaza, the West Bank and East Jerusalem.

These are only preliminary steps. However, if implemented, they could be a foundation from which more far reaching forms of assistance can develop.

December 1998

## APPENDIX I

During the mission, the delegates met:

Dr Hanan Ashrawi	-	Palestinian National Authority Minister for Higher Education
Dr Eyad Sarraj	-	Former Palestinian Commissioner for Human Rights
Professor Ali Jarbawi	-	Director General PICCR and Bir Zeit University
Judge Hussein Abu Asi	-	Palestinian Supreme Court, Gaza
Judge Zuhair Sourani	-	Palestinian Supreme Court, Gaza
Judge Jamil El Ashi	-	Palestinian Supreme Court, Gaza
Judge Mohammed Soboh	-	Acting Chief Justice of the Palestinian Supreme Court, Gaza
Judge Sami Sarsour	-	Head of Palestinian Court of Appeal, Ramallah
Abd El Rahman Abu Nasr	-	Chairman of Palestinian Bar Association
Francesca Maretta	-	Human Rights Officer, UN Office of Human Rights
Raja Shehadeh	-	West Bank Lawyer
Dr Rabah Mohanna	-	Union of Health Work Committees
Faris Abu Hassan	-	West Bank Lawyer
Isam Younis	-	Palestinian Centre for Human Rights
Dalia Kerstein	-	Director Hamoked: Centre for the Defence of the Individual
Eyad Al Alami	-	Head of Legal Aid Palestinian Centre for Human Rights, Gaza
Raji Sourani	-	Director, Palestinian Centre for Human Rights
Salah Abdel Shafi	-	Development Resource Centre, Gaza
Eitan Felner	-	Executive Director, B'tselem, Israeli Information Centre for Human Rights in the Occupied Territories
Mr R A Kely CMG	-	British Consular General, Jerusalem
Mary Pring, Vice-Consul	-	British Consulate General, Jerusalem
Shawqi Issa	-	Executive Director, The Palestinian Society for the Protection of Human Rights and the Environment (LAW)
Tamar Pelleg	-	Israeli Human Rights Lawyer
Michael Warshawski	-	Alternative Centre for Human Rights
David Sharrok	-	Middle East Correspondent, The Guardian
Hadas Ziv	-	Physicians for Human Rights
Fayyez Abu Rahman	-	Former Palestinian Attorney General (resigned 11 May 1998)
Joe Shechla	-	UN Office of Special Co-ordinator in the Occupied Territories
Azmi Bishara	-	Knesset Member
Brig-General Mahmood Asfar	-	Police General, Gaza
Asad Mubarak	-	Assistant Attorney General, Ramallah

## APPENDIX 2

The PICCR believes that the following actions are essential to improve the Executive Branch's performance:

1. It is impossible to preserve the rule of law and protect citizens' rights and freedoms in the absence of complete separation of power, both in theory and practice. Thus, the PICCR recommends that the President of the Executive Branch ratify the Basic Law and implement it as soon as possible. Without Basic Law, the relationship between the three Branches lacks organization and uniformity. This leads to a situation where the Executive Branch, as it does presently, has a monopoly on power and may ignore decisions and the political process.
2. The PICCR recommends that all of the agencies and institutions of the Executive Branch accord full respect to the Legislative and Judicial Branches, and implement their decisions and orders immediately.
3. The role of the Cabinet must be expanded and its responsibilities clarified. In order to better manage PNA affairs, the PICCR recommends that Cabinet meetings take place separately from meetings of the entire Palestinian leadership.
4. Office integration problems must be a top priority in all of the Ministries, Public Institutions and Security Forces in both the West Bank and the Gaza Strip. In addition to its political significance, such reforms would have an important effect on eliminating redundancy and preventing waste and the squandering of public funds.
5. The Civil Service Law must be implemented, as well as regulations to establish the structure of Government Ministries and Public Institutions. They should provide clear and explicit job descriptions, including their responsibilities, duties, and authorities, in order to prevent meddling and redundancy. The PICCR asserts the need to institute these regulations openly and strictly, especially in the area of appointments, which must be made on the basis of qualifications, experience, ability, and on an equal opportunity basis, thereby eliminating political nepotism in civil service employment.
6. The PICCR recommends the consolidation of a number of Ministries, in order to combine those whose jurisdictions overlap and to address problems of redundancy, counterproductivity, rivalry, and waste. It is also recommended that each Ministry be assigned a yearly plan, in order to better implement government goals and strategies, establish projects in line with the public budget, and coordinate their projects. The Ministries should also submit ongoing progress reports to the Cabinet.



7. The government must limit its expenditures to its annual budget. The Executive Branch must send a Draft Annual Budget to the Palestinian Legislative Council by the submission deadline to allow the PLC to discuss it and issue decisions prior to the next fiscal year.
8. The activities of the Security Forces must be limited in accordance with laws issued by the PLC and their operations should be coordinated to curtail redundancy, overlap, and interference. The PICCR emphasizes the need to consolidate a number of these agencies, and for them to comply with the law and not to interfere in matters falling outside of their sphere of operations.
9. The PICCR emphasizes the need for the rule of law and the protection of public and individual rights and freedoms. The PICCR recommends that proper legal procedures be followed in all arrests and detentions. The PICCR calls for an end to arbitrary detentions. All political prisoners should either be released or brought to court to permit justice to take its course.
10. All of the detention centers belonging to the various Security Forces must be centralized under a single authority and should be held to international standards for the treatment of prisoners. The PICCR emphasizes that prisoners should not be held in these detention centers for more than 48 hours prior to their transfer to the custody of the Attorney General.
11. The PCCR advises of the need for improving the skill level of all Security Forces agents, especially in the identification of evidence and investigative techniques. The PICCR emphasizes the need to refrain absolutely from the use of torture in interrogation.
12. The PICCR recommends that the oversight duties of the General Control Office should be expanded to encompass all of the Executive Branch's agencies and institutions. The PICCR also calls for the establishment of clear and public procedures for accountability, to which all are subject without exception, and the need to bring all violators before the courts to let justice take its course.