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## Palestinian Civil Society Urges the EU to Base its Relations with the Palestinian Authority on Respect for Human Rights

As Palestinian civil society organisations concerned with the promotion and protection of human rights in the Occupied Palestinian Territory (OPT), we are deeply concerned with the deteriorating human rights situation on the ground. In light of the EU's upcoming negotiations with the Palestinian Authority (PA) relating to the adoption of a new Action Plan, we would like to highlight some of these concerns.

Two of the main factors that have contributed to the deterioration of the human rights situation are (1) the political fragmentation between the Gaza Strip and the West Bank and (2) the ongoing Israeli occupation. Most human rights violations committed by the Palestinian authorities in the West Bank and the Gaza Strip are a direct result of political tensions between the Hamas *de facto*-government in Gaza and the Fatah-led PA in the West Bank. The vast majority of human rights violations perpetrated by the PA are directed against Palestinians in alleged affiliation with Hamas; in the Gaza Strip individuals affiliated with Fatah are the primary targets of violations. As this paper attempts to illustrate, the PA has adopted of a pattern of oppressive policies to stifle political dissent and to generate a sense of intimidation within Palestinian society, turning the latter into what resembles a "police state" void of democratic values and the rule of law.

The EU's refusal to engage in any dialogue with the Hamas *de facto* government in the Gaza Strip is perpetuating the political split between the West Bank and Gaza, which has serious and potentially long term implications for both the human rights situation on the ground as well as the realisation of a sovereign and independent Palestinian State.

While the EU-PA Association Agreement does not cover violations committed by Israel, the Occupying Power, it is crucial to take into account the considerable restrictions under which the Palestinian Authority operates by virtue of the occupation. The current EU-Israel Action Plan rightly acknowledges that Israel's "continuing occupation, including settlement activity, restric-

tions to movement as a result of the closure policy and the separation barrier” affect “the scope of actions that can be feasibly undertaken”. As Israel remains in effective control of the OPT, constituent of the Gaza Strip and the West Bank, including East Jerusalem, the main responsibilities under international law remain with the Israeli Occupying Power.

To the extent that the PA exercises some control over parts of the OPT, it is responsible for enforcing law through effective and lawful measures in accordance with its obligations under international law, some of which are addressed in this paper.

With regards to the financial and technical aid the EU continues to provide to the Palestinian people, it is important to address the underlying problem that continues to create the need for such assistance, namely, Israel’s occupation of the Palestinian Territory. While we commend and appreciate the EU’s aid to the Palestinians, in order for this aid to positively affect Palestinians’ human rights as well as aspirations for peace and an independent and sovereign State, we strongly believe that any assistance should be accompanied by political corroboration. The EU’s “efforts to resolve the Middle East conflict”, must include support for national reconciliation efforts and must address the illegal policies and practices of the Israeli Occupying Power, which continue to undermine the exercise by Palestinians of their most basic and fundamental rights, including their right to self-determination.

Finally, we believe that EU-PA relations – in addition to being carried out in accordance with international human rights principles and instruments - should be based on the principles of transparency and conditionality. In order for EU-PA relations to positively impact the human rights situation on the ground, there must be open and public dialogue amongst all relevant actors, including civil society, with regard to how human rights concerns are addressed in the framework of future discussions. Basing EU-PA relations on the latter’s respect for international law actuates the PA’s willingness to act in accordance with its human rights obligations.

In light of these considerations and taking into account the structure of the current EU-PA Action Plan, this paper highlights various human rights concerns monitored and documented by Palestinian human rights organisations and suggests specific recommendations for EU action in this regard. We urge you to address these issues in your political dialogue and cooperation with the PA and more specifically in the upcoming negotiations relating to the adoption of a new EU-PA Action Plan.

## **1. Democracy and the Rule of Law**

The declared priority objectives set out in section 2.1.(3) of the current EU-PA Action Plan with the heading “Democracy and the Rule of Law” include the “establishment of an independent, impartial and fully functioning judiciary in line with international standards” and the strengthening of “the separation of powers.” In order to achieve these goals, the Action Plan suggests, *inter alia*, to adopt a coherent strategy for judicial reform, to ensure progress on unification of the legal codes of the West Bank and the Gaza Strip and to “ensure effective implementation of the Basic Law, in particular those articles relating to Citizen’s Rights and Civil Liberties, and to the respect of provisions regarding Military Courts.” The following section addresses the failure of the PA in meeting these objectives and formulates specific recommendations for EU action aimed at addressing these shortcomings.

## **1.1. Failure to Implement Court Decisions**

Palestinian law guarantees a clear division of powers between the different branches of government and affirms that court rulings must be respected and implemented. Article 106 of the Palestinian Basic Law determines that “Judicial rulings shall be implemented. Refraining from or obstructing the implementation of a judicial ruling in any manner whatsoever shall be considered a crime.”

While the Palestinian Prime Minister has expressed his commitment to promoting judicial independence and the rule of law, and has publically ordered security services to respect and implement judicial decisions, the Palestinian executive authorities continue to delay the implementation of and/or nullify court rulings.

Security agencies have adopted a new stratagem to circumvent and evade decisions of the Palestinian High Court of Justice, the highest Palestinian judicial authority, in order to avoid allegations of not enforcing judicial decisions. Judgements, mainly those stipulating the release of citizens detained on the ground of “affiliation to militia”, when effectively implemented are then followed by a new arrest warrant issued against the same individuals on allegedly different charges.

In some cases, detainees would be released by the security services based on a court ruling, only to find themselves arrested by another agency within hours or days, rendering the original release order meaningless. In other cases, security services would unduly procrastinate the implementation of court orders in order to prolong the duration of detention, despite the court judgement ordering the release of the prisoners. This practice of circumventing the rulings of Palestinian courts reflects the security agencies’ disregard for the rule of law and seriously undermines the full functioning of the judiciary, which is an essential element in the promotion of democratic values and human rights.

## **1.2. Illegal Extension of the Military Judicial Authority to Civil Matters**

A further cause of concern is the illegal use of military courts against civilians. In spite of the Palestinian Basic Law limiting the jurisdiction of military courts to “military affairs” and despite a 2006 ruling by the Palestinian High Court of Justice affirming that the military judiciary does not have jurisdiction over civilians who are intrinsically subject to that of the civil judiciary, military courts continue to prosecute Palestinian civilians.

The military judiciary resorts to the unconstitutional Revolutionary Penal Code of the Palestinian Liberation Organisation (PLO) of 1979 to justify its ultra vires actions in civil matters. Military judicial authorities have adopted a very extensive interpretation of the concept of “military affairs” to include any suspected Hamas operatives and militia.

Based on this broad interpretation, widely rejected by Palestinian civil society, the Military General Prosecutor further issues arrest warrants against civilians. Detentions carried out pursuant to arrest warrants issued by the military prosecution, as opposed to the civil prosecutor, regularly fail to comply with the norms and principles of a fair trial and are in contravention of Palestinian legislation as well as international law.<sup>1</sup>

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<sup>1</sup> For more details about the right to a fair trial under Palestinian and international law, kindly see section 2.1. below.

Article 101(2) of the Palestinian Law Basic Law affirms that the jurisdiction of military courts shall not extend “beyond military affairs.” Subjecting civilians to the jurisdiction of the military judiciary and military prosecution is a clear violation of this constitutional norm. By issuing arrest warrants against civilians, the military authorities further violate Article 112 of the Basic Law, which determines that only the Attorney General or the appropriate court is entitled to issue warrants against civilians.

The PLO Revolutionary Penal Law of 1979 also violates the Palestinian Basic Law, as it has not been presented to nor approved by the Palestinian Legislative Council and its application in the OPT is therefore illegal.

### **1.3. Recommendations**

The failure of the Palestinian security forces to implement court decisions in accordance with the law, coupled with the fact that the military judiciary is acting *ultra vires* when trying civilians, is undermining the full functioning of the Palestinian judiciary, the separation of powers, as well as the rule of law in the OPT. The abuse of power by the military judiciary is contributing to the further deterioration of the rights and freedoms of Palestinians; to counter this illegal practice, we call on the EU to use the negotiations ahead of the adoption of a new Action Plan with the PA to urge the latter to:

- Ensure that security services do not delay nor obstruct the implementation of court orders;
- Take all necessary legislative and administrative measures to establish and implement a clear division of powers between the different branches of government
- Immediately implement the rulings of the Palestinian High Court of Justice and refrain from extending the jurisdiction of military authorities to civilians. The PA must immediately stop trying civilians in military courts and detaining them on arrest warrants issued by the military prosecutor;
- Ensure that decisions of the Supreme Court ordering the release of detainees are effectively and systematically implemented and not neglected by Palestinian security agencies;
- Ensure that former detainees are not re-arrested on the same grounds by a different security agency; and
- Refrain from applying the unconstitutional Penal Code of the PLO.

## **2. Human Rights and Fundamental Freedoms**

In the current EU-PA Action Plan, the two parties have agreed to take action aimed at promoting “Human Rights and Fundamental Freedoms.” The suggested action points include, *inter alia*, to “ensure the respect of human rights and basic civil liberties in accordance with the principles of international law” and to “strengthen legal guarantees for freedom of speech, freedom of the press, freedom of assembly and association in accordance with international standards.” The following section gives an overview of the PA’s recent human rights practice in this regard.

### **2.1. Arbitrary Arrests & Detention**

PA security forces continue to arbitrarily arrest and/or detain Palestinians in the West Bank, without valid criminal charges or trial, based primarily on political considerations. Despite the 1999 ruling of the Palestinian High Court of Justice affirming the illegality of political arrests and

detentions, the number of such unlawful arrests has sharply increased over the past year, revealing a widespread trend of targeting mainly individuals who are affiliated to Hamas and those who oppose the ruling government including journalists, teachers and university professors, students and Imams of mosques.<sup>2</sup>

Most recently, on 31 August 2010, PA security forces carried out an arrest raid in several West Bank governorates, arbitrarily detaining dozens of Palestinians in alleged affiliation with Hamas, without presenting any arrests warrants.<sup>3</sup>

In those cases where detentions are carried out on the basis of arrest warrants, these are usually issued by the military rather than the civil prosecutor, in violation of Palestinian law<sup>4</sup> In addition to being tried before improperly constituted military courts, detainees are rarely informed of the charges brought against them (if any), or about the duration of their detention and are often denied family visits during the interrogation period. Furthermore, detainees are often delayed and in some cases denied access to defence counsel. Lawyers in turn, often have limited or no access to the charges brought against their clients.

As of August 2010, Al-Haq has documented the arbitrary arrest of at least 350 Palestinians in the West Bank, most of whom are in alleged affiliation with Hamas. The total number of persons subject to unlawful arrest is likely to be significantly higher.<sup>5</sup> In the month of July 2010, the Palestinian Independent Commission for Human Rights (ICHR) received a total of 132 complaints against PA security agencies, 88 of which included allegations of politically motivated and other forms of arbitrary detentions.<sup>6</sup>

Arbitrary arrests are unlawful under both Palestinian and international law. The illegality of arbitrary arrest or detention is enshrined in Article 11 of the Palestinian Basic Law and has been affirmed in numerous Supreme Court orders. The practice of arbitrary detention further violates the right of Palestinians to due process of law, guaranteed in Article 12<sup>7</sup> of the Palestinian Basic Law.

Furthermore, Article 29 of the Palestinian Criminal Procedure Law 3/2001, establishes the prohibition of arrest or detention of individuals in the absence of an order issued by the legitimate authorities. Whenever law enforcement officials detain civilians they must present them with a

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<sup>2</sup> For more information, kindly see Al-Haq, *Overview of the Internal Human Rights Situation in the Occupied Palestinian Territory - June 2009*, 13 June 2009, <http://www.alhaq.org/etemplate.php?id=456> accessed 8 September 2010; PCHR, *PCHR Condemns Arrests of Supporters of Islamic Movements in the West Bank*, 12 May 2009, <http://www.pchrgaza.org/files/PressR/English/2008/62-2009.html> accessed 8 September 2010, and *PCHR Notes with Grave Concern the Arrest of Dr. Abdul Sattar Qasem by the Palestinian Police in Nablus*, 22 April 2009, <http://www.pchrgaza.org/files/PressR/English/2008/54-2009.html> accessed 8 September 2010.

<sup>3</sup> Al-Haq, *Palestinian Security Services waging a campaign of politically-motivated arrests*, 2 September 2010, <http://www.alhaq.org/etemplate.php?id=542> accessed 8 September 2010; Al Dameer, *Al Dameer Association for Human Rights condemns the arrest campaigns, which have been carried out by the Palestinian security services against members and supporters of Hamas in the West Bank*, 2 September 2010, <http://www.aldameer.org/en/index.php?pagess=main&id=352> accessed 8 September 2010.

<sup>4</sup> For more details kindly refer to section 1.2. above.

<sup>5</sup> Al-Haq, *Suppression of Freedom of Expression and Assembly and Attacks on Human Rights Defenders by Palestinian Security Services*, 25 August 2010, <http://www.alhaq.org/etemplate.php?id=540> accessed 8 September 2010.

<sup>6</sup> ICHR, *Monthly Report on Violations of Human Rights and Public Freedoms in the Palestinian-controlled Territory July 2010*, <http://www.ichr.ps/pdfs/ICHR%20Monthly%20Report%20-%20July%202010%20-%20Eng.pdf> accessed 8 September 2010.

<sup>7</sup> Article 12 of the Palestinian Basic Law stipulates that "Every arrested or detained person shall be informed of the reason for their arrest or detention. They shall be promptly informed, in a language they understand, of the nature of the charges brought against them. They shall have the right to contact a lawyer and to be tried before a court without delay."

legitimate arrest warrant.<sup>8</sup> Whenever security forces fail to present arrest warrants or act on the basis of arrest warrants issued by the military rather than the civil prosecutor, they act in violation of the law.

The right to freedom from arbitrary detentions and arrests<sup>9</sup> and the right to a fair trial<sup>10</sup> are further protected in various international human rights instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) and are recognised as customary international law. Accordingly, detentions and arrests are prohibited if the detainee has not committed an actual criminal offense against a legal statute and must be based on a proper due process of law. This includes the right of everyone “to a fair and public hearing by a competent, independent and impartial tribunal established by law”<sup>11</sup>, to be informed promptly of the reasons for his arrest and of the nature and charges against him,<sup>12</sup> to be tried without undue delay<sup>13</sup> and the right to a defence counsel.<sup>14</sup>

Since most arrest and detentions carried out by the PA are based on political considerations rather than criminal charges and do not meet the standards of a fair trial, they are in blatant violation of international law.

### **Recommendations:**

In light of the above, the EU should use all diplomatic and legal tools at its disposal to pressure the PA to immediately:

- Stop the practice of arbitrary detention and arrests;
- Release all prisoners of conscience and political dissidents arbitrarily detained; and
- Ensure that detentions are carried out only for valid criminal or security reasons and are based on arrests warrants issued by the competent authorities.

## **2.2. Torture and Ill-Treatment**

While the treatment of prisoners in Palestinian jails had significantly improved between late 2009 and early 2010, Palestinian security forces have lately resumed their illegal practice of torture and other forms of cruel, inhuman and degrading treatment of prisoners.

In late September 2009, Palestinian Prime Minister Salam Fayyad explicitly instructed security agencies to immediately halt the use of torture and other forms of ill-treatment, threatening to remove officers who refused to comply with this decision. Accordingly, by the end of 2009, several officers were arrested, fired or demoted for abusing prisoners, which resulted in a significant decrease in the number of committed abuses. However, the failure of the Palestinian government in Ramallah to satisfy demands by Palestinian human rights organisations to adopt legislation criminalising the use of torture and ill-treatment has resulted in the resumption of this illegal practice.

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<sup>8</sup> See Articles 29, 30, 39, 40, 41, 48, and 50 of the Palestinian Criminal Procedure Law 3/2001.

<sup>9</sup> Articles 9 UDHR and 9 (1) ICCPR.

<sup>10</sup> See Articles 9(3) and 14 ICCPR and Article 10 UDHR. The latter states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

<sup>11</sup> Article 14(1) ICCPR.

<sup>12</sup> Articles 9(2) and 14(3)(a) ICCPR.

<sup>13</sup> Articles 9(3) and 14(3)(c) ICCPR.

<sup>14</sup> Article 14(3)(b) ICCPR.

Torture and other forms of ill-treatment are used as means to force victims to disclose information and/or coerce a false confession. In some cases, ill-treatment is committed for the sole purpose of intimidation or revenge for similar violations committed by opposing political factions.<sup>15</sup>

Palestinian prisoners are subjected to verbal insult and physical abuse, such as severe beating, kicking and whipping as well as humiliation and confinement in dark and narrow cells. They are prevented from washing, contacting their lawyers or receiving family visits, blindfolded, shackled for prolonged periods of time, and/or subjected to abusive measures such as sleep deprivation and *shabah*, which involves forcing detainees to remain in painful stress positions for prolonged periods of time.<sup>16</sup> In July 2010 alone, ICHR received 11 complaints of citizens accusing security service of torture and other forms of ill-treatment.<sup>17</sup>

The use of torture and other forms of cruel, inhuman and degrading treatment or punishment is prohibited under international law and violates international human rights instruments such as the UN Convention against Torture, the UDHR<sup>18</sup> and the ICCPR.<sup>19</sup> While the Palestinian Basic Law protects the right of freedom from torture,<sup>20</sup> according to criminal legislation currently in force in the West Bank, torture is a misdemeanour, not a crime.<sup>21</sup> Despite the repeated calls by Palestinian civil society to criminalise the use of torture, the PA has failed to enact appropriate legislation to prevent this illegal practice.

### **Recommendations:**

In light of the above the EU should use the leverage of its current negotiations with the PA to pressure the latter to:

- Put an end to the security forces' practices of torture and other forms of ill-treatment;
- Immediately adopt appropriate legislation which criminalises the use of torture and other forms of ill-treatment; and
- Ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially.

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<sup>15</sup> Al-Haq, *Overview of the Internal Human Rights Situation in the Occupied Palestinian Territory - June 2009*, 13 June 2009, <http://www.alhaq.org/etemplate.php?id=456> accessed 8 September 2010; See also the report of the Palestinian Independent Commission Investigating in Follow-up of the Goldstone Report, 12 July 2010, <http://www.picigr.ps/userfiles/file/EN.pdf> accessed 16 September 2010. For a more concise summary, see Al-Haq's unofficial English translation of the executive summary of the Commission's report, <http://www.alhaq.org/pdfs/Executive%20Summary%20-%20-%20Unofficial%20English%20Translation.pdf> accessed 8 September 2010.

<sup>16</sup> See, for example, Al-Haq, *Al-Haq releases new report on arbitrary detention and torture in Palestinian prisons*, 28 July 2008, <http://www.alhaq.org/etemplate.php?id=384> accessed 8 September 2010; ICHR, *The Status of Human Rights in Palestine – The 15<sup>th</sup> Annual Report, 2009*, <http://www.ichr.ps/pdfs/ICHR%20Report15%20-%20-%20Final.pdf> accessed 8 September 2010.

<sup>17</sup> ICHR, *Monthly Report on Violations of Human Rights and Public Freedoms in the Palestinian-controlled Territory July 2010*, <http://www.ichr.ps/pdfs/ICHR%20Monthly%20Report%20-%20-%20July%202010%20-%20-%20Eng.pdf> accessed 8 September 2010.

<sup>18</sup> See Article 5 UDHR.

<sup>19</sup> See Article 7 ICCPR.

<sup>20</sup> See Article 13 Palestinian Basic Law.

<sup>21</sup> See Article 208 of the Jordanian Penal Law No. 16 of 1960.

### 2.3. Dismissal from Civil Service on Political Grounds

The employment policy of the Palestinian Authority is substantiated by “security” vetting. The government continues to dismiss and/or suspend the appointment of Palestinian civil servants based on political considerations, in violation of the Palestinian Basic Law and Civil Service Law.

The PA is conditioning the right to hold public office upon an individual’s “adherence to the legitimate authority” and his/her obtaining of “security approval.” Whether or not a Palestinian meets these conditions is determined by the Palestinian security agencies and/or the Security Committee of the Council.

The government in Ramallah has introduced these newly introduced requirements/conditions in order to exclude Palestinians in alleged affiliation with political opponents, most notably Hamas, from public office and has dismissed a large number of civil servants over the last months.

The Palestinian Ministry of Education for example has dismissed or suspended the appointment of numerous schoolteachers. Since the beginning of 2010, ICHR has received 445 complaints regarding the dismissal or suspension of teachers, 12 of which occurred in July alone.<sup>22</sup>

The right of every Palestinian to assume public office equally and without discrimination is guaranteed in both the Palestinian Basic Law<sup>23</sup> and the Law of Civil Service. The latter stipulates the conditions and procedures relevant to assuming and suspending positions in public office. The policy and practice of the PA to arbitrarily suspend and replace civil servants based on their political views is in blatant violation of this right.

The PA’s practice further violates international human rights law, namely Articles 2 and 6 of the International Covenant on Economic Social and Cultural Rights (ICESCR), which guarantee the right of everyone to work without discrimination of any kind, including on the basis of political opinion. The PA is further acting in violation of Articles 2 and 21 of the UDHR, which guarantee the right of everyone to “equal access to public service in his country”,<sup>24</sup> “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion.”<sup>25</sup>

#### Recommendations:

In light of the above, the EU should urge the PA to:

- Adhere to the Provisions of the Civil Service Law in their relations with civil servants;
- Immediately stop the security agencies’ interference in the process of recruiting and dismissing civil servants;
- Immediately stop implementing illegal administrative norms that require the referral of all applications for public service posts to the security agencies for approval;
- Review without delay all cases of dismissal or non-appointment to civil service upon the recommendation of security agencies; and
- Compensate the victims of this illegal practice in accordance with the law.

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<sup>22</sup> ICHR, *Monthly Report on Violations of Human Rights and Public Freedoms in the Palestinian-controlled Territory July 2010*, <http://www.ichr.ps/pdfs/ICHR%20Monthly%20Report%20-%20July%202010%20-%20Eng.pdf> accessed 8 September 2010.

<sup>23</sup> Article 26 (4) of the Basic Law stipulates that every Palestinian has the right “To hold public office and positions, in accordance with the principle of equal opportunities.”

<sup>24</sup> Article 21 (2) UDHR.

<sup>25</sup> Article 2 UDHR.



## 2.4. Freedom of Association

According to the monitoring and documentation of Palestinian human rights organisations, the Palestinian Ministry of Interior continues to infringe on the right of Palestinians to freely form and join associations. The PA undermines the registering, management and proper functioning of organisations on the basis of their political views and/or on those of their staff and board members. Since 2008, associations in alleged affiliation with the Hamas movement have been the primary targets of this illegal practice.<sup>26</sup>

According to the 2000 Law of Charitable Associations and Civil Society Organisations No. (1) every Palestinian has the right to freely establish and run associations and community organisations. The law imposes only one procedural requirement to form an association: that a group register with the Palestinian Ministry of Interior. The PA, however, has turned this notification process into a licensing process, refusing to register associations in reputed affiliation with political opponents.

The PA further undermines the proper functioning of associations by revoking or refusing to renew the registration of organisations in alleged affiliation with Hamas or other Islamic groups, and by freezing the funds of such associations.

Palestinian security forces continue to raid and search organisations - including charities - tampering with and confiscating office contents and in some cases subjecting board or staff members to threats and/or arbitrary arrests. The Ministry of Interior further interferes in the management of such organisations by impairing the election of government bodies, forcibly replacing board members<sup>27</sup> or coercing staff members to sign letters of resignation and in some cases has insisted on attending general assembly meetings.

The PA's policy of interfering in the establishment, management and day-to-day administration of associations in affiliation with political opponents violates Palestinians' constitutional right to freely form associations, which is guaranteed in Art. 26(2) of the Basic Law and by the Palestinian Charitable Associations Law.

The right to freedom of association is further guaranteed in several international instruments, such as the UDHR<sup>28</sup> and the ICCPR<sup>29</sup>. The PA has not only consistently failed to protect the right of its citizens to freedom of association but has actively prevented Palestinians from fully exercising this right, in blatant violation of its obligations under domestic and international law.

### Recommendations

In light of the above, the EU should urge the PA to protect its citizens from human rights violations occurring as a result of political tensions and to respect the independence of civil society. More specifically the PA must immediately:

- Stop interfering with the management and licensing of associations and charities; and
- Allow the reinstatement of all forcibly replaced board and staff members of associations and charities.

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<sup>26</sup> ICHR, *Report on the Freedom of Association in the Palestinian-controlled Territory (2009)*, <http://www.ichr.ps/pdfs/eFreedomofassociation.pdf> accessed 8 September 2010.

<sup>27</sup> EMHRN, *Monitoring the Freedom of Association in the Euro-Mediterranean Region*, December 2009, [http://en.euromedrights.org/index.php/news/emhrn\\_releases/67/4076.html](http://en.euromedrights.org/index.php/news/emhrn_releases/67/4076.html)) accessed 8 September 2010.

<sup>28</sup> See Article 20 UDHR.

<sup>29</sup> See Article 22 ICCPR.

## 2.5. Freedom of Assembly and Expression

The PA has adopted a general policy of silencing any political opposition. In addition to the politically motivated human rights violations outlined above, the PA continues to violate Palestinians' rights to freedom of assembly and expression, including freedom of speech and the press in an attempt to undermine any manifestation of political dissent.

Palestinian security agencies typically disperse or prevent peaceful gatherings, including protest marches, lectures, and seminars whenever they involve individuals who hold opposing political views, and in some cases have resorted to physical violence.<sup>30</sup>

Victims of this practice include journalists, who are prevented from carrying out their work.<sup>31</sup> They are arrested and interrogated, and in some cases subjected to threats or physical attacks. Over the past year, the PA has also prevented journalists from convening press conferences and/or covering field events, has banned the printing and distribution of some daily and weekly newspapers and has raided several media centres.<sup>32</sup>

These worrying developments are a further example of the increasing climate of violence and intimidation that is effectively transforming Palestinian society into a "police-state." The PA's policies and practices in this regard are in stark violation of both Palestinian as well as international law.

Article 26(5) of the Palestinian Basic Law protects the right of Palestinians to assemble peacefully. Article 19 of the same law enshrines Palestinians' freedom of expression, including that of the media by stipulating that "Freedom of opinion may not be prejudiced. Every person shall have the right to express his (*sic*) opinion and to circulate it orally, in writing or in any form of expression or art, with due consideration to the provisions of the law."

These rights also find protection under international human rights law. Article 21 of the ICCPR and Article 20 of the UDHR recognise the right to peaceful assembly. Moreover, the right to hold and express opinions freely and without interference, including the right to seek, receive and impart information and ideas through any media, is enshrined in Article 19 of both the ICCPR and the UDHR. The PA's policy of preventing any manifestation of political dissent is in clear violation of these legal norms.

### Recommendations

In light of the above the EU should pressure the PA to:

- Immediately stop the security services' interference in peaceful gatherings which is undermining Palestinians' rights to freedom of expression and opinion;
- Allow journalists and media agencies to operate freely; and

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<sup>30</sup> Al-Haq, *Suppression of Freedom of Expression and Assembly and Attacks on Human Rights Defenders by Palestinian Security Services*, 25 August 2010 <http://www.alhaq.org/etemplate.php?id=540> accessed 8 September 2010; ICHR, *Monthly Report on Violations of Human Rights and Public Freedoms in the Palestinian-controlled Territory*, April 2010, <http://www.ichr.ps/pdfs/eMRV-4-10.pdf> accessed 8 September 2010; and *Monthly Report on Violations of Human Rights and Public Freedoms in the Palestinian-controlled Territory*, May 2010, <http://www.ichr.ps/pdfs/eMRV-5-10.pdf> accessed 8 September 2010.

<sup>31</sup> ICHR, *Monthly Report on Violations of Human Rights and Public Freedoms in the Palestinian-controlled Territory*, April 2010, <http://www.ichr.ps/pdfs/eMRV-4-10.pdf> accessed 8 September 2010 and *Monthly Report on Violations of Human Rights and Public Freedoms in the Palestinian-controlled Territory*, May 2010, <http://www.ichr.ps/pdfs/eMRV-5-10.pdf> accessed 8 September 2010.

<sup>32</sup> ICHR, *The Status of Human Rights in Palestine – The 15<sup>th</sup> Annual Report, 2009*, <http://www.ichr.ps/pdfs/ICHR%20Report15%20-%20Final.pdf> accessed 8 September 2010.

- Permit the restoring of printing and distributing newspapers.

## 2.6. Abolishing the Death Penalty

A major cause of concern is the persistent issuing by Palestinian courts of death sentences. Three death penalty sentences were proclaimed in the West Bank in 2009<sup>33</sup>, and at least one additional sentence was issued since the beginning of 2010.<sup>34</sup>

Death sentences are typically issued by improperly constituted military courts (as opposed to civil courts) whose proceedings violate international standards for fair trial. Not only are these courts acting *ultra vires*, but they continue to refer to the unconstitutional Revolutionary Penal Code of the PLO to justify their illegal actions.<sup>35</sup>

The death penalty constitutes the most flagrant violation of the fundamental right to life, enshrined in Article 3 of the UDHR. It is further recognised to be incompatible with the dignity inherent to every human being and violates the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment, enshrined in various international human rights instruments.<sup>36</sup>

Domestic legislation effective in the West Bank, notably the 1960 Jordanian Penal Code No. 16, legitimises the death penalty. While PA President Abbas has not ratified any death sentences since he took office in 2005, the failure of his government to formally abolish capital punishment continues to pose a tangible threat to the rights and lives of Palestinians in the OPT.

The new Palestinian draft penal code, elaborated in cooperation between Palestinian civil society and the Ministry of Justice and currently under final review by the latter, does not include the death penalty as a legitimate form of punishment. The formal adoption of this draft code would put an end to death sentences and preserve the rights of Palestinians.

The inclusion of NGOs in the drafting process of the new penal code was initiated in order to ensure its compliance with international human rights standards and to promote a human rights dialogue between the government and local civil society. Any efforts by the EU to intervene in this process should take into consideration this important joint initiative so that the efforts of local civil society in promoting human rights and the rule of law are not undermined.

## Recommendations

In order to contribute to the abolishment of capital punishment in the OPT, the EU should:

- Urge the PA to formally abolish death penalty, and to refrain from applying the unconstitutional Penal Code of the PLO;
- Pressure the PA to review all legislation relative to death sentences, notably the Jordanian Penal Code No. 16; and
- Support the new draft penal code, which abolishes capital punishment.

<sup>33</sup> ICHR, *The Status of Human Rights in Palestine – The 15<sup>th</sup> Annual Report*, 2009, <http://www.ichr.ps/pdfs/ICHR%20Report15%20-%20Final.pdf> accessed 8 September 2010.

<sup>34</sup> ICHR, *Monthly Report on Violations of Human Rights and Public Freedoms in the Palestinian-controlled Territory*, February 2010, <http://www.ichr.ps/pdfs/eMRV-2-10.pdf> accessed 8 September 2010.

<sup>35</sup> PCHR, *Military Court in Hebron Sentences Civilian to Death -PCHR Urges President not to Ratify Sentence*, 29 April 2009, <http://www.pchrgaza.org/files/PressR/English/2008/58-2009.html> accessed 8 September 2010.

<sup>36</sup> See section 2.2. above.

*This report has been endorsed by the following human rights organisations:*

**Addameer Prisoners' Support and Human Rights Association**

Sahar Francis  
General Director

**Aldameer Association for Human Rights**

Khalil Abu Shammala  
General Director

**Al-Haq**

Shawan Jabarin  
General Director

**Al Mezan Center for Human Rights**

Issam Younis  
General Director

**Badil Resource Center for Palestinian Residency and Refugee Rights**

Ingrid Jaradat Gassner  
General Director

**The Civic Coalition for Defending Palestinians' Rights in Jerusalem**

Zakaria Odeh  
General Director

**Defence for Children International -Palestine Section**

Rifat Kassis  
General Director

**Ensan Center for Human Rights and Democracy**

Shawqi Issa  
General Director

**Jerusalem Center for Legal Aid and Human Rights**

Issam Aruri  
General Director

**Palestinian Centre for Human Rights**

Raji Sourani  
General Director

**Ramallah Center for Human Rights Studies**

Iyad Barghouti  
General Director

**Women's Centre for Legal Aid and Counseling**

Maha Abu Dayieh  
General Director