



HIDDEN INJUSTICES

A REVIEW OF PA & HAMAS HUMAN RIGHTS VIOLATIONS IN THE WEST BANK AND GAZA

Executive Summary

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood,” states Article I of the Universal Declaration of Human Rights, a document that in 1948 became the cornerstone of international human rights law whose mission of protecting human rights lives on today.¹

The Oslo Accords (1993 - 1995) established the Palestinian Authority (PA) as a semi-autonomous governing authority. In the West Bank, the PA controls a specific territory, government mechanisms and key institutions such as courts, prisons, public administration services, educational institutions, welfare and health, and security forces, among others.

Within the United Nations, the PA and Hamas are considered non-state actors for the purposes of international law and therefore cannot be a party to international treaties. Although international human rights law applies to both state and non-state actors, non-state actors are unable to become party to the international treaties as states. Within the existing international judicial system, it is difficult to prevent or punish violations by such parties. Though the PA has stated its intention to comply with international human rights law, this compliance can only be enforced through strong mechanisms of accountability. The Palestinian Basic Law incorporates and affirms international principles on human rights. Even so, under the PA government, the human rights violations of arbitrary imprisonment, torture, and degrading treatment are regular occurrences and the freedom of opinion and expression, freedom of the press, freedom of religion and the rights of minorities, women's rights, and the rights of children are routinely impaired.

The political, international, and effective status of the PA and Hamas as non-state players with regard to international human rights treaties places special responsibility on foreign aid providers to the PA to uphold the authority of the Universal Declaration of Human Rights. The Jerusalem Institute of Justice calls on the United States and the European Union as major providers of foreign aid to the Palestinian Authority to stand up against assaults on human life by calling for human rights reforms within the PA. Failure to make foreign aid contingent upon compliance with respect for human life and all other human rights renders those providing aid as complicit in and even enabling the continued violations of human rights. Our recommendations include the establishment of an adequate separation of powers within the PA to decentralize power and prevent corrupt internal practices such as nepotism and misappropriation of funds. This and other reforms would increase the integrity of institutions founded to protect the rights of the Palestinian people, most urgently the right to human life.

The Jerusalem Institute of Justice (JIJ) values life as the most basic human right. Any assault on the right of an individual to life is the most extreme violation of human rights. Governments across the globe must cooperate to create environments that promote basic human rights such as education and freedom of expression and diminish hate speech and other factors that contribute to violence and hate crimes.

¹ Universal Declaration of Human Rights (1948), at <http://www.un.org/en/documents/udhr/>, accessed Aug 8, 2012.

In this report, JIJ examines the Palestinian governing authorities through the lens of international human rights standards, reporting the foremost violations of human rights committed by them against Palestinians, distinguishing between the Palestinian Authority (PA) in the West Bank and Hamas in the Gaza Strip (Gaza).

This report contains personal interviews with representatives of local and international human rights organizations that are active in the West Bank and Gaza (hereinafter: the Representatives of Human Rights Organizations, the Human Rights Organizations Representatives, and/or the Representatives). Out of concern for the safety of the representatives who were interviewed for this report, the Jerusalem Institute of Justice has removed their names and other information from this document that these representatives may continue their humanitarian work without hindrance.

Local and international human rights organizations operating in the West Bank and Gaza Strip serve as the main source of information shaping international public perception of the state of human rights in the respective territories. Because of global interest in the Israeli-Palestinian conflict and the peace process, the scope of information disseminated by these groups is largely limited to the wrongs committed by Israelis against Palestinians or vice versa. The organizations frequently impugn Israel, directly and indirectly, for human rights violations against Palestinians. Though the organizations are aware of human rights violations committed by the Palestinians government authorities against Palestinians, violations of this nature are not the organizations' primary focus and thus are not reported. They assert that the PA does not possess the means to develop a functional governmental infrastructure or to establish law and order due to continuous Israeli intervention in the West Bank and Gaza.² Even so, representatives from within these organizations are concerned about the international community's unattended lack of awareness of the human rights violations committed by the Palestinian government authorities.³

JIJ does not present information here as a denial of human rights violations committed within Israel, as material is readily available on the subject. Instead, JIJ seeks to call the attention of international bodies providing financial support to the PA—namely, the US Congress and the European Parliament—to human rights violations committed by Palestinian governmental authorities and to challenge oversimplified or distorted understandings of the situation in the West Bank and the Gaza Strip by presenting objective facts and perspectives from the grassroots level.

Establishing a political context where human rights are protected is a long-term process that governments must continuously envisage and move towards. Within such a context, human life—including life of people who differ in terms of religion, ethnicity, and politics—is celebrated, government officials are accountable to those they serve, and justice mechanisms are strong.

² Interview dated Aug. 23, 2011, with "H.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with H."); Interview dated Aug. 17, 2011 with "Y.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with Y."); Interviews dated Aug. 7 and 23, 2011 with "G.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with G."); Interviews dated Aug. 8 and Sep. 9, 2011 with "M.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with M."); Interviews dated Aug. 9 and 25, and Sep. 15, 2011 with "S.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with S.").

³Interviews dated Aug. 28 and Sep. 14, 2011 with "B.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with B.").

This report has highlighted several human rights violations regularly committed by the Palestinian government authorities: arbitrary detention, torture and cruel punishment, violation of freedom of expression and the freedoms of the press, violation of freedom of religion and minority rights, and the violation of the rights of women and children. Given the strong financial ties of the European Union and the US to the PA and their responsibilities to uphold and affirm the human rights of each individual regardless of where they reside, the European Union and the US should leverage their relationships to the PA to exhort it to demonstrate and strengthen its commitment to international human rights standards as reflected in the Universal Declaration of Human Rights.

While continued funding to the PA is vital to sustain its existence and maintain security in the West Bank, the European Union and the US should make the continued funding of the Palestinian government contingent upon the PA's commitment to instituting the reforms that would create better human rights conditions. Considering the large sum of foreign aid to the Palestinian Authority and speculation of gross corruption within the PA's finances due to lack of accountability, the European Union, the US, and other foreign aid providers should recognize the need for and take steps to encourage stronger transparency and a stronger system of controls within the PA. Continued funding of the Palestinian government should be contingent upon demonstrated commitment to human rights reforms and real reform.

Jerusalem Institute of Justice urges the international community and human rights organizations to work together to call for the following specific reforms:

- The PA's adoption of the core value of life and respect for life as the most important human right.
- The PA's prevention of hate language and incitement, especially when it is directed at vulnerable populations such as youth.
- Disclosure by international human rights organizations working in the West Bank and Gaza of known violations by Palestinian government authorities.
- Tighter mechanisms of public disclosure of money transfers among PA funds and stronger controls within the PA's financial structure in order to promote an atmosphere of internal accountability and to discourage corruption.
- Ensuring due process including swift, unbiased and fair investigations, indictments, and trials.
- Strengthening of the independence of the judicial authority, especially from security agencies.
- PA inspection into prisons and detention centers to ensure the holding of detainees is in compliance with the legal framework and that detainees receive due process of law.
- Increased internal monitoring over detention centers and investigation of incidences of torture and inhumane treatment.
- Accountability of the PA security agencies to cease the practice of torture and inhumane treatment in detention centers and prisons and follow through with accountability measures for violators of such orders.
- Discontinuation of trying journalists before military courts.

- Investigation and justice in cases of honor killings.
- Cessation of the PA's celebration and commemoration of terrorists and terrorism.
- Removal of content within textbooks that hinders positive perceptions of the "other" based on core values of life and human dignity.
- Greater disclosure of allocation and use of USAID and UNRWA program funding to reduce the chance that the funds will be used to support terrorist activities.

The PA is heavily reliant upon foreign aid from around the world and thus is in a position to listen to the international community, especially as it seeks to further establish a presence in global venues such as the UN. The PA currently aspires to acquire a higher level of autonomy and governance over people living in geographic areas, which are currently stewarded by the government of Israel. Should the PA obtain an increased level of self-government before civil reforms are implemented and human rights abuses are reduced, JIJ believes the quality of life of the Palestinian people will be negatively affected and therefore views such reforms as an immediate concern for the international community. The international community should not endorse, much less actively advance, any solution to the Israeli-Palestinian conflict that does not place the human rights of all peoples in this region as a top priority and consideration.

Engaging the PA in dialogue on sustainable measures of human rights reform will also draw the facts into the public's eye to deepen global understanding of issues inherent to the conflict. An awareness of this key dimension of the conflict in Israel and the West Bank and Gaza is needed in the public square, and all parties involved should follow up knowledge of the situation with firm action in order to encourage change in the West Bank and Gaza. This will serve to further the cause of universal human rights in our day.