



HIDDEN INJUSTICES

A REVIEW OF PALESTINIAN AUTHORITY AND HAMAS

HUMAN RIGHTS VIOLATIONS IN THE WEST BANK AND GAZA

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The Jerusalem Institute of Justice (JIJ) does not present this report as a denial of human rights violations charged against Israel, since materials are readily available on that subject. JIJ itself has litigated human rights cases within Israel for more than a decade.

This report covers largely unreported, often censored, violations by Palestinian governing authorities against Palestinians, so their voices may be heard and that facts might replace distorted misunderstandings of the regional situation.

TABLE OF CONTENTS

Executive Summary	4
Introduction: Defending the Fundamental Right to Life for All Peoples	7
International Human Rights Law	9
The Palestinian Authority and Hamas	12
The Chronology of West Bank and Gaza Control	12
Status of Palestinian Authority and Hamas in the International Framework	15
Separation of Powers	17
Internal Conflicts and Rifts	18
Human Rights Violations	20
Arbitrary Imprisonment	20
Extrajudicial Killings	21
Torture and Inhumane Treatment	22
Sponsoring Torture Abroad	24
Violations of the Convention Against Torture	24
Excessive Force Against Peaceful Protestors	24
Freedom of Opinion and Expression	26
Freedom of Association	28
Freedom of the Press	29
Freedom of Religion and the Rights of Minorities	31
Women's Rights	32
Children's Rights	34
International Funding of the Palestinian Authority	42
EU Funding of the Palestinian Authority	44
US Funding of the Palestinian Authority	47
The Palestinian Authority's Funding of Terrorism	50
Celebration of Terrorism in the Palestinian Authority Media	51
Financial Corruption within the Palestinian Authority	53
USAID Funding of Propagandist Education	53
Conclusion: Specific Reforms, Specific Accountability	56
<i>Figure 1: UN Partition Plan of 1947</i>	12
<i>Figure 2: Areas A, B & C according to 1995 Oslo Accords</i>	13
<i>Figure 3: 2006 PA Legislative Council Electoral Results</i>	14
<i>Figure 4: Total Official Humanitarian Aid to Palestinians, 2001-2010</i>	43
<i>Figure 5: EU Assistance to Palestinians, 2008-2012</i>	46
<i>Figure 6: US Bilateral Assistance to Palestinian Authority, FY2005-FY2013</i>	48

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.”

Article I, Universal Declaration of Human Rights.¹

International human rights documents hold the *protection of life* to be mankind’s pre-eminent *human* right. Consequently, any arbitrary interference against the right of an individual to life constitutes the most extreme violation of human rights.

With this in mind, the Palestinian Authority (PA) responded appropriately to its recent recognition as a non-member UN observer state by signing and, so, committing itself to fully carry out 15 specific human right conventions. The PA also affirmed its subjection to the Arab Charter on Human Rights, which asserts primacy over UN and international standards. The unresolved international tensions between Islamic law and international law cannot fairly become the unique burden of the Palestinians. However, the Arab Charter does not release the PA from its explicit commitments to international rights standards—notably, the inherent rights, both basic and derived, bestowing on every human being the protection of life.

Sadly, the Palestinian people have been (and remain) subject to numerous, severe violations of this basic right as well as the human rights derived from it—not primarily at the hands of Israelis, but from their own leaders. The Jerusalem Institute of Justice (JIJ) has spent hundreds of hours documenting their plight and submits this report to give public voice to their suppressed plea for justice.

THE STRUGGLE OVER ‘SEPARATION OF POWERS’ IN PALESTINIAN SOCIETY

The regional human rights situation today must be understood in its lengthening historical context. In 1948, Arab leaders rejected the UN plan to partition a state for Israel alongside an independent Arab state. Israel’s unexpected survival and prosperity over succeeding decades was countered by a Palestinian ‘resistance’ movement dedicated to the destruction of a regional Jewish state.

The Oslo Accords of the 1990s brought a very brief reduction of tension. This was followed by the crises of the First and Second Intifada, and the ferocious internal contest between the PA and Hamas for supremacy. These two factions profess, at the time of writing, a fragile governmental unity. Consequently, the PA must now assume moral and legal responsibility before the international community for human rights abuses committed by Hamas in Gaza, as well as for those taking place under PA control of the West Bank.

The PA remains less extreme and more secular, relatively, than Hamas. Still, the PA labors under the contradictions between a traditionalist culture—whose inherently informal, opaque power centers focus on familial and clan-loyalties—and a smaller, contemporary sub-culture evolving, uncertainly, into an outward-looking, transparent state.

JIJ believes that the EU and US can and should foster specific governmental reforms to help the next generation of Palestinians create and institutionalize a ‘separation of powers’ and rule of law within the West Bank and Gaza. Internal reform of the culture offers the best long-term prospect for permanent improvement in the human rights condition of the people.

¹ Universal Declaration of Human Rights, UNGA Res 217A(III), 10 December 1948, UN Doc A/810 (1948)

THE CONSEQUENCES TO THE PALESTINIAN PEOPLE OF BROKEN PROMISES

The prospects for long-term change cannot obscure present-day realities. Unfortunately, despite the PA's recent, formal commitment to international human rights standards, this report documents a broad array of continuing abuses. A small sample of representative violations like these listed below—whether they take place in the West Bank, Gaza or both locales—create a warranted impression that PA leaders never intended to meet their international human rights promises. Below are several examples:

Arbitrary imprisonment: a British journalist was jailed for 25 days after attempting to help a Palestinian accused of collaboration with Israel.

Extrajudicial killings: Members of Hamas seized an alleged spy from police custody and used a motorcycle to drag him through the street until dead.

Torture and inhumane treatment: 'Suspects' of crimes against the government are beaten with sticks or electric cables; their arms are forced behind their back and their bodies suspended in mid-air until their shoulders are dislocated; they are forced to sit or stand in uncomfortable positions for prolonged periods and may become the target of a mock, or, actual, execution.

Sponsoring torture abroad: An entire multi-million dollar 'industry' targets East African refugees fleeing conflicts in their countries. Refugees are kidnapped and brutally tortured, while family members are extorted to pay enormous ransoms.

Violations of the Convention against torture: Although impartial investigations into charges of torture are mandated by this international protocol, no Palestinian official has ever been convicted.

Excessive force against peaceful protestors: Beatings with batons, punching, and breaking journalist's equipment have been reported as commonplace at what peaceful demonstrations, while plain-clothes policemen target women demonstrators for punitive, gender-specific violence.

Freedom of expression and opinion: A Palestinian journalist was imprisoned for one year after publishing a joke on his Facebook page about PA President, Mahmoud Abbas.

Freedom of association: During incidents on 30 June and 1 July 2012, police and security forces violently attacked peaceful demonstrators protesting against a meeting in Ramallah between Palestinian President Mahmoud Abbas and an Israeli government minister.

Freedom of the press: Interrogations, violence and threats target journalists in both the West Bank and Gaza. TV stations and newspapers are often censored and closed by authorities.

Freedom of religion and the rights of minorities: Hamas members set fire to a bookstore belonging to the Bible Society and later kidnapped the storeowner in the middle of the night. His body was found mutilated and dumped in a nearby field.

Women's rights: A wide range of human rights abuses are committed against women for such offenses as immodest dress, sex outside marriage or taking initiative to marry or divorce, based on her own will in the matter. These abuses extend all-too-often to so-called honor killings that avenge communal 'shame'.

Children's rights: Upwards of 100,000 children have participated in 'summer camps'; activities feature military training, including the use of live ammunition and simulated kidnappings of IDF soldiers, against the direct stipulations of conventions that forbid the militarization of children.

THE CONNECTION BETWEEN REGIONAL CORRUPTION AND COMPROMISED FOREIGN AID

The troubling human rights record of the Palestinian Authority could be treated as a purely regional issue, were it not for the vastly generous financial support of the EU and the US. The aid already disbursed equates, in constant dollars, to 15X (times) the amount invested in Europe by the United States throughout the entire post-WWII Marshall Plan. Common-sense speculation that aid has been siphoned into non-productive projects and/or the feather-lining of personal bank accounts has long been borne out by publicly-available evidence. Governmental corruption within the PA cannot be easily separated from human rights abuses and, in many cases, aggravates them even if it did not create them.

Beyond this, concern that foreign aid monies may be, or have been, used to directly fund human rights abuses by the Palestinian Authority and, recently, Hamas have also been confirmed by well-sourced evidence. Palestinian civilians have been placed at risk by a direct connection between some EU/US disbursement funds and the related expenditures by the PA and Hamas.

When regional corruption becomes interwoven with a compromised foreign aid machinery, how can the EU and the US invoke the moral authority necessary to improve the lives of Palestinians or, for that matter, others fighting for human rights around the world? This crisis of authority is compounded by a carelessly 'pragmatic' disbursement of monies without accountability requirements, though domestic EU and US laws make their diplomats and agents independently responsible to withhold money which 'might' be used to violate rights, let alone monies for projects or activities with a long-attested pattern of human rights abuse.

THE CRITICAL REQUIREMENT FOR ACCOUNTABLE REFORM ACROSS STATE RELATIONSHIPS

The rights violations cited by this report illustrate how the non-stop public campaign by the PA for ever-expanded state recognition poses an unexpected danger to the human rights of Palestinians. Universal historical experience suggests that the premature grant of power over human life to governments without a demonstrated commitment to the basic right to life will worsen the suffering of the Palestinian people—'freezing' the unacceptable status quo in perpetuity.

In sum, this report concludes that future funding of the Palestinian Authority should be contingent upon carrying out specific reforms that demonstrate their long-term commitment to better human rights conditions for their own people.

Actions by PA leaders to advance the rights of the Palestinian people, yoked to a maturing balance of civil powers, must be supported by donors who require PA accountability even as they exhibit similar accountability to their own laws. This will contribute vitally to a foundation upon a just, permanent solution to the Israeli-Palestinian conflict can be built.

INTRODUCTION: DEFENDING THE FUNDAMENTAL RIGHT TO LIFE FOR ALL PEOPLES

This Jerusalem Institute of Justice (JIJ) report on “Hidden Injustices” examines the Palestinian governing authorities through the lens of *internationally-affirmed human rights standards*, reporting only the foremost violations of human rights committed by Palestinian leaders against Palestinian civilians.

In accordance with these standards, JIJ values the right to *life* as mankind’s most basic and inherent *human* right. *Any arbitrary interference against the right of an individual to life constitutes the most extreme violation of human rights*. Legitimately established governments bear a primary responsibility to promote freedom of expression, protect the rights of women and children and eliminate hate speech as well as to criminalize persecution, torture and other assaults against the lives of their citizens.

Local and international human rights organizations operating in the West Bank and Gaza Strip have long served as the main source of information which shapes international perception of the state of human rights in those territories. These organizations are well-aware of human rights violations committed by the Palestinian government authorities against Palestinians, but focus primarily on presumptive violations by Israel against Palestinians. Consequently, intra-Palestinian violations go unreported. Indeed, some organizations impugn Israel even for human rights violations committed by Palestinians against Palestinians.

They assert that continuous Israeli intervention prevents the means needed for the Palestinian Authority (PA) to develop a functional governmental infrastructure and establish law and order.² Yet, even representatives within these organizations express concerns about the international community’s inattentiveness to human rights violations committed by the Palestinian government authority.³

This report contains personal interviews conducted with representatives of just such local and international human rights organizations active in the West Bank and Gaza (hereinafter: the Representatives of Human Rights Organizations, the Human Rights Organizations Representatives, and/or the Representatives). From concern for their safety and respecting their request for anonymity, JIJ has removed names and other identifying information below, so those who have testified may continue their humanitarian work without hindrance. *Their legitimate fears for personal and family safety bear witness to the imperative, immediate need for human rights reforms in the region.*

JIJ research distinguishes between violations committed by the Palestinian Authority (PA) in the West Bank and Hamas in the Gaza Strip (Gaza). However, as of 2014, the two parties entered into a unity government and must henceforth be treated as a single political and legal entity. *Both governing factions now bear joint responsibility for all rights violations committed by either group, whether in the West Bank or Gaza.*

All parties with a stake in the human rights conditions of the West Bank and Gaza concede that the situation is exceptionally complex. International decision-makers must consider not only the relationship between the major participants—Israel and the Palestinian governing authority— but also the complex interactions

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.").

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

created by internal politics, cultural diversities, and religious pluralism within each system of government. Failure to acknowledge certain dimensions of the situation in Israel, the West Bank and Gaza fosters a limited understanding of its complexities and shifts responsibility off the shoulders of the Palestinian governmental authority. Excusing Palestinian leaders from universal standards of human rights conduct only exacerbates the problem.

In particular, IJJ directs the attention of international bodies providing financial support to the PA—namely, the US Congress and the European Parliament—to the critical need for expanded accountability measures. Policies that sever both direct and indirect connection between Western *aid* and regional *abuses*, derived from confirmable evidence offered by participants at the grassroots level, will improve the lives of all Palestinians and increase opportunities for the international community to make a lasting impact towards regional justice and reconciliation.

INTERNATIONAL HUMAN RIGHTS LAW

The Universal Declaration of Human Rights (UDHR or the Declaration) is the foundation for human rights conventions adopted by the international community.⁴ Drafted in 1948, the UDHR acknowledges human rights as inherent to all persons by nature of their existence and views infringement upon any person's human rights as a violation against all persons.⁵ The Universal Declaration of Human Rights stipulates that all human beings have the right to life, liberty, and security of person; the right to an education; freedom from torture or cruel, inhumane treatment or punishment; freedom to peaceably assemble; and freedom of thought, conscience, and religion.

Since 1948, many international conventions on human rights have been written and signed by a majority of the world's nations. The Palestinian Authority (PA), the governing body of the West Bank, had not, until recently, acceded⁶ to any United Nations human rights convention. They were unable to do so because these treaties are only open to accession by states.

Following recognition by the UN General Assembly of Palestine as a non-member observer state (Resolution 67/19, 2012), in April 2014, the PA acceded to 15 international conventions on human rights, humanitarian law and diplomatic relations.⁷

Consequently, the PA has obliged itself to comply with international human rights law, and implement the provisions laid out in the following conventions:

- ❖ The International Covenant on Civil and Political Rights, 1966
- ❖ The International Covenant on Economic, Social and Cultural Rights, 1966
- ❖ The Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict, 1990
- ❖ The Convention on the Elimination of All Forms of Discrimination against Women, 1987
- ❖ The Convention on the Rights of Persons with Disabilities
- ❖ The International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- ❖ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- ❖ The United Nations Convention against Corruption
- ❖ The Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- ❖ The International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973
- ❖ The Four Geneva Conventions of 12 August 1949 and the First Protocol Additional to the Geneva Convention
- ❖ The Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land, 1907
- ❖ The Vienna Convention on Diplomatic Relations, 1961

⁴ The International Covenant on Civil and Political Rights (1966); The International Convention on Economic, Social and Cultural Rights (1966); The International Convention on the Elimination of All Forms of Racial Discrimination (1965); The Convention on the Elimination of All Forms of Discrimination against Women (1979); The Convention against Torture and Cruel, Inhuman or Degrading Treatment (1984); The Convention on the Rights of the Child (1989).

⁵ Robby Sabel, International Law, 167-169 (2003).

⁶ "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force." Glossary, the United Nations, https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml#accession, last accessed 2/3/2015.

⁷ Note to Correspondent, UN website, <http://www.un.org/sg/offthecuff/index.asp?nid=3372>, accessed on 2/3/2015.

- ❖ The Vienna Convention on Consular Relations, 1963
- ❖ The Vienna Convention on the Law of Treaties, 1969

By accession to these conventions, the PA has not merely bound itself by customary law⁸, but become a willing party to international human rights and humanitarian law, obligating itself to ensure that its people enjoys the rights set out in the convention. Several human rights committees of independent experts monitor implementation of the core international human rights conventions.⁹ All state parties must submit regular reports to these committees that describe their detailed implementation of the conventions. After examination, committees express relevant concerns and recommendations to the state party in the form of “concluding observations”.¹⁰

Many nations across the globe value human rights. However, crucial differences emerge in their prioritization and interpretation of ‘rights’. For Islamic nations, striking a balance between the tenets of *Sharia* (Islamic moral and religious) law and universal individual rights has, historically speaking, proved quite challenging. Tellingly, most nations with Muslim majorities abstained from the ratification vote on the United Nations’ Universal Declaration of Human Rights, stating that it violated Islamic law. Moreover, in 1981 and 1984, a representative from post-Islamic revolution Iran pronounced the Declaration to be a “secular understanding of the Judeo-Christian tradition” which would violate Islamic law if implemented by Muslims.¹¹ In 1990, 57 Islamic nations, through the Organization of Islamic Cooperation, created the Cairo Declaration of Human Rights in Islam (Islamic Declaration) as an alternative to the 1948 Universal Declaration that more properly reflects Allah’s “binding divine commands.”¹²

This Islamic Declaration qualifies and limits individual human rights granted by the UDHR. The document reads, “All human beings are Allah’s subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds” (Article 1b). In addition, “all the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah” (Article 24). Freedom of opinion and expression is allowed under the Islamic Declaration so long as such expression does not contradict *Sharia*. Under *Sharia*, criticism of the Prophet Muhammad is blasphemous and is punishable by death. The Declaration’s final article reads, “The Islamic *Sharia* is the only source of reference for the explanation or clarification of any of the articles of this Declaration” (Article 25).¹³

In 2004, the League of Arab States—whose members include the so-called “State of Palestine”—adopted the Arab Charter on Human Rights (Arab Charter), affirming the principles of both the UN Universal Declaration of Human Rights and the Cairo Declaration on Human Rights in Islam. This decision prompted the UN High Commissioner for Human Rights Louise Arbour to issue a disclaimer upon the ratification of the Charter in 2008, stating the following: “Throughout the development of the Arab Charter, my office shared concerns with the drafters about the incompatibility of some of its provisions with international norms and standards. These

⁸ Customary international laws are those aspects of international law that derive from custom. In other words, they are fundamental principles of international law that are accepted by the international community of states as a norm from which no derogation is ever permitted. International customary laws are norms that have become pervasive enough internationally that countries need not consent in order to be bound.

⁹ Monitoring the core international human rights treaties, United Nations Human Rights, <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>, accessed on 2/3/2015.

¹⁰ Committee of the Rights of the Child, United Nations Human Rights, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>, accessed on 2/3/2015.

¹¹ David Littman, “Universal Human Rights and Human Rights in Islam”, *Midstream*, Feb 1999, at http://www.dhimmitude.org/archive/universal_islam.html, accessed on 2/3/2015.

¹² “Cairo Declaration on Human Rights in Islam,” U.N. GAOR, World Conf. on Human Rights, Aug 5, 1990, at <http://www1.umn.edu/humanrts/instree/cairodeclaration.html>, accessed on 2/3/2015.

¹³ Ibid.

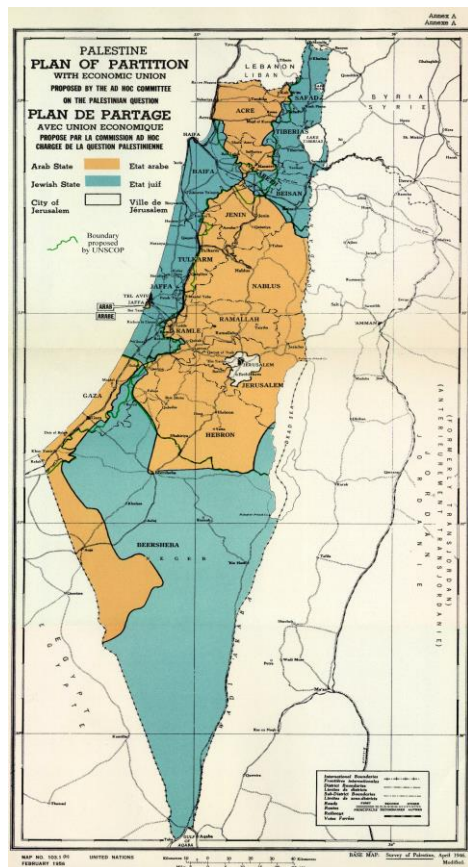
concerns included the approach to death penalty for children and the rights of women and non-citizens.” The international and regional tensions provoked by these two radically different views of human rights have not yet been addressed, let alone resolved.

THE PALESTINIAN AUTHORITY AND HAMAS

THE CHRONOLOGY OF CONTROL IN THE WEST BANK AND GAZA STRIP

Today, the geographical area of the West Bank and the Gaza Strip contains between 2.9 to 3.8 million people (between 1.4 to 2.3 million in the West Bank and 1.5 million in the Gaza Strip).¹⁴ In terms of religion, the Sunni Muslim majority is still strong at 98%.¹⁵

Figure 1: UN Partition Plan of 1947



According to the UN Partition Plan of 1947, the West Bank was scheduled for inclusion in a future Arab state. This plan was rejected, wholly, by regional Arab leadership. During the subsequent 1948 war, Jordan conquered the West Bank and annexed it three years later. In the wake of this war, Palestinians organized various liberation movements, forming, among others, Fatah in 1959 as an independent Palestinian movement. In 1964, the Palestinian Liberation Organization (PLO) was established as an umbrella organization for the national Palestinian movements. Shortly thereafter, the Fatah movement joined the PLO, which granted its members immediate power and influence.

During the 1967 War, Israel took the West Bank and East Jerusalem from Jordan, annexing only East Jerusalem and instituting military rule in the West Bank. In 1969, the head of Fatah, Yasser Arafat, became the PLO leader through an election, deepening Fatah's strong presence in the PLO. In 1987, the Muslim Brotherhood established Hamas in the Gaza Strip. The next year, the King of Jordan renounced any affiliation between Jordan and the West Bank, foregoing any future Jordanian claims to the territory. Support for Hamas continued to grow, while support for Fatah weakened during the intense period of violent conflict from 1987 to 1993 between Israelis and Palestinians, known as the First Intifada.

¹⁴ Palestinian Central Bureau of Statistics and the Begin - Sadat Center for Strategic Studies report different figures.

¹⁵ "International Religious Freedom Report for 2011," *US State Department*, at

http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dynamic_load_id=192889#wrapper, accessed 2/3/2015.

Figure 2: Areas A, B & C according to 1995 Oslo Accords



Coinciding with the end of the First Intifada, the Oslo Accords (1993-1995) conferred Palestinian self-government. In the Declaration of Principles under the Oslo Accords, Israel recognized the PLO as the organization representing the Palestinian people, and the Palestinian Authority led by Yasser Arafat was established as an autonomous entity in the West Bank and Gaza. Fatah became the leading party within the PA government, and many of its members were given positions within the PA security or civil services. The Israeli military government granted authority to the PA to manage broad areas of Palestinian civil life. Israel, however, maintained overall authority.

The Oslo Accords divided the West Bank and Gaza into three categories as the first step in a phased process of transferring control of the West Bank from Israel to the PA. Area A (initially 2.7% of the area) came under complete PA control in civil and security matters; Area B (initially 25.1% of the area) came under Palestinian civil control and joint security control by Israel and the PA; and Area C (initially 72.2% of the area), remained under complete Israeli territorial control.¹⁶

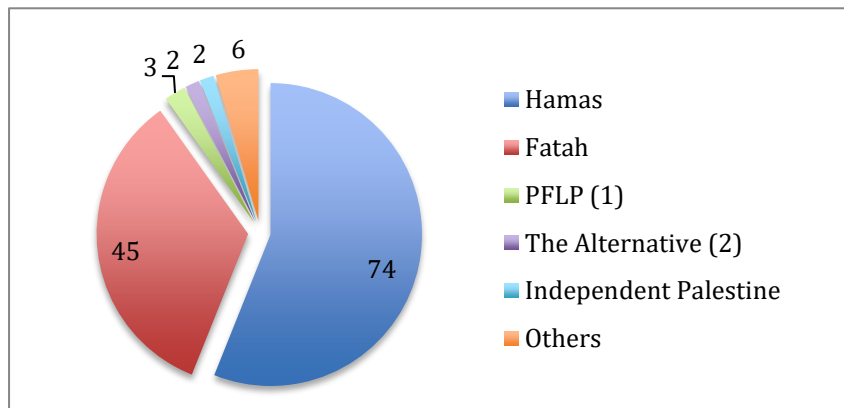
Although Israel gradually transferred control of the West Bank to the PA after signing the Interim Agreement, Israel froze the transfer process in 1996. Over time, the boundaries between Areas A, B and C blurred and there were increased restrictions of PA control of Areas A and B. In 2010, the United Nations reported that Areas A and B together made up 38% of the land area in the West Bank, with Area C comprising the remaining 62%.¹⁷ IDF presence is still felt in each of the West Bank sub-areas.

Beginning in 2000, the PLO experienced a troubled period. The organization's power and stability faltered as a result of the Second Intifada, the death of Yasser Arafat in 2004, and the transition from the leadership of Arafat to the leadership of Mahmoud Abbas (also known as Abu Mazen). This period saw an increase of local criticism towards the PA government for corruption, absence of vision, lack of viable social and political programs, governing negligence, and its inability to manage the lives of its residents efficiently. The Palestinian public's faith in the Fatah leadership diminished, while expressed support for Hamas grew. Hamas was perceived as a religious group that stood passionately against secular and corrupt government. On January 25, 2006, the general election for party representation within the PA's legislative body, the Palestinian Legislative Council (PLC) was held. Hamas won the elections, with its members receiving 74 seats out of 132, while Fatah received only 45 seats. Representatives of Hamas formed the government, headed by its leader Ismail Haniyeh.

¹⁶ Haim Gvirtzman, "Maps of Israeli Interests in Judea and Samaria Determining the Extent of the Additional Withdrawals," at <http://www.biu.ac.il/Besa/books/maps.htm>, accessed 2/3/2015.

¹⁷ "Area C Humanitarian Response Plan Fact Sheet," August 2010, *UN Office for the Coordination of Humanitarian Affairs*, at <http://unispal.un.org/UNISPAL.NSF/0/59AE27FDECB034BD85257793004D5541>, accessed 2/3/2015.

Figure 3: 2006 PA Legislative Council Electoral Results



¹ Popular Front for the Liberation of Palestine, aka Martyr Abu Ali Mustafa;

² Coalition of the Democratic Front for the Liberation of Palestine, the Palestinian People's Party, the Palestine Democratic Union, and independents.

The June 2006 kidnapping of IDF soldier Gilad Shalit provoked Israel to arrest members of the Palestinian Legislative Council (PLC). Under pressure due to the subsequent economic and diplomatic crisis, the PLC agreed to establish a national unity government. Before the government could be established as planned, violent clashes broke out between Fatah and Hamas, resulting in an armed conflict in December 2006. Despite a second signed agreement to form a joint Fatah and Hamas government in March, 2007, clashes between the two groups resumed in May 2007 and became more severe. Hamas wrested control of the Gaza Strip from Fatah and completed its takeover of power by June 2007 as the Fatah government fell. Shortly following, PA President Abu Mazen announced the dissolution of the unity government, led now by Hamas leader Ismail Haniyeh. Abu Mazen appointed Salam Fayyad as the new Prime Minister of the PA. Hamas claimed these decisions could not be legally valid because they had not been approved by the PLC. Nonetheless, the international community accepted the new government presented by Abu Mazen.

In the years following the Hamas takeover of the Gaza Strip, several mediation attempts were launched to reconcile Hamas and the PLO. Both entities shared a common goal to reunite the West Bank and the Gaza Strip under one political unit. However, these attempts could not overcome difficulties arising from the deep distrust and conflicting interests between both parties.

Finally, on May 4, 2011, Hamas and Fatah signed a reconciliation agreement that guaranteed the future establishment of a joint government. This agreement, too, disintegrated. Governance of the West Bank and Gaza continued separately until June 2014, when Hamas was merged into the Palestinian government. Not surprisingly, the new joint government has faced several challenges from both sides. PA leader, Abu Mazen, has expressed sharp criticism towards Hamas for continuing to run a “parallel” administration in Gaza, effectively ignoring the mandate to restructure their government in accordance with the 2014 agreement with the PA. In response, Hamas has criticized Abu Mazen and the PA for refusing to pay 45,000 Hamas employees in Gaza.¹⁸

¹⁸ Beaumont, F., *Fatah and Hamas agree deal for unity government to take control of Gaza*, The Guardian, 25 Sept, 2014, <http://www.khilafah.com/index.php/news-watch/middle-east/19787-fatah-and-hamas-agree-deal-for-unity-government-to-take-control-of-gaza>

STATUS OF PA AND HAMAS IN THE INTERNATIONAL FRAMEWORK

The status of the Palestinian Authority today within the UN must be understood within a decades-long context of ever-increasing recognition. Recognition commenced when the UN General Assembly granted the PLO "observer" status as the representatives of all Palestinians in 1974¹⁹. In 1976, this was extended to permit Palestinian participation in UN Security Council deliberations. After the Oslo Accords were signed, the PA was recognized as a legal, "quasi-sovereign" entity directly representing the Palestinian people in the West Bank and Gaza Strip. Later, in 1998, the name under which the "observer" status was registered was changed from PLO Observer to 'Palestine Observer'.²⁰

The UN has since awarded the Palestine Observer additional permissions, including the right to participate in the general discussion held at the beginning of each session of the General Assembly, the right to respond at the General Assembly, and the right to raise points for discussion on Palestinian and Middle East issues.²¹

Although approximately 130 countries have independently affirmed Palestinian 'statehood', the PA failed in its 2011 bid to achieve full statehood (membership) recognition within the United Nations. However, during the next General Assembly on November 29, 2012, PA President Mahmoud Abbas successfully secured formal recognition of 'non-member *state status*' for Palestine, with consequences pertinent to the observance of international law. The UN vote to recognize Palestine as a non-member observer state passed 138 to 9, with 41 abstentions.²² By 2014, as mentioned earlier, the PA had signed accession letters to 15 human rights conventions and is now an enforcement party to them all.

Regarding the specific issue of human rights, the Oslo Interim Agreement required that Israeli and Palestinian parties line up to meet the standards of the "acceptable international norms and principles of human rights and the rule of the law."²³ The PA subsequently passed the Palestinian Basic Law, which incorporates and affirms international principles on human rights, including the rule of law; equality before the law without discrimination; respect for basic human rights and the joining of international human rights treaties; prohibition on arbitrary detention or imprisonment; protection of legal due process; prohibition of torture, cruelty, and confession under duress; freedom of religion; freedom of opinion and expression; freedom of movement; right to property; right to education; freedom of occupation; freedom of association; freedom of the press; and right of access to the courts.²⁴

The Palestinian Basic Law establishes a democratic form of government that is based on the principles of the rule of law, separation of powers and political pluralism. Though the ideology expressed by the Palestinian Basic Law is inherently secular, liberal and parliamentary, Islamic jurisprudence determines the meaning assigned to 'protection of rights' for Palestinians under the PA. This same Basic Law declares Palestinians to be part of the Arab world and, so, subject to principles of Islamic *Sharia* as the main source of legislation.²⁵

¹⁹ A-RES-3237 (XXIX) UN General Assembly Resolution, Nov. 22, 1974.

²⁰ A-RES-43-177 UN General Assembly Resolution, Dec. 15, 1988.

²¹ A/RES/52/252 UN General Assembly Resolution, July 7, 1998.

²² McMahon, R., & Masters, J. (2012, November 30). *Palestinian statehood at the UN*. Retrieved from <http://www.cfr.org/palestine/palestinian-statehood-un/p25954>.

²³ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Washington D.C., 1995, Israel Ministry of Foreign Affairs, at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>, accessed 2/3/2015.

²⁴ "The Amended Palestinian Basic Law" (2003), at <http://www.palestinianbasiclaw.org/2003-amended-basic-law>, accessed 2/3/2015. (Hereinafter: the "Palestinian Basic Law").

²⁵ Ibid.

Hamas' dominance in the Gaza Strip has further intensified the influence of Islamic law, both directly in the Gaza Strip and indirectly in the West Bank.²⁶ Founded in 1987, Hamas's charter articulates a fundamentalist Islamic and national ideology that relies heavily on Islamic religious texts. In contrast with the secular ideologies of the PLO and Fatah, Hamas was the first Palestinian national organization to combine national identity with religious identity. Hamas describes the Qur'an as its sole constitution and Islam as the ultimate religion. While Hamas engages in acts of charity and seeks to avoid dishonoring the commandments of other religions, the organization takes a militant position that justifies the use of force and violence in achieving its ideological goals. Although Article 31 of the Hamas Charter states that Hamas is a humanistic movement that preserves human rights and guarantees freedom of religion, Article 13 of the Charter expresses reservations regarding initiatives, proposals and international conferences, while Article 27 of the Charter withdraws support of any type of liberal secular ideology.²⁷

In some respects, Hamas embodies the defining characteristics of a typical national liberation movement; in other respects, it conforms closely to prevalent definitions for a terrorist organization. The UN does not recognize Hamas as a legitimate government, nor do countries around the world regard it as a legitimate administration in Gaza. Hamas, for its part, has never joined an international treaty, nor committed to international principles of human rights protection or humanitarian law. *Notably, the recent 2014 unity government between Hamas and Fatah, however, legally binds Hamas representatives in the PA to the conventions acceded to by the PA in April 2014.*

The coming to prominence of the Islamic State of Iraq and Syria (ISIS) in 2014 has aroused speculation about possible connection between ISIS and Hamas. While the two groups are not directly affiliated, they share key similarities as well as distinct contrasts.

ISIS and Hamas share strikingly similar beliefs and practices, many tracing back to the radical Wahhabi school of Islamic thought.²⁸ Both groups employ tactics of aggression, degradation, and extreme violence deemed justifiable by this "reactionary version of Islam".²⁹ Additionally, ISIS and Hamas share the goal of forming an Islamic caliphate that conforms strictly to *Sharia* law. Most likely, Hamas morale has been buoyed by the rapid success of ISIS' military expansion.³⁰

In contrast, while Hamas is a nationalist movement seeking to reestablish the state of Palestine, ISIS strives for the supra-national creation of a pan-Arab caliphate. Consequently, ISIS does not define itself by a specific, existing national boundary or regional population group.³¹ Corresponding to these differences, Hamas has used social media proactively for domestic propaganda as well as to secure international sympathy by inventing fictionalized Israeli human rights abuses or by manipulating the narratives of their own self-destructive human rights violations. These latter have included the use of civilians as human shields to deter

²⁶ "Internal Palestinian Issues – Islamization," *Palestinian Media Watch* (PMW), at <http://www.pmw.org.il/main.aspx?fi=737>, accessed 2/3/2015; Jonathan Schanzer, "The Talibanization of Gaza: A Liability for the Muslim Brotherhood," *Hudson Institute's Center on Islam, Democracy and the Future of the Muslim World*, Aug. 19, 2009, at <http://www.currenttrends.org/research/detail/the-talibanization-of-gaza-a-liability-for-the-muslim-brotherhood>, accessed 2/3/2015.

²⁷ "Hamas Charter" (1988), at Yale Law School Lillian Goldman Law Library http://avalon.law.yale.edu/20th_century/hamas.asp, accessed 2/3/2015.

²⁸ Hawraa Zakery, "Shiite, Sunni, Wahhabi and the Israel-Gaza conflict" Communities Digital Institute, July 31, 2014, at <http://www.commdiginews.com/world-news/shiite-sunni-wahhabi-and-the-israel-gaza-conflict-22803>, accessed 2/3/2015.

²⁹ Jerusalem Post, "Hamas and ISIS," Jun 17, 2014, at <http://www.jpost.com/Opinion/Editorials/Hamas-and-ISIS-359674>, accessed 2/3/2015.

³⁰ Ibid.

³¹ Ibid.

wartime attacks against otherwise legitimate targets.³² However, Hamas has not used social media internationally as direct tool of recruitment to its nationalistic cause. By contrast, both the scope and impact of the internally-sourced and produced public relations, media, and social media wing of ISIS has been unprecedented for any jihadist organization. This campaign has paid off in thousands of international recruits.³³

SEPARATION OF POWERS

Separation of powers has long served as a vital asset for supporting humane and democratic governments. The extent of a government's effective structural separation of powers correlates well, by historic fact, with institutional protection of human, civil and political rights. Decentralizing power into an accountability network establishes mutual control and supervision of powers, each towards the other, helping to reduce corruption and the violation of rights.

Even the existence of such separation of powers within the PA, let alone their proper expression, must be judged dubious at best. As a semi-presidential republic, the President is elected directly by the people. He thereafter appoints the Prime Minister with parliamentary approval. Though the President serves as the official head of the national government, his powers are limited to issues relating to foreign relations and security. The Prime Minister governs all areas of domestic policy.

The Palestinian Basic Law requires the government to be held accountable to the President and to the Palestinian Legislative Council.³⁴ In practice, however, the PA's power has been concentrated in the hands of an executive government authority without effective parliamentary (the Legislative Council) supervision or meaningful judicial and public examination. According to interviews with M. and S., who are human rights representatives requesting anonymity, political corruption is widespread. S. observed that PA officials reveal their motivations protecting and further their own positions at the expense of the general welfare.

Based upon the set of JIJ interviews with human rights representatives, no independent legislative procedure could be identified within the Palestinian system of governance.³⁵ Legislative initiatives, when introduced, face long delays or stagnate without action due to internal political or social rifts. In practice, the passage of legislation depends upon the President's authority to publish emergency decisions regarded, subsequently, as laws. Drafts of bills covering civil matters of priority are formulated by legal advisors within government ministries and forwarded to the President, to be published as laws on his behalf.³⁶ George Washington University Professor and Palestinian political expert Nathan J. Brown argues that former Palestinian Authority Prime Minister, Salam Fayyad, did not build the infrastructure needed to ensure a self-governing Palestinian state. Instead, he merely prevented the total collapse of the existing structure. Brown concluded that 'separation of powers' does not yet exist within the PA. Israeli Arab journalist and researcher Khaled Abu Toameh noted, likewise, that "the Palestinian authority has failed to provide its constituents" with a democratic political system and an independent judiciary system.³⁷

³² Bob Fredericks, "Hamas' disturbing 'human shields' manual," *New York Post*, Aug 5, 2014, at <http://nypost.com/2014/08/05/hamas-manual-details-civilian-death-plan-israel/>, accessed 2/3/2015.

³³ Scott Shane and Ben Hubbard, "ISIS Displaying a Deft Command of Varied Media," *The New York Times*, Aug 30, 2014, at <http://www.nytimes.com/2014/08/31/world/middleeast/isis-displaying-a-deft-command-of-varied-media.html>, accessed 2/3/2015.

³⁴ "The Amended Palestinian Basic Law," *supra* note 26.

³⁵ Interview with Y., Interview with S., *supra* note 2; Interview with B., *supra* note 3.

³⁶ Ephraim Lavie, "The Palestinian Authority's Challenge: Building a Lack of Governmental Legitimacy", 14 Strategic Assessment 59-70 (2011).

³⁷ Khaled Abu Toameh, "No Democracy for Palestine," *Gatestone Institute*, Aug. 30, 2011, at

Amnesty International has documented a similar lack of independent jurisdiction within the Palestinian justice system.³⁸ However, official reports on the West Bank and Gaza Strip by the US State Department have noted the PA's general respect for judicial independence. These have cited, as well, the limited capacity of the Palestinian police forces and judicial system to transfer detainees and to gather evidence due to Israeli restrictions on movement.³⁹ By counter-balance, the US State Department has also noted unconfirmed reports of attempts made by various Palestinian factions to influence judicial decisions in the West Bank.⁴⁰

According to interviews with human rights representatives, Israeli military intervention has, by stripping the PA of effective enforcement power, made itself a primary cause of the PA's lack of an independent judicial system. Israeli interventions, whether causal or incidental, cannot be held responsible for structural factors which have long compromised judicial integrity. A long-standing culture of nepotism promotes personal advancement through judicial appointment on the basis of familial connections. This diminishes the freedom of government officials to criticize the PA or, in many cases, to enforce court orders at all.⁴¹

Evidence suggests, paradoxically, that the executive branch of the PA benefits from the existence and cultivation of the Israeli-Palestinian conflict. At the expense of health, education and welfare, the PA's executive branch has established large security services that account for one-third of the PA's overall budget, draining and diverting investments for Palestinian health, education and welfare services. To assess their scope, note that six entirely different security services, or branches, have been created, which, in turn, have been divided into sub-units, with each assigned independent roles and orders.

Coordination among the branches is not always appropriately defined. These forces, including the intelligence and counter-security forces, aid the executive branch by screening candidates for positions in the public sector, based on political affiliations.⁴² Because the labor market in the PA concentrates employment opportunities under government auspices, nepotism and the promotion of personal interests have become a widespread phenomenon.⁴³

INTERNAL CONFLICTS AND RIFTS

Although political instability is a critical issue facing the PA, the conflict between Fatah and Hamas, according to a majority of human rights representatives interviewed, is the greatest cause of human rights violations committed in both the West Bank and Gaza.⁴⁴ A general atmosphere of non-cooperation prevails between Fatah and Hamas, made still more difficult by intra-partisan conflicts and rifts.⁴⁵ Adding to the complicated ecology of Fatah-Hamas relations, several other parties active within the PA, including the Popular Front for the Liberation of Palestine (PFLP), the Democratic Front for the Liberation of Palestine (DFLP), the Palestinian

<http://www.gatestoneinstitute.org/2389/palestine-democracy>, accessed 2/3/2015.

³⁸ "Annual Report: Palestinian Authority 2011," *Amnesty International*, at

<http://www.amnestyusa.org/research/reports/annual-report-palestinian-authority-2011>, accessed 2/3/2015 (Hereinafter: "Amnesty Report").

³⁹ Interview with M., *supra* note 2.

⁴⁰ "2010 Human Rights Report", *US State Department*, at <http://www.state.gov/j/drl/rls/hrrpt/2010/index.htm>, accessed 2/3/2015 (Hereinafter: "The US State Department Report").

⁴¹ Khaled Abu Toameh, "No Democracy for Palestine," *Gatestone Institute*, Aug. 30, 2011, at <http://www.gatestoneinstitute.org/2389/palestine-democracy>, accessed 2/3/2015.

⁴² Interview with Dr. Mamdukh Al-Acr, *Ha'aretz*, Feb. 3, 2011.

⁴³ Amnesty Report, *supra* note 38.

⁴⁴ Interview with M., Interview with I., *supra* note 2; Interview with B., *supra* note 3.

⁴⁵ Interview with C., Interview with H., and Interview with D., *supra* note 2.

People's Party (PPP), the Palestine Liberation Front (PLF) and the Third Way insist on being heard. Though political pluralism is not inherently destructive, the current internal conflicts within the PA are severe and, oftentimes, conducive to violence. Some suggest that shared opposition to Israel constitutes the primary unifying force for otherwise divided Palestinian factions.⁴⁶

Beyond divided ideological loyalties among contemporary political factions, representatives of human rights organizations pointed to persisting tribal and clan structures within the territories as a heavy burden which hinders Palestinian unity.⁴⁷ In general, Palestinian society remains traditional. Socio-cultural identities span a wide range, based on the varying intersection of geographic origins, family lines, tribal clans, and other communal factors. As noted by Professor Dror Ze'evi, founder of the Crown Center for Middle East Studies, " Hamas in Gaza and the PA in the West Bank will not take any action on public or political issues without informing or consulting the local tribes."⁴⁸ According to ICG's 2007 report, several strong families have even gone as far as establishing personal armed units to protect their territories.⁴⁹

The International Crisis Group (ICG), a non-profit organization led by Louise Arbour, former UN High Commissioner for Human Rights, also acknowledged the power of tribes and families, especially in Gaza. On the one hand, tension erupts between the various clans. On the other hand, each constitutes, potentially, a direct threat to Hamas. This traditionalist culture erodes, at present, any realistic possibility of forging national unity within Palestinian society. Internal power struggles between the parties, rifts among various Islamic national organizations and, finally, traditional tribal tensions create unhealthy ground for sowing a stable government and society.

⁴⁶ Khaled Abu Thoameh, "Palestinians Busy Fighting each Other: Not Ready for Statehood," *Gatestone Institute*, June 21, 2011, at <http://www.gatestoneinstitute.org/2214/palestinians-fighting-eachother-statehood>, accessed 2/3/2015; Khaled Abu Thoameh, "Are the Palestinians Ready for Statehood?" *Gatestone Institute*, Mar. 22, 2011, at <http://www.gatestoneinstitute.org/1981/palestinians-ready-for-statehood>, accessed 2/3/2015.

⁴⁷ Interview with S., Interview with G., *supra* note 2. Interview with B., *supra* note 3.

⁴⁸ Dror Ze'evi, "Clans and Militias in Palestinian Politics," 26 Brandeis University Crown Center for Middle East Studies: Middle East Brief (2008), at <http://www.brandeis.edu/crown/publication/meb/MEB26a.pdf>, accessed 2/3/2015.

⁴⁹ "Inside Gaza: The Challenge of Clans and Families," International Crisis Group, at <http://www.crisisgroup.org/en/regions/middle-east-north-africa/israel-palestine/071-inside-gaza-the-challenge-of-clans-and-families.aspx>, accessed 2/3/2015.

HUMAN RIGHTS VIOLATIONS

Now that the PA has acceded to various international conventions of human rights, *international benchmarks must be used to evaluate the PA's respect for human rights and freedoms*. By international law, the PA *must* respect its citizens and protect them from human rights violations within its territory. Regrettably, the foremost current violations of basic human rights in the West Bank and Gaza by the Palestinian government, detailed below, suggest the PA did not intend to fulfill its international promises.

ARBITRARY IMPRISONMENT

Article 9 of the International Covenant on Civil and Political Rights prohibits arbitrary imprisonment of any individual. The Amended Palestinian Basic Law upholds this protection by guaranteeing personal liberty and prohibiting unlawful encroachment on arbitrary grounds or pretexts. The Law additionally stipulates that arrest, detention, or restriction of freedom is prohibited unless carried out under a court order in accordance with the provisions of the law. Article 11 of the Palestinian Basic law states:

Personal freedom is a natural right, shall be guaranteed and may not be violated. It is unlawful to arrest, search, imprison, restrict the freedom, or prevent the movement of any person, except by judicial order in accordance with the provisions of the law. The law shall specify the period of pre-arrest detention. Imprisonment or detention shall only be permitted in places that are subject to laws related to the organization of prisons.⁵⁰

Nonetheless, arbitrary arrests and imprisonment routinely occur both in the West Bank and in Gaza. In February 2010 in Gaza, Hamas officials arrested Paul Martin, a British journalist, after he tried to help a man accused of collaboration with Israel. Paul Martin was initially accused of spying for Israel but was released after 25 days in custody without charge.⁵¹

In 2012, the Independent Commission for Human Rights (ICHR) received complaints of 1,000 arbitrary arrests in the West Bank and more than 750 in Gaza.⁵² Although most of the cases were and are connected to the conflict between Fatah and Hamas, many cases involved the political arrests of reporters, teachers, university professors, students, mosque imams and others who opposed the reigning government. A Palestinian man from Jericho, in the West Bank, recounted the Palestinian Authority's detention of members of Hamas on the day of PA elections as a means of suppressing political opposition.

In April 2013, Hamas passed new legislation that imposes a ten-year prison sentence for any Palestinian caught engaging with an Israeli NGO.⁵³ In August 2012, Heba Abu Khater, a Palestinian infant from Gaza, was admitted to the Wolfson Medical Center in Israel for treatment for a congenital heart defect. Khater was one of about 100 Palestinian children who received free cardiac treatment in 2012 from an Israeli NGO called "Save a Child's Heart."⁵⁴ If enforced, the new law passed by Hamas would carry ten-year prison sentences for Khater's family and even the hospital staff.⁵⁵

⁵⁰ Palestinian Basic Law, Amended Basic Law, 2003, Ramallah.

⁵¹ Amnesty Report, *supra* note 34.

⁵² "Palestinian Authority" *Amnesty International*, at <http://www.amnesty.org/en/region/palestinian-authority/report-2012#section-19-3>, accessed 2/3/2015.

⁵³ "In the quest for peace, you cannot ignore Hamas," Times of Israel Blogs, April 10 2013, at <http://blogs.timesofisrael.com/in-the-quest-for-peace-you-cant-ignore-hamas/>, accessed 2/3/2015.

⁵⁴ See *supra* note 52.

⁵⁵ *Ibid*.

Hamas's oppression is not limited to its political opponents. In April 2013, Hamas security forces arrested 41 men on charges of "immodesty."⁵⁶ Some of the men were arrested for sporting "pop star haircuts" that were labeled culturally inappropriate. Others were detained because their pants were too low or too tight; most of the men were beaten and all had their heads forcibly shaved by Hamas security forces.⁵⁷ Rajou Hayek, a 33-year-old Palestinian, was arrested, beaten, and had his head forcibly shaved at a Hamas police station. According to him, the process was "humiliating," and "has nothing to do with jeans or hairstyles."⁵⁸ Hamas carries out these abuses to instill an attitude of fear in its own citizens.

EXTRAJUDICIAL KILLINGS

Article 6 of the International Covenant on Civil and Political Rights states that no one shall be arbitrarily deprived of life. Yet, several media sources and the Human Rights Watch have reported that, extrajudicial killings, which are executions carried out without judicial proceedings,⁵⁹ remain a frequent issue in Gaza.⁶⁰

Authorities in Gaza regularly carry out arbitrary executions and thereby disregard both Palestinian Basic Law and international human rights law.⁶¹ Such behavior not only violates the right to life, but also Article 14 of the International Covenant on Civil and Political Rights, which stipulates that all persons shall be equal before the courts and that everyone is entitled to a fair and public hearing with the right to be presumed innocent until proven guilty according to the law.⁶² Hamas regularly disregards its duties under this convention. For instance, on November 20, 2012, Palestinian gunmen in Gaza shot and killed six men whom they had "caught red handed" collaborating with Israel, according to Israeli security forces. The six men had already been convicted by a Gazan military court of spying before the gunmen removed them from governmental custody.⁶³ The body of one of the alleged collaborators was chained to a motorcycle and dragged through the main streets of Gaza.⁶⁴ According to Human Rights Watch, the Hamas government did not investigate the killings of these alleged spies.⁶⁵

Three months after the execution of these six alleged collaborators, Hamas began an anti-collaboration campaign in Gaza by running a series of television ads depicting another young man being dragged to his public execution by Hamas security forces after he was coerced into collaboration with Israel.⁶⁶ Additionally in 2012, the ICHR reported that two Palestinians died in PA detention centers and nine Palestinians, seven of

⁵⁶ Green, Phoebe. "Hamas 'modesty' crackdown stokes fears of Islamic militancy," *The Sydney Morning Herald*, April 30 2013 at <http://www.smh.com.au/world/hamas-modesty-crackdown-stokes-fears-of-islamic-militancy-20130430-2ipze.html>, accessed 2/3/2015.

⁵⁷ See *supra* note 92.

⁵⁸ *Ibid.*

⁵⁹ USLegal, Extrajudicial Killing Law & Legal Definition, <http://definitions.uslegal.com/e/extrajudicial-killing/>, accessed 2/3/2015.

⁶⁰ See *supra* note 51.

⁶¹ Amnesty Report, *supra* note 38; HRW Report, *supra* note 51.

⁶² International Covenant on Civil and Political Rights, 1966

⁶³ BBC, "Hamas failed to probe Palestinian collaborator deaths," April 11 2013, at <http://www.bbc.co.uk/news/world-middle-east-22118880>, accessed 2/3/2015.

⁶⁴ "Ma'an News Agency", *Gunmen kill 6 alleged collaborators in Gaza*, at <http://www.maannews.net/eng/ViewDetails.aspx?ID=540228> accessed 2/3/2015.

⁶⁵ Same as footnote 64 (see above).

⁶⁶ Harris, Emily. "In Gaza Hamas Targets Palestinians in Crackdown," *NPR*, June 4 2013 at <http://www.northcountrypublicradio.org/news/npr/186975387/in-gaza-hamas-targets-palestinian-informants-in-crackdown>, accessed 2/3/2015.

which were suspected of alleged collaboration with Israel, died while in Hamas custody.⁶⁷

In 2014, between August 21-23, after the August 21st Israeli airstrike on three top Hamas militants in Gaza, Hamas quickly retaliated against its own people by carrying out 25 summary executions against alleged Israel "collaborators." The killings were performed by masked gunmen in or near public parks and squares in Gaza City, as well as outside several mosques, in violation of even Hamas Interior Ministry's standards. Journalists have found no evidence that the accused were brought to trial at any point, nor that the execution orders were ever handed down by the courts.⁶⁸

Sources from Gaza have reported that Hamas has carried out extrajudicial killings against tens of diggers of its vast network of underground tunnels. Victims were not granted a trial before their executions, but were arbitrarily killed to ensure no worker would leak information to Israel.

TORTURE AND INHUMANE TREATMENT

Article 5 of the Declaration of Human Rights declares that no person shall be subjected to torture, or cruel, inhuman or degrading punishment or treatment. The UN's 1984 *Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment* also states that each state shall take effective legislative, administrative, judicial or other measures to prevent acts of torture, including under exceptional circumstances like war, occupation, and political instability.⁶⁹

Torture is described by this last convention as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁷⁰

Yet despite these prohibitions, Amnesty International, Human Rights Watch and the US State Department, along with the representatives from human rights organizations, report that torture and cruel punishment occur on a regular basis in both the West Bank and the Gaza Strip, sometimes resulting in death.⁷¹ In the first six months of 2014 alone, the monthly reports from the Independent Commission for Human Rights (ICHR) show a total number of 438 complaints of torture: 358 in the Gaza Strip and 80 in the West Bank.

According to a 2013 ICHR report, two Palestinians died in PA detention centers and nine Palestinians died

⁶⁷ "11 Palestinians died under PA, Hamas Detention," *The Jerusalem Post*, May 21 2013 at <http://www.jpost.com/Middle-East/Eleven-Palestinians-have-died-under-PA-Hamas-detention-313905>, accessed 2/3/2015.

⁶⁸ Human Rights Watch, News, *Gaza Halt Executions*, 25 Aug, 2014, <http://www.hrw.org/news/2014/08/25/gaza-halt-executions>, accessed 2/3/2015.

⁶⁹ United Nations, Office of the High Commissioner for Human Rights. (1984). Convention against torture and other cruel, inhuman or degrading treatment or punishment (General Assembly resolution 39/46). Retrieved from website: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

⁷⁰ Ibid.

⁷¹ Interview with I., Interview with G., Interview with S., Interview with M., *supra* note 2; Interview with B., *supra* note 3. Amnesty Report, *supra* note 34; US State Department Report, *supra* note 36; "West Bank: Reports of Torture in Palestinian Detention," *Human Rights Watch*, Oct. 20, 2010, at <http://www.hrw.org/en/news/2010/10/20/west-bank-reports-torture-palestinian-detention>, accessed 2/3/2015.

while in Hamas custody in the Gaza Strip in 2012. Seven of those who died were suspected of alleged collaboration with Israel.⁷² In April 2013, Mohamed Abdel Karim Dar, a Palestinian man detained by PA security forces in Hebron, lost the ability to speak after severe torture while in a PA prison.⁷³

Extensive use of torture by both political parties took place during the Fatah-Hamas conflict.⁷⁴ Human Rights Watch described cases which involved beatings with sticks or electric cables, tying a detainee's arms behind his back and suspending him off the ground so his shoulders become dislocated, forcing detainees to sit or stand in uncomfortable positions for prolonged periods, and occasionally staging mock executions.⁷⁵

In the West Bank, increasing failure to investigate torture by the PA's security authorities facilitates a culture of leniency towards those who employ cruel interrogation and punishment methods. Meanwhile, in Gaza, Hamas makes frequent use of torture and degrading treatment as punishment for what are deemed 'moral' crimes.

In one account of torture from April 2009, Internal Security officials in Gaza held Mohammed Baraka Abdel-Aziz Abu-Moailek incommunicado for more than 50 days after his arrest on suspicion of collaboration with Israel. Mr. Baraka Abdel-Aziz Abu-Moailek stated he was tortured with electric shocks, beaten on the soles of his feet, burned with cigarettes, and threatened with death to force him to confess. He remained on trial and in detention indefinitely.⁷⁶

In another account in September 2010, Ahmed Salhab, a 42-year-old mechanic from Hebron, was arrested and detained until October 16, first in Hebron and then in Jericho. On October 16, Preventive Security officials transferred him to a hospital in Hebron suffering from injury to previously torn spinal discs and severe mental distress resulting from torture in custody. On September 16, 2010, a second man (who has requested anonymity), was arrested and held first in the Preventive Security detention facility in Hebron and then in Jericho, where he was tortured for 10 days. Both men were accused of having ties to Hamas.⁷⁷

Human Rights Watch interviewed a lawyer in Gaza who was tortured in April 2011 after Hamas civil police and police detectives arrested him without a warrant. In the investigation room, Hamas forces cursed him and beat him, called him an unbeliever, tied him to a bed, and hit his feet with a rubber hose for an hour. Later, the lawyer was forced to put his legs in buckets of water, to move them as if he were riding a bicycle, and to drink bleach. When he received medical attention, the doctor hit him and threatened him. He told a prosecutor looking into the charges against him, "I have been beaten more than any donkey in Palestine."⁷⁸

Additionally, tunnel diggers meet, often, with Hamas's cruelty and disregard for human life. Many were coerced to perform this work. These diggers face highly dangerous and strenuous working conditions, laboring over 12 hour shifts and earning under \$300 a month. Workers are, at times, allegedly blindfolded when traveling to and from work and are under strict watch by Hamas operatives.⁷⁹

⁷² "11 Palestinians died under PA, Hamas Detention," *The Jerusalem Post*, May 21 2013 at <http://www.jpost.com/Middle-East/Eleven-Palestinians-have-died-under-PA-Hamas-detention-313905>, accessed 2/3/2015.

⁷³ "Palestinian lost speech ability after PA torture," *The Jerusalem Post*, May 19 2013, at <http://www.jpost.com/Middle-East/Report-Palestinian-lost-speech-ability-after-PA-torture-313660>, accessed 2/3/2015.

⁷⁴ Amnesty Report, *supra* note 34; HRW Report, *supra* note 51.

⁷⁵ "Abusive System: Failures of Criminal Justice in Gaza," Human Rights Watch, http://www.hrw.org/sites/default/files/reports/iopt1012ForUpload_0.pdf, accessed 2/3/2015.

⁷⁶ Amnesty Report, *supra* note 34.

⁷⁷ "West Bank: Reports of Torture in Palestinian Detention," *Human Rights Watch*, *supra* note 48.

⁷⁸ "Abusive System: Failures of Criminal Justice in Gaza," Human Rights Watch, *supra* note 51.

⁷⁹ Newman, M., Times of Israel, *Hamas said to have executed dozens of tunnel diggers*, 11 Aug, 2014, <http://www.timesofisrael.com/hamas-said-to-have-executed-dozens-of-tunnel-diggers>, accessed 2/3/2015.

SPONSORING TORTURE ABROAD

Not only has Hamas tortured civilians within its own borders, but the organization also sponsors torture abroad. Over the past years, the Sinai Peninsula has become a global hub of torture, human trafficking, and nearly indescribable crimes, as local tribesmen have built a thriving business in trafficking East African refugees who are fleeing conflicts in their countries. The refugees are kidnapped and brutally tortured until their family members agree to pay a hefty ransom. If the ransom is not paid by a certain deadline, these refugees are killed for failure to procure the funds. If the ransom is paid, however, other traffickers often kidnap the refugees shortly thereafter. With the mortality rate hovering at around 50%, the revenue in this industry is valued at up to 600 million dollars and encompasses a far-flung network of regional operatives from Sudan to the West Bank.

Hamas plays a critical, direct role in these operations. Multiple Israeli court indictments implicate Hamas for providing middleman and money laundering services to the Bedouin traffickers. Because the Israel-Sinai barrier and Israeli border control prevent direct movement out of Israel, the traffickers cooperate with Hamas to move funds through Gaza.

Israeli court records describe a complicated network that has been designed to smuggle these funds.⁸⁰ Once family members have paid to ransom a loved one, funds are routed into the hands of Hamas operatives in the West Bank. The ransom money is transferred from there to the Gaza Strip, coming under the control of a high-ranking Hamas operative. He deducts and pockets a 'tax', before transporting the funds through Hamas' network of smuggling tunnels along the border between Gaza and Sinai. According to some estimates, Hamas has enriched itself to the tune of 64 million dollars by smuggling ransom cash through its tunnels.

VIOLATIONS OF THE CONVENTION AGAINST TORTURE

Under Article 12 and 13 of the UN's 1984 *Convention Against Torture*, state parties must conduct investigations when there is reasonable ground to believe an act of torture has been committed. They must also ensure that an individual who alleges that he has been subjected to torture will have his case examined by the competent authorities. According to Human Rights Watch, no Palestinian security official has ever been convicted for abusing those in custody.⁸¹

The systematic use of torture and other abuse by Palestinian government authorities toward Palestinian detainees and prisoners shows a blatant disregard for, and violation of, international human rights. Such tactics motivated civil Palestinian organizations to appeal to the European Union (EU) in September 2010, urging the EU to re-examine its relations with the PA in view of its violations of human rights.⁸²

EXCESSIVE FORCE AGAINST PEACEFUL PROTESTORS

⁸⁰ Beer Sheva District Court, Indictment No. 41584/03/12 against Yosef Alkarinari, 3/23/2012; Jerusalem District Court indictment No.44801-09-12 against Victor Saboni, 9/21/2012; Jerusalem District Court, Indictment No. 44333-09-12 against Yaakov Grad and Eliran Moshe, 9/28/2012; Jerusalem District Court, Indictment No.52343-09-12, against Louie Nasser Aladin, 9/27/2012.

⁸¹ Human Rights Watch, *Palestinian authority: No justice for torture death in custody* (2011, February 26). Retrieved from <http://www.hrw.org/news/2011/02/16/palestinian-authority-no-justice-torture-death-custody>

⁸² Abstract of 2010 Report, *The Independent Commission for Human Rights*, at <http://ichr.ps/pdfs/exs2011.pdf>, accessed 2/3/2015.

Article 21 in the International Covenant on Civil and Political Rights limits the restrictions which may be placed on the right of peaceful assembly. Furthermore, the Palestinian Authority is obligated to abide by the Arab Charter on Human Rights, which includes similar provisions.⁸³ More specifically, the Palestinian Amended Basic Law of 2003 includes provisions protecting the rights to freedom of expression (Article 19), including the rights of journalists to carry out their work freely (Article 27(2)), to association (Article 26), and to assembly (Article 26(5))⁸⁴. Freedom of assembly is further guaranteed under Article 2 of the Law on Public Assemblies, No. 12 of 1998, which states, "citizens are freely entitled to hold public meetings, assemblies and demonstrations, and prohibits any restriction of the right to freedom of assembly other than as provided for by law."⁸⁵

Though Palestinians must provide advance notice to authorities before exercising this right, "there is no requirement that they obtain the PA's permission in advance for the event to be legal."⁸⁶ Amnesty International, however, has raised concerns over Articles 6, 7, and 9 of the PA's Law on Public Assemblies:

Articles 6 and 7 allow the police to disperse an assembly or demonstration if it exceeds its stated goal, violates conditions imposed by police, results in a violation of public order or security, or includes actions that threaten citizens' security or property...Article 9...prohibits any public assembly that is against "national unity" or damaging to the PA's relationships with other governments.⁸⁷

The vague and broad conditions under which Palestinian Security Forces may disperse an assembly or demonstration can be used to arbitrarily repress freedom of expression. The situation is further aggravated by the fact that there is no comprehensive law regulating police or security forces⁸⁸. Palestinian Security Forces are comprised of the National Security, Internal Security and General Intelligence, and yet "the legal framework for the different security forces, including the police, is far from clear to experts and is completely unknown to many citizens."⁸⁹ No solid law holds security forces accountable, mandates their activities, or coordinates their operations. This creates a wide margin for error and abuse, with the result that "several of these [security forces]... stand accused of committing human rights violations, including violations of the right to peaceful assembly, carrying out arbitrary detentions and torturing detainees or subjecting them to other forms of ill- treatment."⁹⁰

Beatings with batons, punching, and breaking journalist's equipment have become commonplace at what would otherwise be peaceful demonstrations, as evidenced by recent demonstrations in Ramallah and

⁸³ "Arab Charter On Human Rights 2004." Translated by Dr. Mohammed Amin Al-Midani, Mathilde Cabanettes, and Edited by Susan M. Akram. *Boston University International Law Journal*. 24.147 (2004): 147-164 at <http://refworld.org/docid/3ae6b38540.html> , accessed 2/3/2015.

⁸⁴ Palestinian Legislative Council, (2003). *The Palestinian basic law: 2003 amended basic law*. Retrieved from: <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>, accessed 2/3/2015.

⁸⁵ As cited in: 'Shut Up We Are The Police': Use of Excessive Force by Palestinians Authority In the Occupied West Bank. *Amnesty International Briefing*, September 23, 2013 Available in Arabic at <http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?LegPath=1998&MID=13000>. An unofficial English translation is available at <http://muqtafi.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=1998&MID=13000>.

⁸⁶ 'Shut Up We Are The Police': Use of Excessive Force by Palestinians Authority In the Occupied West Bank. *Amnesty International Briefing*, September 23, 2013, at <http://www.amnesty.org/en/library/asset/MDE21/006/2013/en/3502962f-76b0-45a8-adba-5cc7c4c5fa16/mde210062013en.html>; p. 4, accessed 2/3/2015.

⁸⁷ Ibid.

⁸⁸ As cited in "Shut Up We Are The Police". Law No. 8 of 2005, Service in the Palestinian Security Forces, contains very few provisions specific to the police.

⁸⁹ See supra note 78, p. 6.

⁹⁰ Ibid.

Hebron.⁹¹ In the last year alone, two people have been shot and killed by Palestinian police in the West Bank.⁹² Evidence indicates that plain-clothes policemen target women demonstrators to “intimidate them in gender-specific ways”.⁹³ In general, Palestinian human rights activists and journalists face abuse, harassment, violence, and are occasionally prevented from traveling abroad—actions that violate both Palestinian domestic law and also binding international law.⁹⁴

On June 30, 2012, Palestinian demonstrators met in Ramallah to peacefully protest a planned meeting between Palestinian Authority President Mahmoud Abbas and Israeli politician Shaul Mofaz. As protestors marched towards the Palestinian Presidential palace, where the meeting was to take place, Palestinian police and security forces launched a surprise brutal attack, using batons to beat back demonstrators. The next day, protestors re-gathered, but were once again met with excessive force.⁹⁵

Police brutality within the PA reached new heights in 2013 with the deaths of two Palestinians during police raids in the West Bank. On May 8, 2013, during a raid on the village of Se’ir, Khaleda Kawazbeh, 44, was shot and killed by police.⁹⁶ Her death led to massive protests and more clashes with the police. The police launched an investigation into her death, but have not yet disclosed the outcome of their investigation.⁹⁷ On August 27, 2013, Amjad Odeh, 37, was similarly killed by security forces as they raided his refugee camp in Nablus.⁹⁸ Odeh was shot in the head while local Palestinians were protesting the security force’s raid.⁹⁹ Once again the PA opened an investigation into the death, but has still not provided any details regarding the investigation.

It is commendable that official inquiries are sometimes launched to investigate this type of violence, but insufficient. Palestinian police and security forces are guilty of abusing power and often fall woefully short of meeting the standards set out by international and regional human rights laws. In the aftermath of the 2012 protest in Ramallah, President Abbas and the Ministry of the Interior launched separate inquiries to investigate the behavior of the police and security forces. Over two years later, the full results of the reports have still not been released, none of the officers involved have been prosecuted, and excessive force continues to be used by the Palestinian Authority against peaceful demonstrators.¹⁰⁰

FREEDOM OF OPINION AND EXPRESSION

According to Article 19 of the *International Covenant on Civil and Political Rights*, every person has the right to freedom of opinion and expression. As reported by representatives of human rights organizations, Palestinian government authorities restrict the freedom of opinion and expression.¹⁰¹ In both the West Bank and Gaza, any person or organization, including human rights organizations, expressing criticism of the existing government, will likely receive threatening phone calls from the PA Security forces and, in certain cases, face

⁹¹ Ma'an News Agency, *Hundreds protest return to negotiations in Ramallah*. (2013, July 28). Retrieved from <http://www.maannnews.net/eng/ViewDetails.aspx?ID=617445>.

⁹² Ibid, p. 2.

⁹³ See supra note 78, p. 22.

⁹⁴ Ibid, p. 7.

⁹⁵ Ma'an News Agency, *EU police trainers concerned by Ramallah violence*. (2012, July 03). Retrieved from <http://www.maannnews.net/eng/ViewDetails.aspx?ID=501058>.

⁹⁶ See supra note 78, p. 2.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ See supra note 78, p. 1.

¹⁰¹ Interview with S., Interview with M, supra note 2. Interview with B., supra note 3.

arrest and interrogation.¹⁰² With the rise of social media, the PA policed cyberspace with increased rigidity. Any online speech deemed offensive to authorities may receive stricter punishments.

In September 2010, for instance, the Palestinian General Intelligence Service in Hebron summoned writer Lama Khater and tried to restrict her from expressing her opinion against the PA in her online writings. Intelligence service officials subsequently arrested and detained her husband, questioning him and trying to have him use his influence over her.¹⁰³ In another case in October 2010, the Palestinian General Intelligence Service in the West Bank town of Qalqilya detained blogger Walid al-Husayin on suspicion of advocating atheism and criticizing Islam and other religions through comments posted on a blog. Al-Husayin remained under detention through the end of the year.¹⁰⁴

The Interior Ministry of the Hamas government has imposed numerous restrictions on the right to freedom of opinion and expression. On November 10, 2010, the Internal Security Service of the Interior Ministry in Gaza Strip summoned Dr. Ibrahim Abrash—a Palestinian writer, political analyst, and a lecturer at Al-Azhar University in Gaza City. Dr. Abrash was asked to sign a pledge that he would not criticize Hamas and refrain from doing anything to incite activities, whether in writing or oral statements. Four days later, after refusing to sign the pledge, he was once again summoned by the government. This furnishes just one instance of a broader pattern of intimidation tactics used by Hamas against journalists who criticize the regime

In December 2013, Mohamed al-Sabawi, a Palestinian-Canadian investor, was arrested by PA police and held for eight hours for allegedly insulting President Mahmoud Abbas.¹⁰⁵ The PA boasts a particularly disturbing history of punishing anyone who insults PA President, Mahmoud Abbas. In March 2013, journalist Mamdouh Hamamreh was sentenced to one year in prison for “insulting” Abbas on Facebook.¹⁰⁶

In February 2013, a PA court sentenced Anas Said Awad, 26, to one year in prison for publishing a photo on Facebook depicting Abbas as a player for the football organization, Real Madrid. PA security forces also detained several Palestinian journalists and activists for posting critical commentary and jokes about Abbas and other PA leaders on Facebook.¹⁰⁷

In September 2014, according to the Palestinian Center for Development and Media Freedoms (MADA), two social media users, television producer Mujahed Al-Sa’di and Birzeit University Media Club head Bara’ Al-Qadi, were arrested. Al-Sa’di had allegedly used Facebook to accuse a Fatah Central Committee member of treason, while Al-Qadi allegedly “defamed the public” by insulting the PA on social media and news websites. Al-Sa’di was released shortly after, but as of October 2014, Al-Qadi’s release date is still pending. Three additional civilians were arrested for Facebook posts in the summer and early fall of 2014.¹⁰⁸

Such restrictions on public expression with seemingly no legal justification, creates an atmosphere of suspicion, and anxiety, where many can lose their jobs, reputations, and freedom because of their expressed

¹⁰² Interview with M, Interview with S., *supra* note 2. Interview with B., *supra* note 3.

¹⁰³ Independent Commission for Human Rights, *supra* note 47.

¹⁰⁴ Amnesty Report, *supra* note 34.

¹⁰⁵ “Palestinian-Canadian investor arrested for insult,” *UPI Top News*, Dec. 3 2013, at http://www.upi.com/Top_News/World-News/2013/12/03/Palestinian-investor-arrested-for-insult/UPI-50101386072247/?spt=rln&or=1, accessed 2/3/2015.

¹⁰⁶ Abu Toameh, Khaled. “Palestinian Journalist jailed for ‘insulting’ Abbas,” *The Jerusalem Post*, March 28 2013 at <http://www.jpost.com/National-News/Palestinian-journalist-jailed-for-insulting-Abbas-308014>, accessed 2/3/2015.

¹⁰⁷ See *supra* note 123.

¹⁰⁸ Palestinian Center for Development and Media Freedom, “MADA demands an end to the prosecution of journalists for their writings on Facebook”, http://www.madacenter.org/report.php?lang=1&id=1500&category_id=6&year=2014, accessed 2/3/2015.

political views.¹⁰⁹

FREEDOM OF ASSOCIATION

Article 20 of the *Human Rights Declaration* ensures the freedom of association. In violation of this covenant, restrictions are often imposed on the organization of peaceful demonstrations, press conferences, seminars and meetings of individuals and groups holding opposing or critical views of the government authorities.

If individuals succeed in assembling, Palestinian police forces often scatter them, at times even employing force against the peaceful demonstrators.¹¹⁰ For instance, on August 25, 2010, PA security officials in Ramallah forcibly dispersed a peaceful protest against the PA's agreement to participate in new peace talks with Israel. Journalists, photographers and human rights monitors were among those assaulted.¹¹¹ Similar violence took place against demonstrators in Ramallah at the beginning of 2014.

Another case in February 2011 involved the PA violently attacking peaceful demonstrators at a rally supporting the Egypt protests.¹¹² During incidents on 30 June and 1 July 2012, police and security forces, some in plain-clothes, violently attacked peaceful demonstrators who were protesting against a meeting in Ramallah between Palestinian President Mahmoud Abbas and an Israeli government minister. At least five protesters required hospital treatment.¹¹³ PA police and security forces were alleged to have violently attacked peaceful protesters on at least four separate occasions in July and August 2013. Some attacks were carried out by plain-clothes officers who targeted and sought to intimidate women protesters and journalists present to report on the demonstrations.

On 8 May, Khaleda Kawazbeh died in unexplained circumstances during a PA police raid in the village of Se'ir, near Hebron, and eight others were injured. On 27 August, Amjad Odeh, 37, died after he was shot in the head, apparently by PA police, during a protest.¹¹⁴¹¹⁵ In April 2014, 23 year old journalism student Yaser Jodallah was arrested, at random, while walking in a funeral procession. It is not uncommon for the Palestinian security agencies to carry-out random and extra-judicial arrests, imprisoning people without charges for a long period of time.¹¹⁶

Conditions are worse, however, in Gaza. Article 24 of the Hamas Charter prohibits defamation of individuals or groups and grants the organization the right to act against any "erroneous" standards.¹¹⁷ Several organizations have even been forced to shut down because of their views. The South Society for Women's Health, an NGO providing family planning advice to women in Rafah, was forced to close for three weeks from

¹⁰⁹ Interview with I., *supra* note 2; Interview with B., *supra* note 3.

¹¹⁰ Amnesty Report, *supra* note 34.

¹¹¹ Ibid.

¹¹² "Palestinian Authority: End Violence Against Egypt Demonstrators," *Human Rights Watch*, Feb. 4, 2011, at <http://www.hrw.org/news/2011/02/03/palestinian-authority-end-violence-against-egypt-demonstrators>, accessed 2/3/2015.

¹¹³ "Palestinian Authority Must End Use of Excessive Force in Policing Protests", People's World Peace Project, Sept. 23, 2013, at <http://www.pwpp.org/palestinian-authority-must-end-use-of-excessive-force-in-policing-protests/>, accessed 2/3/2015.

¹¹⁴ Ibid.

¹¹⁵ "Rare: UN High Commissioner details abuses of PA & Hamas against Palestinians", UN Watch, Apr 2, 2014, at <http://blog.unwatch.org/index.php/2014/04/02/5471/>, accessed 2/3/2015.

¹¹⁶ Ali Younes, "Palestinian security agencies accused of human rights abuses, illegal arrests of Palestinian students", *The Arab Daily News*, Apr 19, 2014, <http://thearabdailynews.com/2014/04/19/palestinian-security-agencies-accused-human-rights-abuses-illegal-arrests-palestinian-students/>, accessed 2/3/2015.

¹¹⁷ Hamas Charter, *supra* note 29.

May 31, 2010 and was only allowed to reopen under Interior Ministry supervision. On that same day, two other women's NGOs in Rafah were also closed.¹¹⁸

On November 30, 2010, following several months of harassment by Hamas authorities, the Sharek Youth Forum, an NGO funded by the UN Development Program and operating in both the West Bank and Gaza, was issued a temporary closure notice in Gaza. As of 2014, its Gaza offices remained closed.¹¹⁹ In the spirit of Hamas policy, in May 2010, a masked gunman, who accused the UN of promoting immoral values, attacked a summer camp for children operated by the UN in the Gaza Strip.¹²⁰

FREEDOM OF THE PRESS

Article 19 of the *International Covenant on Civil and Political Rights* grants every individual the right to receive and impart information and ideas through any media, regardless of frontiers. Despite this, extensive use of arrests, interrogations, violence and threats has been made against reporters and various journalists in both the West Bank and Gaza. TV stations and newspapers are often censored and closed by authorities. In 2011, Human Rights Watch reported a significant increase in violations of reporters' rights by the Palestinian authorities.¹²¹ In 2013, Reporters without Borders ranked Palestine 146 out of 179 states, in levels of freedom of the press.¹²²

On May 6, 2010, the General Intelligence Service in Hebron detained Samir Anwar Rushdi Rashid, a Palestinian journalist from the city of Hebron who worked as a correspondent for the Voice of Al-Aqsa. According to the ICHR, the journalist was detained without being brought before any competent judicial authority regarding the nature of his journalistic work. On December 8, 2010, the PA Intelligence Service re-arrested him and confiscated his computer.¹²³

On March 26, 2012, in what later became a high profile case, the PA detained journalist Yusuf al-Shayeb without charge, following the publication of his article criticizing Palestinian government officials for corruption, spying, and nepotism. The PA detained al-Shayeb while they investigated his sources, which he refused to provide when interrogated. He was then charged under Article 191 of the Jordanian Penal Code, which still operates in the West Bank and Gaza and allows for imprisonment of up to two years for the "slandering" of government officials.

Along with intimidation and detention, the threat of assault serves as another common form of infringement on the freedom of the press. The Palestinian Center for Development and Freedom of the Press (MADA) reported 68 cases of assault on reporters by the Palestinian security forces in the West Bank and Gaza Strip during the first half of 2011.¹²⁴ On March 29, 2010, members of the PA Security Forces in Bethlehem prevented journalists from covering the demonstration called for by government forces in protest against Israeli occupation crimes. A number of journalists were attacked, beaten, insulted and cursed at by the security

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ "Gaza gunmen set fire to UN summer camp for children," *BBC News*, June 28, 2010, at <http://www.bbc.co.uk/news/10433004>.

¹²¹ Human Rights Watch Report, *supra* note 66.

¹²² Press Freedom Index 2013, *Reporters without borders*, 2013 at <http://en.rsf.org/press-freedom-index-2013,1054.html>, accessed 2/3/2015.

¹²³ ICHR Report, *supra* note 47, at 107.

¹²⁴ "113 Attacks on the Freedom of the Press in the First Half of This Year in PT," *The Palestinian Center for Development and Freedom of the Press*, July 18, 2011, Ramallah, at http://www.madacenter.org/report.php?lang=1&id=873&category_id=13&year=, accessed 2/3/2015.

forces. Mohammad Abu Ghaniyeh, a Palestinian journalist and a photographer for Reuters, Iyad Hamad, a Palestinian journalist and a photographer for the *Associated Press*, and Loay Saban, a Palestinian journalist and a photographer for *Ma'an News Agency*, were all beaten with sticks and cursed by the security forces.¹²⁵

After Palestinian voters elected Hamas into power, Hamas implemented absolute governmental control of the media by distributing Hamas-issued press cards throughout Gaza.¹²⁶ Numerous journalists and media representatives have been assaulted by the Security Service elements of Hamas's Ministry of the Interior while covering certain events. For example, Ahmad Mousa Ibrahim Abu Fayyad, a Palestinian journalist and correspondent for Al-Jazeera Net, was beaten and insulted by members of the police during his reporting for the ceremony organized by Toyour al-Janeh Band on August 4, 2010, in the sports city playground in Qizan al-Najjar in Khan Younis. Additionally, in 2012, Hamas issued a ban on Palestinian journalists from cooperating with Israeli media in any way, a move that keeps Israelis in the dark about Gazan current events and further isolates Gaza and Hamas from the rest of the world¹²⁷

In August 2013, during a rally in Ramallah in support of ousted Egyptian president Mohamed Morsi, PA security forces beat and confiscated the cameras and footage of several journalists. The security forces assaulted the journalists as they were trying to break up the rally, which the PA accused Hamas of organizing.¹²⁸ Mohamed Arouri, a journalist with Al-Quds TV, claimed that several security offers dragged him, beat him and told him that he was "unwanted" in the area for security reasons.¹²⁹

Radjaa Abu Dagga, a journalist for France's Liberation newspaper was forbidden exit for weeks from the Gaza Strip, despite holding a valid French passport. He was detained by Hamas security forces in March, 2014 and accused, without any evidence, of collaboration with either Israel or the PA—forced to confront the perilous charge that he was aiding PA President, Mahmoud Abbas.¹³⁰

In "Operation Protective Edge," several Western journalists were harassed or threatened by Hamas for reporting cases of civilian involvement in warfare.¹³¹ There were several confirmed incidents in which journalists were questioned or threatened by Hamas for, among other things, taking pictures of Hamas operatives preparing to shoot rockets from inside civilian buildings, or for even fighting in civilian clothing.¹³² These journalists were approached by Hamas operatives, bullied and thereafter had their cameras or other

¹²⁵ ICHR Report, *supra* note 47, at 111.

¹²⁶ "Hamas disbands Journalists Union amid continuing incidents," *Reporters Without Borders*, Sep. 6, 2007, at <http://en.rsf.org/palestinian-territories-hamas-disbands-journalists-union-06-09-2007,23565.html>, accessed Aug 12, 2012; "Hamas widens crackdown on journalists in Gaza," Nov. 15, 2007, at http://www.b92.net/eng/news/world-article.php?yyyy=2007&mm=11&dd=15&nav_id=45429, accessed 2/3/2015.

¹²⁷ "Hamas Bans Palestinian Journalists from Cooperating with Israeli Media" *Reporter Without Borders*, 2012, at <http://en.rsf.org/palestine-hamas-bans-palestinian-journalists-28-12-2012,43847.html>, accessed 2/3/2015.

¹²⁸ Abu Toameh, Khaled. "Palestinian journalists to protest against assaults by the PA security forces," *Jerusalem Post*, Aug. 25 2013 at <http://www.jpost.com/Middle-East/Palestinian-journalists-to-protest-against-assaults-by-PA-security-forces-324155>, accessed 2/3/2015.

¹²⁹ See *supra* note 105.

¹³⁰ "Journalist Describes Interrogation at Hamas Headquarters next to Emergency Room at Gaza's Al Shifa Hospital," *The Algemeiner*, July 24, 2014, at <http://www.algemeiner.com/2014/07/24/french-journalist-describes-interrogation-at-hamas-headquarters-next-to-emergency-room-at-gazas-al-shifa-hospital/>, accessed 2/24/2015.

¹³¹ Israel Ministry of Foreign Affairs, "Testimonies from Gaza and Hamas Intimidation of Foreign Journalists", August 11, 2014, at <http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Testimonies-from-Gaza-and-Hamas-intimidation-of-foreign-journalists.aspx>.

¹³² "Hamas threatening journalists in Gaza who expose abuse of civilians," *The Times of Israel*, July 28, 2014, at <http://www.timesofisrael.com/hamas-threatening-journalists-in-gaza-who-expose-abuse-of-civilians/#ixzz3QJiA6fuF>.

equipment confiscated.¹³³

According to the Palestinian Center for Developmental and Media Freedoms, violations of freedom of expression committed by the PA's security forces are on the rise and suppression of protests is becoming more, not less, routine.¹³⁴ When the media and other public channels for expressing opinion are restricted, self-censorship from reasonable fear of punishment replaces enjoyment of the basic human right to freedom of expression. According to a study by the Palestinian Center for Development and Media Freedoms (MADA), 80% of Palestinian journalists self-censor. Due to fear of official institutions and general public opinion, some publishers require the journalists to avoid reporting about certain subjects or to censor articles while editing. This same study shows that 68% of Palestinian journalists say that their or their colleagues' journalistic work has been banned from being published.¹³⁵ This restrictive climate also inhibits the work of human rights organizations in the West Bank and Gaza as they strive to raise awareness within the international community of local issues within those territories.

FREEDOM OF RELIGION AND THE RIGHTS OF MINORITIES

Article 18 of the *International Covenant on Civil and Political Rights* ensures freedom of religion. Though the Palestinian Basic Law names Islam as the official religion of the PA and the principles of *Sharia* serve as the main source of legislation, freedom of belief and worship are also guaranteed.

In its latest report on religious freedom in the West Bank and Gaza, the US State Department noted that the PA generally respects religious freedom in law and in practice.¹³⁶ Nonetheless, some of the *Sharia* laws, called *Hathimi*, do not allow treating members of other religions as equals or with complete tolerance.¹³⁷ These laws prohibit any non-Muslim from holding authority over a Muslim. Around 98% of the Palestinians in the West Bank and Gaza are Sunni Muslims.

Nearly 52,000 Palestinian Christians also live in the region, with only a small fraction living in Gaza.¹³⁸ Any state governed by *Sharia* is required by the principle of *Hathimi* to protect members of monotheistic religions, as long as they comply with the rules imposed on them, such as prohibition of public worship and payment of special taxes. Hebrew University Professor of International Law, Justus Weiner, reports that the PA facilitates crimes against Christians in the West Bank, considered second-class citizens under Islamic law, by neglecting to take action against perpetrators.¹³⁹ Christians hide offenses against them due to their fear of arbitrary arrest and torture, since it is highly probable that Christians will be accused of cooperation with Israel.¹⁴⁰

Restrictions on religious freedom are more severe in the Gaza Strip, where Christians "have tended toward political invisibility"¹⁴¹ under the Islamic Hamas government. Article 31 of the Hamas Charter allows

¹³³ *Id.*

¹³⁴ *Ibid.*

¹³⁵ Palestinian Center for Development and Media Freedoms, "MADA: 80% of Palestinian journalists censored themselves", Oct 16, 2014, at <http://www.madacenter.org/news.php?lang=1&id=152>, accessed 2/3/2015.

¹³⁶ US State Department Report, *supra* note 36.

¹³⁷ Interview with G., *supra* note 2.

¹³⁸ International Religious Freedom Report for 2011, *supra* note 14.

¹³⁹ Justus Weiner, "Human Rights of Christians in Palestinian Society," *Jerusalem Center of Public Affairs*, 2005, at <http://jcpa.org/christian-persecution.htm>, accessed 2/3/2015.

¹⁴⁰ Interview with G., *supra* note 2.

¹⁴¹ Jonathan Spyer, "Analysis: Cruelty and silence in Gaza," *The Jerusalem Post*, Dec. 11, 2008, at <http://www.jpost.com/MiddleEast/Article.aspx?id=124148>, accessed 2/3/2015.

Christians to live peacefully under Islamic rule.¹⁴² Because Hamas declares the *Qur'an* to be its constitution and the way of Islam to be its way of life, the rights of Christians have been limited and made conditional on Islamic laws. The number of Christians residing in the Gaza Strip is steadily decreasing.¹⁴³ At its inception, Hamas declared that one of its goals for taking control of the Gaza Strip was to put an end to secularism and heresy. Shortly after Hamas assumed power, Hamas gunmen used rockets and hand grenades to blow through the doors of the Latin Church and the adjacent Rosary Sisters School in Gaza City.¹⁴⁴ Hamas forces burned Holy Scriptures before setting both buildings on fire.

In the same year, Hamas members set fire to a bookstore belonging to the Bible Society and later kidnapped the storeowner in the middle of the night. His body was found mutilated and dumped in a nearby field. Thus, Hamas's use of threats and power became a reality for Gaza's Christian population, precipitating their widespread migration from the Gaza Strip.

WOMEN'S RIGHTS

The first article of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) defines discrimination of women as follows:

"... the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. ¹⁴⁵

Both formal and informal forms of discrimination against women shape the culture of the West Bank and Gaza. Honor killings (murders of females by members of their family or social community after they have brought shame on the group) occur each year in both places. Communal 'shame' may be experienced if a woman dresses immodestly, engages in sex outside marriage or seeks to marry or divorce based on her own will.

In 2012, the ICHR monitored 24 deaths of women, with varied background context, in both the West Bank and Gaza. Some were described as "honor killings"¹⁴⁶ In its 2012 report, the ICHR states that "[h]onor crimes are acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonor upon the family."¹⁴⁷ In the first 10 months of 2014, there were 17 known cases of honor killings in the Palestinian Territories.¹⁴⁸ These killings are carried out privately by individuals, not by the government, but Palestinian law allows those who commit honor killings to evade justice by providing them with quasi-impunity.¹⁴⁹ Defendants usually receive light sentences, with life sentences or execution almost never being considered.

¹⁴² Hamas Charter, *supra* note 29.

¹⁴³ Spyer, *supra* note 84.

¹⁴⁴ "Hamas: Call for Expanded Human Rights Jurisdiction," *Jerusalem Institute of Justice*, 2010.

¹⁴⁵ Convention on the Elimination of All Forms of Discrimination against Women, 1979

¹⁴⁶ Human Rights Watch, *Integration of the human rights of women and the gender perspective: Violence Against Women and "Honor" Crimes*, April 6, 2001. Retrieved from: <http://www.hrw.org/news/2001/04/05/item-12-integration-human-rights-women-and-gender-perspective-violence-against-women>

¹⁴⁷ The Independent Commission For Human Rights (ICHR), (2012). *The status of human rights in Palestine* (Eighteenth Annual Report). Retrieved from website: <http://www.ichr.ps/en/2/6/1041/ICHR-18th-Annual-Report.htm>

¹⁴⁸ Interview dated Oct, 20, 2014 with "O.", a representative of a women's and children's rights organization in the Territories. (Hereinafter: the "Interview with O.")

¹⁴⁹ Interview with S., *supra* note 2. Interview with B., *supra* note 3; Interview with R., *supra* note 2.

Speaking with news media website *Al-Monitor* about his time in the judiciary, Gaza appeals court judge Ziad Thabet observed that honor killing defendants were usually given three years in prison or less.¹⁵⁰

Women are also denied legal protection against domestic violence. Many women cannot defend themselves against sexual abuse by their relatives and, in order to make a complaint about sexual abuse, women under the age of 18 must go to the police station escorted by a male relative.¹⁵¹ Girls are particularly at risk—given the Middle East’s strong patriarchal societies—but solid statistics surrounding the issue are difficult to acquire due to the taboos surrounding sex and domestic violence. There are reasons to believe these cases occur in more frequent numbers than reported:

It is widely believed that acts of sexual violence against women and girls by male family members are not infrequent. It is difficult to ascertain the exact rate of occurrence given that sex is considered a social taboo and family affairs are generally not to be discussed outside the family. Subsequently, it is widely believed that many cases go unreported. However, in a survey of 1,153 adolescent girls from the West Bank conducted in 2004, 7.4 percent reported to have been sexually harassed by a brother and 4.3 percent reported to have been raped by their father.¹⁵²

To make matters worse, women do not always have freedom to choose their spouse or decide how or when to marry.¹⁵³ Islamic law makes it difficult for women to initiate divorce, though men can divorce women quite easily. This directly contradicts Article 16 (c) of CEDAW, which requires that couples have equal rights in marriage and in divorce.¹⁵⁴ It is also a violation of ICCPR article 23(3), which stipulates that “no marriage shall be entered into without the free and full consent of the intending spouses”.¹⁵⁵ For women, domestic violence constitutes grounds for divorce. In reality, these claims are exceptionally difficult to prove because the testimony of a woman is worth half the testimony of a man.¹⁵⁶

Furthermore, the Palestinian Inheritance Law is not equal; women cannot inherit as much as men.¹⁵⁷ The majority of the Palestinian population rely upon local and informal jurisdiction (village councils) whose members judge according to the rules of religion and cultural custom. Men possess superiority within these justice mechanisms.¹⁵⁸

Sexual harassment is a usual occurrence in the Palestinian territories, and it is common among all ages.¹⁵⁹ The strict division of girls and boys in the school system (most public schools in the West Bank have separated

¹⁵⁰ al-Ghoul, A. (2013, March 20). Palestinian mother speaks out about daughter’s honor killing. *Al Monitor*. Retrieved from <http://www.al-monitor.com/pulse/originals/2013/03/honor-killing-gaza.html>.

¹⁵¹ Interview with S., *supra* note 2.

¹⁵² *Child Rights Situation Analysis, Right to Protection in the occupied Palestinian territory – 2008*, Defense for Children International and Save the Children Sweden, http://www.ochaopt.org/documents/oPt_protection_DCI-Pales%20&%20SCS%20_Right%20to%20Protection_%20Dec_2008.pdf, 27, accessed 2/3/2015.

¹⁵³ Interview with R., *supra* note 2.

¹⁵⁴ Convention on the Elimination of All Forms of Discrimination against Women, 1979.

¹⁵⁵ International Covenant on Civil and Political Rights, 1976.

¹⁵⁶ UNICEF, MENA Gender Equality Profile, Occupied Palestinian Territories, 2011, retrieved from <http://www.unicef.org/gender/files/oPT-Gender-Eqaulity-Profile-2011.pdf>. Interview with S., *supra* note 2; Interview with R., *supra* note 2.

¹⁵⁷ Interview with R., *supra* note 2.

¹⁵⁸ Interview with S., *supra* note 2; Interview with B., *supra* note 3.

¹⁵⁹ Interview with O.

classrooms) has become a contributing factor to such harassment.¹⁶⁰ A police officer from the West Bank reported to a women's rights organization about the problems dealing with boys assaulting girls on their way home from school. According to the organization taking his report, this problem might stem from a lack of knowledge among boys and girls, women and men. The stigma surrounding gender issues creates stereotypes and artificial separation between men and women.¹⁶¹ Differences exist between the treatment of women in the West Bank and in the Gaza Strip, with women in the former area generally enjoying more freedoms than those living under Hamas.

Palestinian women in the West Bank generally enjoy more freedom than those living in other Arab countries as well. They do not need permission from a man to drive a car or to travel, unless they want to travel with their children.¹⁶² Moreover, five women currently serve in the Palestinian government as ministers of culture, tourism, education, social affairs and women's affairs.

Despite these advancements in the West Bank, Articles 17 and 18 of the Hamas Charter limit and define the role of Muslim women to be mothers in charge of the household who further the education of their children and their children's preparation to fulfill the religious commandments and their role in war.¹⁶³ Hamas founded the "morality police" to patrol the Gaza Strip and ensure that women dress in accordance with the conservative Muslim code when in public.

In Gaza, socializing in public with the opposite sex is forbidden, and premarital sex is punishable by imprisonment.¹⁶⁴ In 2013, Hamas's security forces in Gaza enforced strict existing laws that require women to carry ID cards to prove they are the wife, fiancé, or immediate relative of any man they are caught walking with.¹⁶⁵

CHILDREN'S RIGHTS

Protecting children's rights is a high priority of international human rights law. The *UN Convention on the Rights of the Child*, which is an "international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities,"¹⁶⁶ was adopted by the United Nations in 1989, and ratified by 194 countries in the following two decades. It became a global standard in the treatment of children. Two additional protocols amended to this convention in the year 2000 ensured that children under the age of 18 cannot be forced into armed service, prostitution, pornography, or sold into slavery.¹⁶⁷

More specifically, Palestinian Basic Law states that children shall have the right to:

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Interview with B., *supra* note 3.

¹⁶³ Hamas Charter, *supra* note 29.

¹⁶⁴ Diaa Hardid, "Hamas tries to detain woman walking with man," Associated Press, July 8, 2009, at <http://www.msnbc.msn.com/id/31793001/print/1/displaymode/1098/>, accessed Aug 8, 2012; Khaled Abu Toameh, "They accused me of laughing in public," *The Jerusalem Post*, July 4, 2009, at <http://www.jpost.com/MiddleEast/Article.aspx?id=147555>, accessed 2/3/2015.

¹⁶⁵ "Hamas cracks down on women walking with men in Gaza," *The Commentator*, April 29 2013, at http://www.thecommentator.com/article/3389/hamas_cracks_down_on_women_walking_with_men_in_gaza, accessed 2/3/2015.

¹⁶⁶ UN Convention on the Right of The Child, 1989.

¹⁶⁷ Ibid.

1. Comprehensive protection and welfare.
2. Not to be exploited for any purpose whatsoever, and not to be permitted to perform work that might damage their safety, health or education.
3. Protection from harmful and cruel treatment.
4. Not to be subjected to beating or cruel treatment by their relatives.
5. To be segregated – in cases where they are sentenced to a penalty that deprives them of their freedom – from adults, and be treated in a manner that is appropriate to their age and aims at their rehabilitation.

Despite these explicit guarantees from exploitation and violence, Palestinian authorities in Gaza and, to a lesser extent the West Bank, often fail to take the necessary steps to protect their nation's youth.

The organization *Defense for Children International* has documented 26 cases “involving the recruitment and use of children by Palestinian armed groups. The nature of involvement in armed conflict ranges from openly bearing arms and launching rockets, to performing subsidiary roles, such as scouting and cooking.”¹⁶⁸ Twenty-three out of the 26 cases documented were from within Gaza. This directly contradicts the UN Convention on the Rights of a Child protocol that stipulates children will not be recruited into armed service. The use of children in military conflict denies their right to life.

Palestinian children are also recruited by terrorist organizations with little to no repercussions from the governing authorities. Examples of child recruitment abounded during the Second Intifada of the early 2000's (also known as the Al-Aqsa Intifada). Hebrew University professor Justus Weiner reports that, during the violence, Palestinian youth ran at Israeli forces with Molotov cocktails and stones, and Palestinian snipers would shoot the children from behind with the purpose of framing the Israeli army (who are ordered not to use live ammunition on children) as child killers.¹⁶⁹

Children were encouraged during the Al-Aqsa Intifada to voluntarily participate in the violence through PA controlled television, radio, school and summer camp curricula, magazines, and newspapers.¹⁷⁰ For example:

Television broadcasts frequently included what in many Western countries would be deemed 'hate speech.' On July 2, 1998, in derogation of its commitments to combat incitement under the interim peace agreements...a Palestinian television children's show called "The Children's Club," similar in its basic structure to 'Sesame Street,' aired an episode in which young boys with raised arms chanted 'We are ready with our guns; revolution until victory; revolution until victory.' On the same show, an 8-year-old boy announced to the audience (a group of children), "I come here to say that we will throw them to the quiet sea. Occupiers, your day is near, then we will settle our account. We will settle our claims with stones and bullets." Also on the Children's Club program, on February 8, 1998, a girl who could not have been more than ten years old declared that she wanted to 'turn into a suicide warrior' in Jerusalem."¹⁷¹

In the Gaza Strip, children are exposed to incitement, intolerance, and de-legitimization of others, especially Israelis and Westerners. In April 2012, the PA TV children's program, *The Best Home*, featured a child reciting

¹⁶⁸ Defense for Children International Palestine, <http://www.dci-palestine.org/content/child-recruitment>, accessed 2/3/2015.

¹⁶⁹ Justus Reid Weiner, *The Use of Palestinian Children in the Al-Aqsa Intifada*, <http://www.jcpa.org/jl/vp441.htm>, accessed 2/3/2015.

¹⁷⁰ Ibid.

¹⁷¹ Justus Reid Weiner, *The Use of Palestinian Children in the Al-Aqsa Intifada*, <http://www.jcpa.org/jl/vp441.htm>, accessed 2/3/2015.

a poem promoting Pan-Arabism. The poem, by an Egyptian writer, included the following words: "Our enemy, Zion, is Satan with a tail."¹⁷²

In 2013, Izzedin Kassam the military wing of Hamas – introduced the Futuwa program in order to train 37,000 Palestinian youth ages 15 to 17 in preparation for a potential war with Israel.¹⁷³ This training program includes weekly lessons on how to handle weapons, rocket-propelled grenade launchers, and urban warfare. Successful students were then invited to a Hamas military camp operated by Kassam officers. In March 2013, Hamas hosted 5,000 teens at a two-week military training course that included a simulated mock attack on an IDF outpost.¹⁷⁴ On April 5, 2013, Hamas posted a video showing trainees participating in a mock battle in which an RPG was launched at an Israeli border post. Hamas officials are also preparing a military program for girls in 2014.¹⁷⁵

Hamas organizes 'summer camps' for thousands of teenagers aged 13-18, which combine social activism with Islamic radicalism, political indoctrination and paramilitary training.¹⁷⁶ Hamas announced that 100,000 children enrolled in these camps for the summer of 2013. Camp activities involve semi-military training, including the use of live ammunition and simulated kidnappings of IDF soldiers.¹⁷⁷ These camps violate Article 26(2) of the Human Rights Declaration, which advocates education for peace, tolerance and friendship between all nations and groups.

In April 2013, Hamas approved a draft law that will further impose Hamas' radical Islamic ideology on Palestinian youth. The law will enforce gender segregation at all Gaza schools for pupils above the age of nine¹⁷⁸ and forbids men from teaching at girls schools. The law will be applied to private Christian-led schools as well as UN-sponsored schools.¹⁷⁹

Palestinian media constantly extol and detail the deaths of 'martyrs' who die in the fight against Israel. During the Al-Aqsa Intifada, the PA-appointed Mufti of Jerusalem, Ikrimi Sabri, told an interviewer, "the younger the martyr—the greater I respect him."¹⁸⁰ Fatah leader Yasser Arafat also openly approved of using children in the conflict.

Radical militant indoctrination is a key component of Hamas' education. Hamas textbooks teach students that Jews do not have a connection to the land of Israel, make no mention of Jews from Arab countries, and describe Jews as criminals.¹⁸¹ This incitement to violence among young people poses numerous violations of

¹⁷² "Israel is 'Satan with a tail,' in poem recited by child on PA TV," *Palestinian Media Watch*, Apr. 22, 2012, at http://www.palwatch.org/main.aspx?fi=157&doc_id=6776, accessed 2/3/2015.

¹⁷³ "Hamas training 37,000 teens, 15-17, in urban warfare," *World Tribune*, May 17 2013 at <http://www.worldtribune.com/2013/05/17/hamas-training-37000-teens-15-17-in-urban-warfare/>, accessed 2/3/2015.

¹⁷⁴ See supra note 141.

¹⁷⁵ Ibid.

¹⁷⁶ "Hamas promotes class for high school students teaching military-type training," *Palestinian Media Watch*, at http://www.palwatch.org/main.aspx?fi=339&doc_id=10886, accessed 2/3/2015.

¹⁷⁷ Levy, Elior. "Hamas: 100,000 children to enroll in summer camps," *Ynet news*, June 18, 2013 at <http://www.ynetnews.com/articles/0,7340,L-4393995,00.html>, accessed 2/3/2015.

¹⁷⁸ "Hamas tells Gaza's boys and girls to pull up their pants and get to separate schools," *Albawaba*, April 15 2013, at <http://www.albawaba.com/editorchoice/hamas-gaza-school-484605>, accessed 2/3/2015.

¹⁷⁹ "Hamas new law promotes gender segregation in Gaza Schools," *Oman Tribune*, April 2013, at <http://www.omantribune.com/index.php?page=news&id=141216&heading=Middle%20East>, accessed 2/3/2015.

¹⁸⁰ Justus Reid Weiner, *The Use of Palestinian Children in the Al-Aqsa Intifada*, <http://www.jcpa.org/jl/vp441.htm>, Accessed 2/3/2015.

¹⁸¹ "Hamas Teaches Gaza Kids to be Terrorists – All Year Round," *IDF Blog: Hamas Terrorism 101*, July 11 2013 at

international law in regards to the rights of children. The Children's Rights Institute, headed by award winning filmmaker, lawyer, and founder of the Lawfare Project, Brooke Goldstein, holds that:

Teaching children to violently blow themselves to pieces, to become child soldiers or to act as human shields, through their school textbooks, radio, television and print media, by religious clerics, schoolteachers and by their political leaders, is the main contributor to the manufacturing of terrorism. Such practices are a most egregious form of child abuse akin to mass infanticide...

The state-sponsored or tolerated incitement, education and recruitment of children to violently kill themselves and others for any sake is a form of societal suicide that must be condemned, combated and confronted in the international arena...Turning a blind eye to the brainwashing and recruitment of millions of children to become suicide bombers and child soldiers is inexcusable and gives terrorists the green light to continue with their tactics.¹⁸²

The explicit consent of child recruitment by Palestinian religious and political leaders incited many young Palestinians during the Al-Aqsa Intifada to participate, by their own choice, in the violence. This caused some Palestinian parents to: "...view the role of the youth in the uprising as useful and honorable. A child killed in a street confrontation becomes a *shaheed* (Arabic for 'martyr') of the Palestinian cause, bringing social recognition and a cash payment to his family— \$2,000 per child killed and \$300 per child wounded."¹⁸³

In 2012, the Institute for Palestine Studies released a comprehensive report on the Gaza tunnel situation. According to the report, Hamas recruited children in great numbers—favored for their "nimble bodies" — to dig the complex network of tunnels. Yet the tunnel construction in Gaza has been responsible for an immense number of child deaths, by their own admission: "at least 160 children have been killed in the tunnels, according to Hamas officials."¹⁸⁴

Another widespread children's rights issue pertains to early marriage, since Palestinian law permits the marriage of underage girls. Consequently, approximately 50% of females married in the West Bank and Gaza are under 18.¹⁸⁵ Given the many obstacles that stand in the way of divorce procedures, these underage unions are extremely difficult to dissolve.

The Child Rights Situation Analysis conducted by *Defense for Children International* and *Save the Children* in 2008 cited a Palestinian Central Bureau of Statistics survey from 2005 that polled Palestinian mothers. They judged that 53.3% of children in the West Bank had suffered violence, with 93.3% of that total consisting of domestic violence within the family circle.¹⁸⁶ UNICEF cites a study that reports over 50% of students in West Bank schools are subjected to abuse (physical and verbal) from both teachers and other students.¹⁸⁷ Over 50%

<http://www.idfblog.com/hamas/2013/07/11/hamas-teaches-gaza-kids-to-be-terrorists-all-year-round/>, accessed 2/3/2015.

¹⁸² The Children's Rights Institute, About CRI, <http://www.childrensrightsinstitute.org/about.php>, accessed 2/3/2015.

¹⁸³ Justus Reid Weiner, *The Use of Palestinian Children in the Al-Aqsa Intifada*, <http://www.jcpa.org/jl/vp441.htm>, accessed 2/3/2015.

¹⁸⁴ Nicolas Pelham "Gaza's Tunnel Phenomenon: The Unintended Dynamics of Israel's Siege," Institute for Palestinian Studies, 2012, at <http://palestine-studies.org/jps/fulltext/42605>, accessed 2/3/2015.

¹⁸⁵ An assessment based on the Convention on the Rights of the Child, The Situation of Palestinian Children in The Occupied Palestinian Territory, Jordan, Syria and Lebanon 2010, Unicef, http://www.unicef.org/oPt/PALESTINIAN_SITAN-final.pdf, 35-36 accessed 2/3/2015.

¹⁸⁶ *Child Rights Situation Analysis, Right to Protection in the occupied Palestinian territory – 2008*, Defense for Children International and Save the Children Sweden, http://www.ochaopt.org/documents/oPt_protection_DCI-Pales%20&%20SCS%20_Right%20to%20Protection_%20Dec_2008.pdf, 25-26, accessed 2/3/2015.

¹⁸⁷ An assessment based on the Convention on the Rights of the Child, The Situation of Palestinian Children in The Occupied

of teachers believed physical beatings were an “acceptable means of punishing students and improving educational attainment,” and noted that 70% of teachers interviewed carried sticks and hoses.¹⁸⁸ The study also found:

There was a lack of communication and dialogue among teachers; parents found it acceptable that teachers beat their children; and students were not aware of regulations that should be applied in schools for their protection. Most significantly, the study revealed that school achievement was shown to have a clear link to the level of exposure to violence by school staff: the lower the achievement level of the students, the higher were the levels of different forms of violence being perpetrated against them¹⁸⁹

The right to an education is one of the core tenants of the UN Convention on the Rights of a Child. It is a right that the Palestinian Authority takes seriously and has sought to provide for Palestinian children. In certain aspects, they have succeeded. In other aspects, they struggle to provide children with a safe environment conducive to learning, and often, the actual learning is problematic.

In 2003, *Save the Children* reported that education under the Palestinian Authority was in dire straits:

Palestinian children's rights to and in education are increasingly unfulfilled. Schools have been closed and teaching days lost. Quality of education is declining. Children's academic achievements are suffering. Education remains an ambition for young Palestinians, but their opportunities for learning and preparing themselves for their future is being harmed. The progress made during the 1990s towards establishing and implementing rights for children with disabilities is being eroded. The Palestinian Authority and civil society's capacities to operate are reduced. Without strong structures of reference for these children, they are liable again to be marginalized.¹⁹⁰

Throughout the following seven years, the Palestinian Authority made huge strides in providing education for their children. Basic enrollment rates rose to 98.2% for both genders. Disabled children and those living in East Jerusalem (prevented from enrolling in school because they do not have residency permits) also reached their highest to-date enrollment rates.¹⁹¹

Disabled children are particularly at risk for discrimination and abuse. Muslim parents with a disabled child may perceive the child's disabilities as a form of divine punishment and thus a source of shame.¹⁹² These children are often isolated from society and, in many tragic cases, are sexually abused by their relatives or neighbors. The situation of disabled children in the West Bank and Gaza is rarely discussed; consequently, statistics and data on this population are not readily available.

Palestinian Territory, Jordan, Syria and Lebanon 2010, Unicef, http://www.unicef.org/oPt/PALESTINIAN_SITAN-final.pdf, 18, accessed 2/3/2015.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ *Growing up under Curfew, Safeguarding the basic rights of Palestinian Children*, Save the Children Sweden and Save the Children UK, March 2003, http://www.savethechildren.org.uk/sites/default/files/docs/growing_up_under_curfew_1.pdf, 35, accessed 2/3/2015.

¹⁹¹ The Palestinian National Authority Report on the Implementation of the Convention on the Rights of the Child in the Occupied Palestinian Territory, PNA and Save The Children, December 2010, http://www.savethechildren.org.uk/sites/default/files/docs/OPT_PNA_CRC_Report_English_1.pdf, accessed 2/3/2015.

¹⁹² Hviid, S., "Disabled Children Face a Hard Life," *This Week in Palestine*, Feb. 2011, at <http://www.thisweekinpalestine.com/details.php?id=3327&ed=191&edid=191>, accessed 2/3/2015.

Children with mental or physical handicaps are not uncommonly subjected to abuse at school, as well as severe neglect and abuse at home.¹⁹³ The Palestinian Law on the Rights of Persons with Disability/Disability Law (1999), "...provides measures to ensure that persons with disabilities have access to health, education, social, and occupational services... [But] cultural and social attitudes are negative concerning the rights of children with disabilities when compared with those of children without disabilities."¹⁹⁴ The Palestinian Authority notes that ensuring equality for all children is a priority.¹⁹⁵

The Ministry of Education and Higher Education (MOEHE), with UNRWA, bear the main responsibility for providing public education. Since the mid 1990's, enrollment at the basic level has grown by over 60%, while enrollment at the secondary level has tripled. Compulsory education was increased to age 10, rather than nine, and gender equality in the classroom was reached in 2008. Palestinian curriculum reforms were also introduced.¹⁹⁶

Nevertheless, the reality is that:

The results of international exams for evaluation of the learning skills of pupils at the basic education stage indicated that Palestinian schools ranked among the lowest in comparison to other countries. Overall, learning outcomes have plummeted in OPT. The 2007 Trends in Mathematics and Science Study (TIMSS) showed that Palestinian 8th graders scored 133 and 96 points below the global average in mathematics and science respectively; in 2003, their scores were 38 and 76 points below the global average, respectively.

The Tawjihi national matriculation exam (which could be compared to the baccalaureate) results reveal downward trends in both sciences and literature. West Bank results in literature dropped by 13 per cent and Gaza Tawjihi results in science dropped by 10 per cent between 2008 and 2009. In 2007-2008, only one in five of 16,000 Gazan sixth-graders passed standardized tests in math, science, English and Arabic, as did about half of their peers in Nablus and Jenin. These results can be partially explained by internal closures and other restrictions on movement and access, including the impact of the West Bank Barrier.¹⁹⁷

The reasons given for this decline are a lack of funds and the result of stress from the conflict. For causes "including poor learning environments, violence and limited extra-curricular activities, adolescents are prone to drop out after basic education (grade 10, roughly age 16). In 2007, almost 30 per cent did not enroll in secondary school at all. Primary reasons cited were the need to work to help support their families, early marriage, drug abuse, and political polarization."¹⁹⁸

¹⁹³ *Child Rights Situation Analysis, Right to Protection in the occupied Palestinian territory – 2008*, Defense for Children International and Save the Children Sweden, http://www.ochaopt.org/documents/oPt_protection_DCI-Pales%20&%20SCS%20_Right%20to%20Protection_%20Dec_2008.pdf, 27-28, accessed 2/3/2015.

¹⁹⁴ The Palestinian National Authority Report on the Implementation of the Convention on the Rights of the Child in the Occupied Palestinian Territory, PNA and Save The Children, December 2010, http://www.savethechildren.org.uk/sites/default/files/docs/OPT_PNA_CRC_Report_English_1.pdf, 12, accessed 2/3/2015.

¹⁹⁵ Ibid.

¹⁹⁶ An assessment based on the Convention on the Rights of the Child, The Situation of Palestinian Children in The Occupied Palestinian Territory, Jordan, Syria and Lebanon 2010, Unicef, http://www.unicef.org/oPt/PALESTINIAN_SITAN-final.pdf, 14-15, accessed 2/3/2015.

¹⁹⁷ An assessment based on the Convention on the Rights of the Child, The Situation of Palestinian Children in The Occupied Palestinian Territory, Jordan, Syria and Lebanon 2010, Unicef, http://www.unicef.org/oPt/PALESTINIAN_SITAN-final.pdf, 16-17, accessed 2/3/2015.

¹⁹⁸ An assessment based on the Convention on the Rights of the Child, The Situation of Palestinian Children in The Occupied Palestinian Territory, Jordan, Syria and Lebanon 2010, Unicef, http://www.unicef.org/oPt/PALESTINIAN_SITAN-final.pdf, 17,

In 2011, *Save the Children* argued that discriminatory Israeli policies, the continued armed conflict, and the ongoing occupation prevent children from safely accessing schools and learning in a safe environment.¹⁹⁹ Traveling to and from school is problematic: “Children and parents in Area C and in Gaza reported that their children were harassed by settlers and Israeli soldiers and that this disrupted their ability to concentrate, made them anxious, and increased thoughts of dropping out of school.”²⁰⁰

Another children’s rights issue relates to child labor: it is customary to employ Palestinian minors to work in shops, sell goods, or work on family farms.²⁰¹ Child labor in the West Bank is on the rise:

Child labor (some 15,000 cases) in the West Bank seems to have increased... Full disclosure of the numbers of children working within family and domestic settings, in hazardous work environments, and in hidden places of work and exploitation requires greater allocation of human resources within the Ministry of Labor (MOL) to support the removal of these children from these working conditions and return them to schools and safe environments...²⁰²

Furthermore, the number of children exploited sexually or economically is also increasing.²⁰³ The Palestinian Authority is aware of the problems regarding child exploitation in this area and notes that, “the prevalence of the child labor phenomenon in Palestinian society has become a cause for concern which demands greater interest and effective procedures to stop it from expanding.”²⁰⁴

Palestinian Ministry of Social Affairs (MoSA) protection officers have a bad track record with respect to protecting vulnerable children. They blame this on low salaries and insufficient funds—a problem faced by all ministries under the Palestinian Authority. Furthermore, much of the funding available comes from international aid, adversely affecting long-term sustainability. Social workers are prohibited from fully carrying out their jobs due to cultural and social mores: “In fact, besides the unwillingness among family members to report incidents of domestic violence (given the prevailing attitude that it is a private family matter), the community has also not yet accepted the authority of the protection officers from MoSA in investigating without police authorization.”²⁰⁵

accessed 2/3/2015.

¹⁹⁹ *Fact Sheet: Children’s Rights to Education in an Armed Conflict*, Save the Children, October 2011, 1, http://www.protectingeducation.org/sites/default/files/documents/save_the_children_fact_sheet_childrens_right_to_education_in_armed_conflict.pdf, accessed 2/3/2015.

²⁰⁰ The Palestinian National Authority Report on the Implementation of the Convention on the Rights of the Child in the Occupied Palestinian Territory, PNA and Save The Children, December 2010, http://www.savethechildren.org.uk/sites/default/files/docs/OPT_PNA_CRC_Report_English_1.pdf, 15, accessed 2/3/2015.

²⁰¹ Interview with B., *supra* note 3.

²⁰² The Palestinian National Authority Report on the Implementation of the Convention on the Rights of the Child in the Occupied Palestinian Territory, PNA and Save The Children, December 2010, http://www.savethechildren.org.uk/sites/default/files/docs/OPT_PNA_CRC_Report_English_1.pdf, 16, accessed 2/3/2015.

²⁰³ *Ibid.*

²⁰⁴ *Palestinian Children –Issues and Statistics Annual Report, 2011*, Palestinian Central Bureau of Statistics Child Statistics Series (No. 14), 43, http://www.pcbs.gov.ps/Portals/_PCBS/Downloads/book1740.pdf, accessed 2/3/2015.

²⁰⁵ *Child Rights Situation Analysis, Right to Protection in the occupied Palestinian territory – 2008*, Defense for Children International and Save the Children Sweden, http://www.ochaopt.org/documents/oPt_protection_DCI-Pales%20&%20SCS%20_Right%20to%20Protection_%20Dec_2008.pdf, 33, accessed 2/3/2015.

Professionally-trained staff who can advocate for child rights are in short supply. Only three police stations in the West Bank are equipped with an “internal specialized Child and Family Unit.”²⁰⁶ Evidence has surfaced that Israeli Authorities act in a discriminatory fashion towards at-risk Palestinian children, failing to allocate social services, social works, and social welfare chambers equally.²⁰⁷ In 2004, the Palestinian Child Law appointed the Ministry of Social Affairs to ensure child protection. However—

MoSA fails to provide sufficient services to many children in need of protection. In addition, with the exclusion of anecdotal good practices, other governmental duty-bearers, such as MoI and MoEHE, do not regularly cooperate and support MoSA in fulfilling its role.’ For example, police officers are not systematically trained to deal with children and the cases of violence in schools are not addressed jointly by MoSA and MoEHE... Children with special needs, girls who are married at an early age, Bedouin children, and children living in the Jordan valley are by and large neglected by both governmental and non- governmental duty-bearers and stakeholders.²⁰⁸

To summarize, Palestinian children in the West Bank and Gaza are susceptible to abuse and violence at home and in their communities because of a sub-standard domestic legal and policy framework, “internal political instability, scarcity of social and legal services provided to children, limited funds to invest in child protection both at the governmental and non-governmental level, and the lack of systematic coordination among different stakeholders.”²⁰⁹

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ *Child Rights Situation Analysis, Right to Protection in the occupied Palestinian territory – 2008*, Defense for Children International and Save the Children Sweden, http://www.ochaopt.org/documents/oPt_protection_DCI-Pales%20&%20SCS%20_Right%20to%20Protection_%20Dec_2008.pdf, 33, accessed 2/3/2015.

²⁰⁹ Ibid.

INTERNATIONAL FUNDING OF THE PALESTINIAN AUTHORITY

Upon its creation under the Oslo Accords, the Palestinian Authority faced a range of challenges, the most pressing ones concerning the Palestinian economy. Israeli closures, permits policies, and other complex restrictions on the movement of people and goods aggravated an economic situation that was already stifled by low public investment and the contraction of the regional economy.²¹⁰ As these conditions threatened the stability and survival of the newly established PA, international communities assumed the responsibility to support it.

International communities refocused and redirected funds to finance the PA's continued budgetary shortfalls, housing programs, and emergency job creation measures.²¹¹ Even so, such funding proved ineffective and only created more tension between all parties. In 1996, the President of the World Bank stated: "The sense of urgency is clear. Peace will only be assured in that area if you can get jobs for those people."²¹²

In 1997, Israel liberalized their closure policy, leading to employment growth and economic expansion in both the West Bank and Gaza.²¹³ This Israeli action supported the goal of stability within the Palestinian Authority. However, the violence of the second intifada created security risks to which the Israeli government responded with closure policies and restrictions. Over the next two years, GDP in the West Bank and Gaza shrank by 40%.²¹⁴ After Hamas won the election in Gaza in 2006, many international donors halted assistance to the PA.²¹⁵ The political rivalry between Hamas and the PA further strained financial conditions.

The World Bank estimated that in 2008 the PA would need \$1.2 billion dollars of recurring budget support in addition to \$300 million dollars in development aid.²¹⁶ The Hamas-PA political rivalry and the growing economic problems in the West Bank and Gaza prompted the EU to propose a plan to send aid directly to the Palestinians. Accordingly, the EU set up a temporary international mechanism (TIM) to channel the money for an initial three-month period (which was later extended).²¹⁷ In the beginning of 2008, the EU moved from the TIM mechanism to a program known as the *Palestino-Européen de Gestion de l'Aide Socio-Economique* mechanism or simply "PEGASE", in which direct support is transferred to the PA's Central Treasury Account in addition to the support transferred through the TIM.²¹⁸

Overall, foreign aid has been and continues to be the main driver of economic growth in the West Bank and

²¹⁰ Aid Effectiveness in the West Bank and Gaza. Japan and the World Bank. 1999.

²¹¹ "West Bank and Gaza: An Evaluation of Bank Assistance" (PDF). OECD. March 7, 2002.

[http://lnweb90.worldbank.org/oed/oeddclib.nsf/DocUNIDViewForJavaSearch/DB1BC6952F401E0785256B8A0067B726/\\$file/west_bank_and_gaza.pdf](http://lnweb90.worldbank.org/oed/oeddclib.nsf/DocUNIDViewForJavaSearch/DB1BC6952F401E0785256B8A0067B726/$file/west_bank_and_gaza.pdf), accessed 2/3/2015.

²¹² Ball, Nicole; Friedman, Jordana D.; Rossiter, Caleb S. (2000). "The Role of International Financial Institutions in Preventing and Resolving Conflict". In David Cortright. *The Process of Peace: Incentives and International Conflict Prevention*. Rowman & Littlefield. ISBN 0-8476-8557-8.

²¹³ Aid Effectiveness in the West Bank and Gaza, supra note 101.

²¹⁴ Overview: Stagnation or Revival? Israeli Disengagement and Palestinian Economic Prospects" (PDF). World Bank. Dec 1, 2004. <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WBG-Overview-e.pdf>, accessed 2/3/2015.

²¹⁵ Sayigh, Yezid (September 1 2007). "Inducing a Failed State in Palestine". *Survival* (Routledge) 49 (3): 7–39.

doi:10.1080/00396330701564786. <http://www.tandfonline.com/doi/abs/10.1080/00396330701564786#.VNI7op2UdQU>

²¹⁶ "Palestinian Economic Prospects: Aid, Access and Reform" (PDF). World Bank. September 22, 2008.

<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/AHLCSept15,08.pdf>, accessed 2/3/2015.

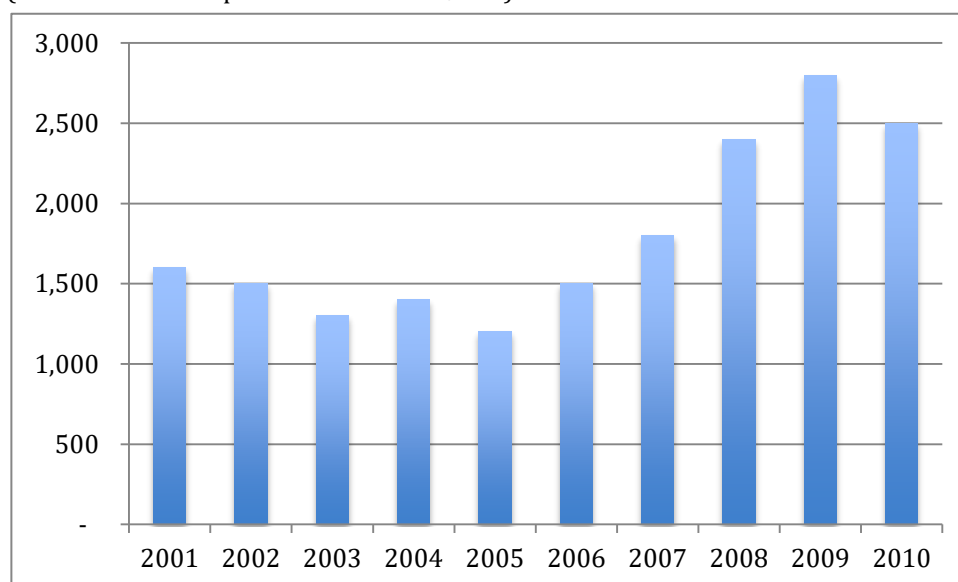
²¹⁷ "Powers Agree Palestinian Aid Plan". *Middle East* (BBC News). June 18, 2006., "Palestinians to Get Interim Aid". *Middle East* (BBC News). May 10, 2006. http://news.bbc.co.uk/2/hi/middle_east/4756407.stm, accessed 2/3/2015.

²¹⁸ "Implementing the Palestinian Reform and Development Agenda" (PDF). World Bank. May 2, 2008.

<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WorldBankAHLCTMay2,08.pdf>, accessed 2/3/2015.

Gaza,²¹⁹. The two major providers of foreign aid to the PA are the EU and the US. All foreign aid sent to the West Bank and Gaza generally falls into one of three categories: budgetary, emergency/humanitarian, and development. The three major institutional foreign aid providers are the US Agency for International Development (USAID), the European Commission's Humanitarian Aid Office (ECHO), and the United Nations Relief and Works Agency (UNRWA).

Figure 4: Total Official Humanitarian Aid to Palestinians, 2001-2010*
(Stated amounts represent millions of \$USD)



*Amounts as reported by a non-profit watchdog organization compiling data from OECD Development Assistance Committee.²²⁰

Both the EU and US must follow domestic laws governing foreign assistance and programs to facilitate transfer of the foreign aid to the PA. The following two sections of this report explains the different EU and US regulations and laws relative to the amounts of foreign aid disbursed. Taking a broader perspective, the Palestinians received approximately \$31 billion dollars in aid during the twenty-one years following the Oslo Accords. This translates into \$7,750 dollars a year per person^{221 222 223 224}; exceeding 15 times the amount per-person grant by the US Marshall Plan for the post-World War II reconstruction of Europe.^{225 226 227 228}

²¹⁹ Wainer, D., "Palestinians Lure Banks With First Sukuk Bills: Islamic Finance," December 08, 2010, Bloomberg/Business Week.

²²⁰ Global Humanitarian Assistance, <http://www.globalhumanitarianassistance.org/countryprofile/palestineopt>, accessed Nov 5, 2012.

²²¹ <http://fas.org/sgp/crs/mideast/RS22967.pdf>.

²²² https://www.swuconnect.com/insys/npoflow.v.2/_assets/pdfs/fact_sheets/Foreign%20Aid%20to%20the%20Palestinians%20Data.pdf.

²²³ http://en.wikipedia.org/wiki/Demographics_of_the_Palestinian_territories.

²²⁴ <http://data.worldbank.org/country/west-bank-gaza>.

²²⁵ <http://www.britannica.com/EBchecked/topic/366654/Marshall-Plan>.

²²⁶ <http://learningtogive.org/lessons/unit231/lesson3.html>.

²²⁷ http://www.learneurope.eu/files/1313/7509/6435/Distribution_of_MP_aid_en.pdf.

²²⁸ Clawson, Patrick, "The Palestinians' Lost Marshall Plans," originally published by *The Jerusalem Post*, Aug 9, 2002, <http://www.washingtoninstitute.org/policy-analysis/view/the-palestinians-lost-marshall-plans>, accessed 2/3/2015.

EU FUNDING OF THE PALESTINIAN AUTHORITY

The role of the EU as one of the largest donors to the Palestinian Authority dates back to the Oslo Accords. The guidelines for EU foreign aid to the PA were compiled, primarily, by the 2009 Lisbon Treaty. This serves as the EU's constitutional basis, as well as secondary legislation.²²⁹ The EU has launched many development programs in accord with the Lisbon Treaty's foundational principles: liberty, democracy, respect for human rights and the rule of law. The EU has espoused the objective of ever-increasing transparency and accountability for aid recipients, while following a 25-year policy of delivering untied aid. However, under EU law, foreign aid to foreign countries may be reduced or discontinued, wholly or partially, if such countries fail to respect international law, human rights, and the rule of law.²³⁰

The EU's mandate on foreign aid, including the granting of humanitarian assistance, is based on the 2009 Lisbon Treaty and secondary legislation. Title III of the *Treaty on the Functioning of the EU* (TFEU), as amended by the Lisbon Treaty, provides the legal framework for the EU's development policy. In particular, Article 208 of the TFEU on *Cooperation with Third Countries and Humanitarian Aid* establishes the principles on which foreign aid policy must be conducted and objectives achieved. It also delineates the capabilities of the EU and its member states, obliging them to fulfill their commitments and take into account the objectives endorsed within the UN framework and other international organizations. Specifically, Article 208 stipulates that the EU must exercise its development policy within the framework of the principles and objectives of its external actions; that "the Union's development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty;" and that the Union's development policy and that of its Members "complement and reinforce each other."²³¹ The EU continues to endorse the European Consensus on Development (ECD) adopted in 2005.²³² The ECD established the foundation for a common EU vision on development designed to deliver increased and more effective aid, and also led to the adoption of the EU Code of Conduct on Complementarity and Division of Labour in Development Policy in 2007.²³³ The EU Code of Conduct is designed to harmonize donor practices and increase cooperation and collaboration in joint co-financing programs with other donors.²³⁴

PEGASE has been charged with the mission to ensure that EU funding aligns with the Palestinian Reform and Development Plan (known as "PRDP"): governance, social development, economic and private sector development, and public infrastructure development. PEGASE serves as the main instrument that allows the EU to channel money from its budget and from the budgets of its member states into the PA's budget. This money is used to pay salaries for public workers, give money to vulnerable families, support Gaza's power plant, and finance many infrastructure projects, judicial and financial reforms, and Palestinian security, health and education systems.²³⁵

²²⁹ Consolidated Version of the Treaty on European Union, Feb. 7, 1992, 2010 OFFICIAL JOURNAL OF THE EUROPEAN UNION [O.J.] (C 83) 13.

²³⁰ "Regulation of Foreign Aid in Selected Countries 2011/2012," The Law Library of Congress, Global Legal Research Center LL File No. 2011-006054, http://www.loc.gov/law/help/foreign_aid_2011-006054_FINAL_RPT.pdf, accessed 2/3/2015.

²³¹ Article 208 of the Lisbon Treaty, <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-5-external-action-by-the-union/title-3-cooperation-with-third-countries-and-humanitarian-aid/chapter-1-development-cooperation/496-article-208.html>, accessed 2/3/2015.

²³² The European Consensus, 2006 O.J. (C 46) 1

²³³ European Union Code of Conduct on Complementarity and Division of Labour in Development Policy [EU Code of Conduct], <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0072:FIN:EN:PDF>, accessed 2/3/2015.

²³⁴ Towards a Division of Labour in European Development Co-Operation: Operational Options, June 2007, <http://www.oecd.org/dataoecd/60/23/46859449.pdf>, accessed 2/3/2015.

²³⁵ EU Assistance to the Palestinians, http://eeas.europa.eu/delegations/westbank/eu_westbank/tech_financial_cooperation/index_en.htm, accessed 2/3/2015.

In 2012, the European Union transferred €156 million for the Palestinian Authority's recurrent expenditures (salaries and pensions, vulnerable Palestinian families, arrears due by the PA to the private sector). Allocations included €11 million for private sector reconstruction, €25 million for infrastructure development in the Gaza Strip and Area C, €27.5 million for institution-building projects in support of the Palestinian Authority and a further €8 million for projects in East Jerusalem²³⁶. In 2013, the EU provided €168 million for Direct Financial Assistance to the PA through the PEGASE mechanism.²³⁷

Besides budgetary assistance, the European Union also provides humanitarian assistance to the West Bank and Gaza through the European Neighborhood and Partnership Instrument and other budgetary sources. From 2000, an annual average contribution of more than €100 million was provided to UNRWA. The European Union made annual contributions to UNRWA's General Fund of at least €80 million for the period from 2011-2013 under a 'Joint Declaration'. The European Union and its member states are, together, the largest donors to UNRWA. This funding is used to cover the UNRWA's crucial core program services in the areas of health, education and social services and is essentially used to pay salaries for teachers, doctors and social workers active in the refugee camps.²³⁸

The European Union also provides money to individual Palestinians (not necessarily through government liaisons) within a complex and often scantily overseen network of thematic programs. The European Commission's Europaid office lists the following on its website:

- The food security program allocated €11 million both in 2011 and 2012. These funds were set aside for local calls for proposals focused on specific projects under the concept of "Linking Relief, Rehabilitation and Development."
- The Partnership for Peace (€10 million for 2011-2012; €5 million proposed for 2013) and the Cross Border Cooperation program; as well as the Erasmus Mundus External Co-operation Window program, enhancing mobility and co-operation with European Union in the field of higher education and Tempus.
- Humanitarian assistance managed specifically by the European Commission's Humanitarian Office (ECHO) and support for specific projects summed up around €42 million in 2012.
- In addition to the funds mentioned above, UNRWA receives further contributions from other EU budget lines. For the period 2007-2013, a total of €24 million was allocated by the European Union under the food security thematic program to UNRWA's Social Safety Net program. To respond to soaring food prices during the period 2009-2011, UNRWA could also draw upon nearly €40 million in supplementary Food Aid from the Food Facility Program..
- In 2012, the European Union also contributed €7.5 million through its Instrument for Stability (IfS) for UNRWA's major "humanitarian"/crisis prevention and recovery initiatives in Gaza, Lebanon and Syria.
- In 2012 ECHO's contribution for humanitarian assistance to UNRWA amounted to €16.75 million.²³⁹

²³⁶ Ibid.

²³⁷ European Commission, EuropeAid. (2013). Co-operation framework. Retrieved from website: http://ec.europa.eu/europeaid/action-fiche-pegase-direct-financial-support-recurrent-expenditures-palestinian-authority-%E2%80%932013_en, accessed 2/3/2015.

²³⁸ European Commission, EuropeAid. (2013). Co-operation framework. Retrieved from website: http://ec.europa.eu/europeaid/action-fiche-pegase-direct-financial-support-recurrent-expenditures-palestinian-authority-%E2%80%932013_en, accessed 2/3/2015.

²³⁹ Ibid.

Figure 5: EU Assistance to Palestinians, 2008-2012²⁴⁰

ENP Instrument In € million on a commitment basis	2008	2009	2010	2011	2012
Rule of Law	14	12	32.3	34.95	27.45
Private Sector	0	22	11	11	11.2
Water & Sanitation	37	18	21	22	25.1
East Jerusalem	2	4.5	6	6	8
UNRWA & PEGASE Direct Financial Support	378	394.97	315.46	360.08	207.03
Thematic lines [incl. support to civil society]	26.73	16.09	16.42	39.94	28.85
Humanitarian Assistance and Food Aid [E H]	43.76	57.15	43.64	48.63	46.03
Overall EU Aid	501.5	524.7	445.8	524.9	358.5

Since the start of PEGASE, the EU has helped foster Palestinian trade by giving €432,000 to finance the Trade Corridors' Facilitation, €2.5 million to modernize Palestinian customs procedures, and €14.5m to the European-Palestinian Credit Guarantee Fund, which guarantees loans to small and medium enterprises through the Palestinian banking system. The EU has also given €10 million to support a number of agriculture-based initiatives. These include land reclamation projects to increase levels of arable land and projects to produce export-quality organic and fair trade Palestinian olive oil.²⁴¹ Finally, the EU gave €1,026 million to the UNRWA for its core programs in education, food assistance, health and relief and social service.²⁴²

Beyond assistance to trade and agriculture, PEGASE has also assisted in civil situations. Through PEGASE, the EU gives financial support to nearly 50,000 Palestinian families, over half of whom live in the Gaza Strip, and are included in its Aid to Vulnerable Palestinian Families program. These families receive regular allowances through a cash support program and a network of banks. In 2008, the EU provided €33 million (US \$44 million) in aid through this program. Furthermore, the EU contributed €95.8 million to provide fuel for the Gaza power plant, €20 million to a World Bank-led multi-donor trust fund—the Emergency Services Support Project, which assists Palestinian public services in education, health and the social sectors across the West Bank and Gaza Strip. In 2008 alone, the EU allocated €551 million, including €421 million of direct EU support and €130 million of support from EU member states. On a monthly scale, that is €21.25 million, representing more than 25% of the total wage bill of PA employees and 45% of the civilian bill.²⁴³

The EU's values of liberty, democracy, and respect for human rights and the rule of law inform its policies abroad. These values are shared among the 27 member states of the EU who have collectively adopted the Lisbon Treaty and endorsed the EDC to achieve these goals, forming a major pillar of the EU's development policy. In 2008, the EU adopted the PEGASE mechanism to help support the Palestinian Authority. Since then, they have given over €1.3 billion in support, excluding additional donations from member states and other

²⁴⁰ Taken directly from The Office of the European Union Representative in West Bank and Gaza (2013). "EU Assistance in Figures". From *The European Union and the Palestinians: Real Partners Make a Real Difference*, http://eeas.europa.eu/delegations/westbank/documents/news/2013_generalbrochure_en.pdf, accessed 2/3/2015.

²⁴¹ "Economic: Providing for Sustainable Economic Growth," EU Assistance to the Palestinians, http://eeas.europa.eu/delegations/westbank/eu_westbank/tech_financial_cooperation/index_en.htm, accessed 2/3/2015.

²⁴² "Refugees and UNRWA: Improving the Lives of Palestinian Refugees," EU Assistance to the Palestinians, http://eeas.europa.eu/delegations/westbank/eu_westbank/tech_financial_cooperation/index_en.htm, accessed 2/3/2015.

²⁴³ "Direct Financial Support to the Palestinian Authority," EU Assistance to the Palestinians, http://eeas.europa.eu/delegations/westbank/eu_westbank/tech_financial_cooperation/index_en.htm, accessed 2/3/2015.

European NGO's to UNRWA.

Nevertheless, the EU's aid to foreign governments and institutions— including the Palestinian people— is disbursed with certain restrictions. At its extraordinary meeting on September 21, 2001, the European Council declared terrorism to be a real challenge to Europe and the world and made the fight against terrorism a priority for the European Union. Among other laws prohibiting the financing of terrorist organizations, it enacted Council Regulation (EC) No 2580/2001 on December, 27, 2001, with the stated goal of “preventing and prohibiting the financing of terrorist acts, i.e. intentional offences that by their nature or context may damage a country when committed with the intention of seriously intimidating the population, destabilizing the country, etc.”²⁴⁴ It gave the European Council extensive powers to freeze bank accounts and other financial assets, deny banking access to individuals and institutions, and generally prevent funds from reaching terrorist organizations. This law also called on the EU to prevent funds from reaching *specific* organizations, including Hamas's terrorist wing and the Palestinian Islamic Jihad (PIJ).

Despite these restrictions and the corresponding need for oversight, “billions of euros in European aid to the Palestinians may have been misspent, squandered or lost to corruption, according to a damning report by the European Court of Auditors, the Luxembourg-based watchdog.”²⁴⁵ In the summer of 2013, EU investigators visited sites in Jerusalem, Gaza and the West Bank and noted “significant shortcomings” in the management of funds sent to Gaza and the West Bank. The report explained that little effort has been made by European bureaucrats to check and ensure foreign funds are used for their intended purpose, or whether they are being used at all. A December 2013 report released by the European Court of Auditors concluded that “EU direct financial support to the Palestinian Authority needs an overhaul.”²⁴⁶ This report suggested that “...there is a need for major revisions such as encouraging the PA to undertake more [civil service] reforms...[and] a way needs to be found to bring Israel to take the necessary steps to help ensure that PEGASE DFS is effective.”²⁴⁷

US FUNDING OF THE PALESTINIAN AUTHORITY

Since the establishment of limited Palestinian self-rule in the West Bank and Gaza in the mid-90s, the U.S. government has committed approximately \$5 billion in bilateral assistance to the Palestinians. Goals have included prevention of terrorism against Israel from Hamas and other militant organizations, enhanced stability, prosperity, and self-governance across the West Bank in hope of inclining Palestinians toward peaceful coexistence with Israel and a two-state solution, and the meeting of humanitarian needs.²⁴⁸

The US provides direct financial assistance to the PA, while funding other Palestinian institutions through USAID. Since 2008, US assistance to the Palestinians has averaged over \$600 million per year, including an average of \$200 million per year in direct budgetary assistance, \$100 million in security assistance to the PA, and \$200 million per year through USAID. In 2012 alone, US bilateral assistance consisted of approximately \$530 million.²⁴⁹

²⁴⁴ European Union, Council of the EU. (2001). Council regulation (ec) no 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (Council Regulation (EC) No 2580/2001). Retrieved from website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R2580:EN:NOT>.

²⁴⁵ Pancevski, B. (2013, October 13). *£1.95bn EU aid lost in Palestine*. The Sunday Times. Retrieved from http://www.thesundaytimes.co.uk/sto/news/world_news/Middle_East/article1326858.ece.

²⁴⁶ European Court of Auditors Press Release, Dec 11, 2013 at http://europa.eu/rapid/press-release_ECA-13-44_en.htm?locale=en, accessed 2/3/2015.

²⁴⁷ Ibid.

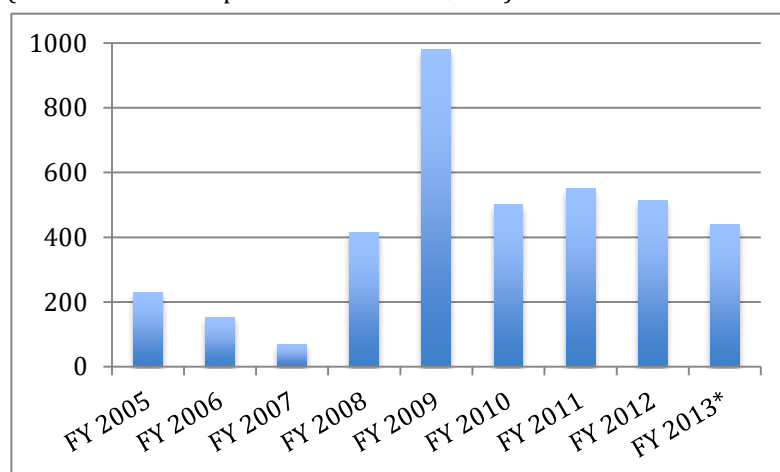
²⁴⁸ Jim Zanotti, “US Foreign Aid to the Palestinians” (2011), *Congressional Research Service*, at <http://fpc.state.gov/documents/organization/166792.pdf>, accessed 2/3/2015.

²⁴⁹ Ibid.

The total dollar amounts of annual aid from the US to the PA (see Figure 7) represent, in large part, direct funds issued to the PA through USAID. This direct assistance is intended to cover costs of government administration, education, health, economic development, and humanitarian assistance. The US also provides assistance through its International Narcotics Control and Law Enforcement (INCLE) to train, reform, and provide non-lethal equipment for PA civil security forces; to restrain militants from Hamas and other organizations advocating violent jihad; and to institute rule of law for a future Palestinian state.²⁵⁰

Figure 6: US Bilateral Assistance to Palestinian Authority, FY2005-FY2013²⁵¹

(Stated amounts represent millions of \$USD)



*Amount stated for FY2013 is suggested but not yet appropriated.

As in the EU, US legislation on foreign assistance aims to prevent the distribution of foreign aid to human rights abusers and terrorist organizations. A principal piece of legislation (the Leahy Law) prohibits the US from funding any foreign security unit against which credible evidence exists of human rights abuses committed by said unit. The Leahy Law states:

None of the funds made available by this Act may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless the Secretary determines and reports to the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice.²⁵²

The United States has passed legislation to restrict aid to a variety of governments that engage in human rights abuses. For example, under the Cuban Democracy Act, the United States Congress found that the Cuban government had "demonstrated consistent disregard for internationally accepted standards of human rights and for democratic values. It restricts the Cuban people's exercise of freedom of speech, press, assembly, and other rights recognized by the Universal Declaration of Human Rights."²⁵³ Accordingly, the United States Congress has voted to maintain sanctions on the Castro government so long as it continues, "to refuse to move toward democratization and greater respect for human rights."²⁵⁴ These sanctions include prohibiting any direct financial assistance to the Cuban government.

²⁵⁰ Ibid.

²⁵¹ Jim Zanotti, "US Foreign Aid to the Palestinians" (2011), *Congressional Research Service*, at <http://fpc.state.gov/documents/organization/166792.pdf>, accessed 2/3/2015.

²⁵² 2001 Foreign Operations Appropriations Act (Sec. 563 of P.L. 106-429).

²⁵³ 22 USC. § 69.

²⁵⁴ Ibid.

Although the United States' relationship with Cuba has recently undergone steps towards normalization, President Obama chose to renew the embargo on Cuba in 2011 under the Trading with Enemy Act (1917), stating that the Cuban government "certainly ha[s] not been aggressive enough when it comes to liberating political prisoners and giving people the opportunity to speak their minds."²⁵⁵ Likewise, in 2010, the US State Department withheld \$26 million in aid to Mexico for its failure to meet human rights standards in its military efforts against drug cartels.²⁵⁶

With regard to the PA, the United States' annual appropriations legislation regularly contains a number of conditions, limitations, and restrictions on US aid. For example, the law prohibits any US assistance to a PA government that includes Hamas as a member unless all members agree to recognize Israel's right to exist and accept previous Israel-Palestinian agreements.²⁵⁷ No aid is permitted for a future Palestinian state unless it: 1) demonstrates a firm commitment to peaceful coexistence with Israel, 2) takes appropriate measures to counter terrorism and terror financing, and 3) works with other countries in the region to establish a just, lasting, and comprehensive peace.²⁵⁸ Moreover, under the Consolidated Appropriations Act of 2010, the United States Congress prohibits funding in the West Bank and Gaza of any person who "engages in, or who has engaged in terrorist activity" or "for the purpose of recognizing or otherwise honoring individuals who commit, or have committed acts of terrorism."²⁵⁹

US Congress conditions the PA's receipt of funds on its commitment to peaceful coexistence with Israel and restriction of terror related activities. However, inadequate accountability and oversight of the PA's use of funds persists, nor is the PA required to abide by international human rights norms prior to receiving the funds. An internal audit of USAID dating back to 2007 found that the organization could not "reasonably ensure" that its money did not wind up in terrorist hands.²⁶⁰ Based on that audit, the agency's Inspector General found that USAID had funded groups with ties to terrorism on at least two occasions.

In September 2013, the PA announced it would to distribute \$15 million to 5,000 convicted terrorists as "respectable life grants" on the same day the US government promised to transfer \$148 million to the PA for its general budget.²⁶¹

Human rights organizations operating in the West Bank and Gaza have urged the international community to condition funding to the PA on human rights reforms. In February 2011, following a violent attack by the PA security forces on peaceful demonstrators at a pro-Egypt rally in Ramallah, Human Rights Watch stated: "The US and EU should suspend aid to Palestinian Authority forces unless the Palestinian authorities take appropriate measures to end such abuses and allow Palestinians to enjoy their rights to freedom of assembly and expression." The speaker, Sarah Leah Whitson, head of Human Rights Watch's Middle East and North Africa division, added that instigators of the violence should be prosecuted and that "[t]he PA should take action against the responsible police officers or the US and EU should find another use for their taxpayers'

²⁵⁵ Uri Friedman, "Obama Quietly Renews US Embargo on Cuba," *The Atlantic*, Sep. 13, 2011, at <http://www.theatlanticwire.com/global/2011/09/obama-quietly-renews-us-embargo-cuba/42430/>, accessed 2/3/2015.

²⁵⁶ Elisabeth Malkin and Randal C. Archibold, "US Withholds Millions in Mexico Antidrug Aid," *The New York Times*, Sep. 3, 2010, at <http://www.nytimes.com/2010/09/04/world/americas/04mexico.html>, accessed 2/3/2015.

²⁵⁷ *Id.* at 4.

²⁵⁸ *Id.* at 4-5.

²⁵⁹ Consolidated Appropriations Act, 2010, P.L. 111-117, Sec. 7039 (b).

²⁶⁰ Tankersley, J. (2007, November 16). Audit: Terrorists got u.s. aid. Chicago Tribune. Retrieved from http://articles.chicagotribune.com/2007-11-16/news/0711160366_1_usaid-terrorist-foreign-aid

²⁶¹ "PA Awarding \$15M to Convicted Terrorists," *Palestinian Media Watch*, Sept 9 2013, at <http://www.israelnationalnews.com/News/News.aspx/171933#.Us1GU9IW2Sq>, accessed 2/3/2015.

money."²⁶² In April 2013, the US House of Representatives circulated a resolution threatening to withdraw all US aid to the PA should Hamas takeover the West Bank.²⁶³

Despite the PA's rampant mishandling of international funds, top Palestinian officials continue to ask international donors for additional aid. In September 2013, the PA announced that Prime Minister Rami Hamdallah would ask for \$500 million from international donors during an upcoming meeting in New York.²⁶⁴ The international community must ensure the appropriate use of foreign aid before continuing aid packages to the PA.

THE PALESTINIAN AUTHORITY'S FUNDING OF TERRORISM

By contradiction to the stated values and regulations on foreign aid held by the EU and the US, evidence suggests the PA funds terror-related activities out of foreign aid.

In April 2011, the PA enacted a government resolution allocating a monthly salary to all Palestinian prisoners imprisoned in Israel for terror-related offenses. The salary goes directly to the prisoner or the prisoner's family from the day of arrest. Currently, the families of more than 5,500 Palestinian prisoners receive aid totaling over \$5,207,000 per month. The PA determines each prisoner's salary by the number of years they will spend in Israeli jails. For example, prisoners behind bars for up to three years receive a salary of \$400 per month; those with sentences of 10 to 15 years receive about \$1,690 per month; terrorists who have attacked civilians and are in prison for 15 to 20 years receive almost \$2,000 per month. The worst offenders, those who commit mass murder, earn the top wage of \$3,400 per month.²⁶⁵ Overall, prisoner salaries account for 6% of the Palestinian budget.²⁶⁶ This program is entirely subsidized by foreign aid.²⁶⁷

At a recent ceremony celebrating Israel's release of Palestinian prisoners, PA Minister of Prisoners' Affairs, Issa Karake, defended his government's use of foreign aid to reward convicted terrorists: "The Europeans want their money that comes to us to remain clean – not to go to families of those they claim to be terrorists. They need to renounce this occupation mentality. These [prisoners] are heroes...who fought so that we could live in dignity. These heroes...must live in dignity, so that we will continue to hold our heads high. We appreciate the people of the revolution and are proud of them."²⁶⁸

²⁶² "Palestinian Authority: End Violence Against Egypt Demonstrators," *Human Rights Watch*, Feb. 4, 2011, at <http://www.hrw.org/news/2011/02/03/palestinian-authority-end-violence-against-egypt-demonstrators>, accessed 2/3/2015.

²⁶³ Gur Rettig, Haviv. "House resolution warns US aid would end if Hamas takes over West Bank," *The Times of Israel*, April 24 2013, at <http://www.timesofisrael.com/house-resolution-would-stop-all-us-aid-if-hamas-takes-over-west-bank/>, accessed 2/3/2015.

²⁶⁴ "Palestinian Authority to seek \$500mn in international aid," *World Bulletin*, Sept. 21 2013, at <http://www.worldbulletin.net/?aType=haber&ArticleID=118501>, accessed 2/3/2015.

²⁶⁵ "United States Taxes Fund Arab Terrorism", ENET News Service, Apr. 28, 2014, at <http://emetnews.org/analysis/united-states-taxes-funding-terrorism.php>, accessed 2/3/2015.

²⁶⁶ Black, Edwin. "How British and American aid subsidizes Palestinian terrorism." *The Guardian*, Nov 11, 2013 at <http://www.theguardian.com/commentisfree/2013/nov/11/british-american-aid-subsidises-palestinian-terrorism> accessed 2/3/2015.

²⁶⁷ Palestinian Media Watch, PMW SPECIAL REPORT, JULY 26, 2011, at <http://palwatch.org/STORAGE/special%20reports/Funding%20terrorists%20with%20US%20money.pdf>, accessed 2/3/2015 (hereinafter, "PMW Report").

²⁶⁸ "PA minister defends giving money to terrorists," *Palestinian Media Watch*, Official Palestine Live TV, Nov 4, 2013, at http://palwatch.org/main.aspx?fi=1006&fld_id=1006&doc_id=10051.

Ziyad Abu Ein, PA Deputy Minister of Prisoners' Affairs, also emphasized the government's dedication to rewarding terrorists. He declared that even "if the financial assistance and support to the PA are stopped, the [payment of] salaries and allowances to Palestinian prisoners will not be stopped, whatever the cost may be...We will sacrifice everything for them and continue to provide for their families."²⁶⁹ The head of the Palestinian Prisoners Club— an independent Palestinian NGO with over a thousand members consisting of former Palestinian prisoners— claimed recently that €11 million of EU-donated funds were used to pay the salaries of both government workers and prisoners.²⁷⁰ The Prisoners Club ensures that these prisoner salaries remain a top priority in the PA's annual budget.²⁷¹ These payments continue to grow, with annual 'salaries' of \$40,000 per year awarded in 2014 to top-achieving criminals who have been sentenced to 30 years in an Israeli prison.²⁷²

In addition, PA officials regularly commemorate terrorists. In March 2011, the PA Minister of Prisoner Affairs visited the family of Abbas Al-Sayid, who planned and executed a suicide attack in 2002 that killed 30 Israelis. The family was given an honorary plaque.²⁷³ In honor of Mother's Day in March 2011, PA's former Prime Minister, Salam Fayyad, honored three Palestinian women who had been directly involved in terrorist bombings in Israel.²⁷⁴ In April 2011, the PA Minister of Prisoner Affairs unveiled a "Tree of Freedom for Prisoners" in Bethlehem during a ceremony honoring 73 terrorists serving life sentences in Israeli prisons.²⁷⁵

The PA's Fayyad also sponsored a children's summer camp in 2011 at which children were divided into three groups named after three renowned terrorists: Dalal Mughrabi, who led the most lethal attack in Israel's history; Salah Khalaf, who headed the Black September terror group; and Abu Ali Mustafi, the General Secretary of the Popular Front for the Liberation of Palestine.²⁷⁶ In each of these cases, the general budget support granted to the PA by the US enabled this celebration of terrorists or individuals involved in terror-related activities.

CELEBRATION OF TERRORISM IN THE PALESTINIAN AUTHORITY MEDIA

Through its official media, the PA depicts terrorism as heroism by commemorating anniversaries of terrorist attacks, the terrorists themselves, and accomplices. For example, on the anniversary of the Fatah movement in January 2011, the official PA television station celebrated terrorist Dalal Mughrabi, who was involved in the 1978 Coastal Road massacre that killed 38 Israeli civilians, including 13 children.²⁷⁷ The PA has even taken to

²⁶⁹ Black, Edwin. "How British and American aid subsidizes Palestinian terrorism." *The Guardian*, Nov 11 2013 at <http://www.theguardian.com/commentisfree/2013/nov/11/british-american-aid-subsidises-palestinian-terrorism> accessed 2/3/2015.

²⁷⁰ "PA rejects EU demand not to fund terrorists with EU money," *Palestinian Media Watch*, Dec 24, 2013 at http://www.palwatch.org/main.aspx?fi=157&doc_id=10444, accessed 2/3/2015.

²⁷¹ Black, Edwin. "How British and American aid subsidizes Palestinian terrorism." *The Guardian*, Nov 11 2013 at <http://www.theguardian.com/commentisfree/2013/nov/11/british-american-aid-subsidises-palestinian-terrorism> accessed 2/3/2015.

²⁷² "Crime Pays for Palestinian Terrorists," *The Jerusalem Post*, Mar. 18, 2014 at <http://www.jpost.com/Opinion/Op-Ed-Contributors/Crime-pays-for-Palestinian-terrorists-345779>, accessed 2/24/2015.

²⁷³ "A Palestinian 'gift' for Passover- Official Palestinian promotion of terrorism," *Israel Ministry of Foreign Affairs*, Apr. 8, 2011, at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Palestinian_incitement/Palestinian_gift_for_Passover_8-Apr-2011.htm, accessed 2/3/2015.

²⁷⁴ PMW Report, *supra* note 137, at ¶11.

²⁷⁵ "PA unveils 'Tree of Freedom' decorated with pictures of terrorists serving life sentences," *Palestinian Media Watch*, May 19, 2011 at http://palwatch.org/main.aspx?fi=157&doc_id=5035, accessed 2/3/2015.

²⁷⁶ PMW Report, *supra* note 137, at ¶10.

²⁷⁷ *Id.* at ¶17.

using sporting events to glorify terrorism. In 2013, the PA hosted several youth tournaments honoring the masterminds of the massacre, including ping pong, soccer, martial arts, and bicycle tournaments for Arab youth in Jerusalem, and a boxing competition in Jericho.²⁷⁸

In March 2011, PA TV honored Ahlam Tamimi, the woman who drove the suicide bomber to the Sbarro pizza restaurant in Jerusalem in which 15 people were murdered in 2001. The coverage included footage of a certificate Fatah awarded to Tamimi. The certificate read, "To the heroic prisoner, Ahlam Tamimi, as a token of esteem for your sacrifices and your acts of heroism..."²⁷⁹

In April 2011, the official PA daily referred to four terrorists involved in murdering 117 Israelis as "heroic."²⁸⁰ Then in May 2011, PA TV honored terrorist Fahimi Mashahr, an accomplice to a suicide bombing in Jerusalem that killed 19 Israelis. The PA television host told Mashahr's daughter that her father was "heroic."²⁸¹

In July 2013, a picture was posted on an official Fatah Facebook page that glorified the feats of five suicide bombers responsible for the deaths of 61 Israelis.²⁸²

In May 2013, Jibril Rajoub, Deputy Secretary of the Fatah Central Committee and Chairman of the PA Olympic Committee, stated that "I swear that if we had a nuke, we'd have used it this very day," while discussing "the negotiations game" with Israel during an interview on Lebanese television.²⁸³

In another case of top PA officials glorifying terrorism through the media, Sultan Abu Al-Einein, head of the Palestinian Council for NGO Affairs, declared on Palestinian television that "we salute the heroic fighter, the self-sacrificing Salam Al-Zaghal."²⁸⁴ Zaghal had murdered a 31-year-old Israeli father of five at a bus stop in the West Bank.

The use of US funds by PA officials and the PA media to celebrate acts of terrorism against Israel stands in violation of US laws governing foreign aid and reduces the funds available for the PA to "reduce poverty, improve health and education, create jobs and advance democracy." In pursuit of these goals of USAID, the United States should take action to ensure all USAID funds are appropriately invested in building up Palestinian society in accordance.

Hamas is even more blatant in its use of the media to promote violence and terrorism against Israel. In a video aired on Gaza's 'Al-Aqsa' television—a channel which is affiliated with Hamas—religious leader Wael Al-Zarad asks God to support global jihad in their efforts to "liberate Haifa, Acre, Jaffa, Safed and Lod, Ramle, Jericho and all of our cities [from] this group of cancerous bacteria."²⁸⁵

On March 1, 2013, in another video aired on the same channel, a Gazan preacher used his Friday sermon to

²⁷⁸ Miskin, Maayana. "PA uses Ping Pong to Glorify Terrorism," *Israel National News*, Oct 3 2013 at <http://www.israelnationalnews.com/News/News.aspx/172461#.UsvoJdIW2Sp>, accessed 2/3/2015.

²⁷⁹ *Id.* at ¶ 18.

²⁸⁰ *Id.* at ¶ 16.

²⁸¹ *Id.* at ¶ 19.

²⁸² "PA Awarding \$15M to Convicted Terrorists," *Palestinian Media Watch*, Sept 9 2013, at <http://www.israelnationalnews.com/News/News.aspx/171933#.Us1GU9IW2Sq>, accessed 2/3/2015.

²⁸³ "Palestinian leadership threatens to nuke Israel, continues to praise killer of father of five," JNS.org, May 8 2013 at <http://www.jns.org/news-briefs/2013/5/8/palestinian-leadership-continues-to-praise-murderer-of-israeli-father-of-five#.VOJW2ELFvOZ>, accessed 2/3/2015.

²⁸⁴ See *supra* note 240.

²⁸⁵ "Hamas-Affiliated TV Calls Israel 'Cancerous Bacteria,'" *The Algemeiner*, April 19 2013 at <http://www.algemeiner.com/2013/04/19/hamas-affiliated-tv-calls-israel-cancerous-bacteria-video/>, accessed 2/3/2015.

urge his congregation to “admit and proclaim to the entire world that what we truly seek is to remove the so-called State of Israel from existence.”²⁸⁶

In another case of utilizing the media as a tool to incite terrorism, the anchor of an Al-Aqsa TV news show used his March 2013 broadcast to encourage Gaza residents to answer calls by Hamas for a terror attack on Jerusalem.²⁸⁷

FINANCIAL CORRUPTION WITHIN THE PALESTINIAN AUTHORITY

Charges of financial corruption within the PA are frequent and involve a prodigious amount of money. After the PA ousted him in 2011, former Fatah leader Mohammad Dahlan accused Abu Mazen of financial corruption and poor character, observing that the situation in Israel and the West Bank and Gaza has enabled Mazen “to practice dictatorship against the Palestinian people, silence people and deny them their salaries.”²⁸⁸ Dahlan claimed he was forced out of the PA because he inquired into the disappearance of \$1.3 billion from the Palestinian Investment Fund—an independent investment company established in 2000 to “maximiz[e] the assets’ value for its shareholders: the Palestinian people” that, since the death of Arafat, Mazen personally oversees. Dahlan says the amount of money held in the fund shrank from \$2 billion to \$700 million for unknown reasons.²⁸⁹

For years, little action was taken to investigate cases where embezzlement of public funds was suspected. Abu Mazen established the Anti-Corruption Commission along with a special court to investigate cases of corruption and embezzlement within the PA. In 2011, two PA ministers faced accusations of corruption: Economy Minister Hassan Abu Libdeh and Agriculture Minister Ismail Daiq. On April 30, 2012, the Anti-Corruption Commission filed charges of fraud, embezzlement and money laundering against Arafat’s former economic advisor, Mohammed Rashid. Head of the Commission Rafik Natche said Rashid is suspected of taking millions of dollars out of the Palestinian Investment Fund and the PLO’s treasury, as well as setting up fake companies in his name and in the names of relatives. “The money and the companies disappeared,” Natche stated.²⁹⁰

Osama Mansour, the PA official in charge of tracking Palestinian land sales to Israelis, recently faced accusations that he was stealing money the PA entrusted to him to catch Palestinians selling land to Israelis and to buy the land back when possible. Mansour fell from a window to his death in July 2012 while in Palestinian custody. The PA claimed he committed suicide, but Mansour’s family suspects he was killed.

USAID FUNDING OF PROPAGANDIST EDUCATION

In 2007, USAID was audited following allegations that USAID funds were indirectly supporting terrorist activity. In the audit, USAID admitted that it could not “reasonably ensure” that its funding was not ending up in terrorist hands. USAID later implemented a specialized vetting process and audits to ensure that funds are not diverted to Hamas or other terrorist organizations.²⁹¹

²⁸⁶ See *supra* note 250.

²⁸⁷ *Ibid.*

²⁸⁸ Khaled Abu Toameh, “Abbas ‘Feels He’s Above the Law,’ Charges Dahlan,” *The Jerusalem Post*, July 31, 2011, at <http://www.jpost.com/MiddleEast/Article.aspx?id=231686>

²⁸⁹ *Ibid.*

²⁹⁰ “Arafat’s moneyman targeted in highest-profile Palestinian corruption probe,” *Associated Press*, May 17, 2012, at <http://www.alarabiya.net/articles/2012/05/17/214664.html>, accessed 2/3/2015.

²⁹¹ Zanolli, *supra* note 133.

Epidemiological research shows a correlation between hate language—language “used to dehumanize, demonize, stigmatize, delegitimize, or slander groups defined by their national, ethnic, religious, racial or political identity”—and acts of violence. When prejudice, bigotry, revulsion and hatred are accepted, individuals immersed in them become predisposed to violence, while bystanders to violent behaviors are desensitized and therefore do not protest against such behaviors.²⁹²

Journalist David Bedein discovered in a recent investigation that Palestinian school textbooks continue to praise the use of terrorist violence against Jews and deny the existence of the State of Israel. Eldad Pardo, board member of the Institute for Monitoring Peace and Cultural Tolerance in School Education (IMPACT-SE) and head of the organization’s Palestinian textbook research group, asserted, “there is generally a total denial of the existence of Israel – and if there is an Israeli presence it is usually extremely negative.”²⁹³ In Palestinian geography textbooks, Israel usually does not appear in maps of the Middle East; instead “Palestine” is shown to encompass Israel, the West Bank and the Gaza Strip. Jaffa is also shown on maps of “Palestine,” but Tel Aviv and other predominantly Jewish cities, such as Ramat Gan, are not displayed.²⁹⁴

In January 2014, Israeli officials documented examples of pernicious statements about Israel and Jews in official PA media and textbooks. This study found Adolf Hitler quoted on the Facebook pages of Palestinian Authority schools. One Hitler quote reads, “I could have killed all the Jews in the world, but I left a few so that you would know why I killed them.”²⁹⁵ An August 2013 edition of *Zayzafuna*, a monthly educational magazine for Palestinian children sponsored by the Palestinian National Committee for Education, Culture and Sciences with an advisory board consisting of PA officials, quoted Hitler at least ten times.²⁹⁶

IMPACT-SE also found that Palestinian textbooks include many references to martyrdom, death, jihad and refugees returning to cities and towns in Israel, while frequently demonizing Israelis and Jews. Other textbooks teach students “the rank of shahid (martyr) stands above all ranks,” and include a Muslim hadith about the destruction of Jews by Muslims on the day of the resurrection, which also appears in the Hamas charter.²⁹⁷ This reflects a larger pattern permeating Palestinian culture that reveals itself on television, in banners posted in streets, in newspapers, and in colleges and universities.

The Jerusalem Center for Genocide Prevention states, “People are not born to hate, and a culture of death is not natural to life.”²⁹⁸ Education can either embrace positive core values of life and dignity of the other, or it can reinforce negative depictions of the other.

According to Bedein, the Palestinian textbooks, and schools where they are used, have been largely financed by USAID. While USAID stated that these funds have been used to “reduce poverty, improve health and

²⁹² “Can we prevent genocide by preventing incitement?” Jerusalem Center for Genocide Prevention (JCGP), http://www.genocidewatch.org/images/Articles_Can_we_prevent_genocide_by_preventing_incitement.pdf, accessed 2/3/2015.

²⁹³ Joshua Hamerman, “Israel absent or only negative presence in PA textbooks,” *The Jerusalem Post*, Apr. 13, 2011, at http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?ID=216374&R=R1&utm_source=twitterfeed&utm_medium=twitter, accessed 2/3/2015.

²⁹⁴ *Ibid.*

²⁹⁵ Rudoren, Jodi. “Israeli Official Points to ‘Incitement’ by Palestinians,” *New York Times*, Jan. 6 2014 at <http://www.nytimes.com/2014/01/07/world/middleeast/israeli-official-points-to-incitements-by-palestinians.html?action=click&contentCollection=Middle%20East®ion=Footer&module=Recommendation&src=recg&pgty=pe=article>, accessed 2/3/2015.

²⁹⁶ See *supra* note 265

²⁹⁷ *Ibid.*

²⁹⁸ JCGP, *supra* note 150.

education, create jobs and advance democracy," a USAID official admitted to Bedein that the agency does not inspect the PA school curriculum to ensure that it complies with the terms of the US-backed peace process.²⁹⁹

²⁹⁹ Tzvi Ben Gedalyahu, "Expose: USAID Funds PA Schools for Incitement," *Arutz 7*, November 11, 2009 at <http://www.israelnationalnews.com/News/News.aspx/134354>, accessed 2/3/2015.

CONCLUSION: SPECIFIC REFORMS, SPECIFIC ACCOUNTABILITY

This report has highlighted merely a small portion of the human rights violations regularly committed by the Palestinian government authorities. These include arbitrary detention, torture and cruel punishment, violation of the freedom of expression and the freedoms of the press, violation of the freedom of religion and minority rights, and violation of the rights of women and children.

The EU and the US share a guiding principle that all nations should uphold and affirm the human rights of each individual, wherever they may reside in the world. As critical sustainers of the Palestinian Authority's leadership through the provision of vast quantities of annual aid, how much more so, then, ought the EU and the US require accountability of the PA?

Both the EU and the US not only may, but *must* fulfill their own moral responsibilities as major donors to compel the PA to demonstrate its commitment to human rights standards. To this end, the Jerusalem Institute of Justice urges the international community and human rights organizations to work together to call for the following actions:

- Protecting the disclosure by international human rights organizations working in the West Bank and Gaza of previously unknown violations by Palestinian government authorities.
- Forbidding the use of hate language and incitement in public media and educational institutions, especially when directed at vulnerable populations, such as youth; including the active removal of textbook and video content that hinders positive perceptions of the "other", based on core values of life and human dignity.
- A halt to activities that militarize and propagandize young children, or that employ them for military tasks.
- Audited allocation of a portion of PA foreign aid to educate their population about procedures for securing relief due to violation of their human rights at the local and/or international level.
- Strengthening of the independence of the judicial authority, especially from security agencies.
- Ensuring due process, including swift, unbiased and fair investigations, indictments, and trials.
- Formal, transparent PA inspections of prisons and detention centers to ensure detainees are held within a compliant legal framework, including prompt, transparent investigation of incidences of torture and inhumane treatment.
- Discontinuation of trying journalists before military courts.
- Holding of full investigations in cases of honor killing, with impartial application of justice.
- Significantly tighter mechanisms for public disclosure of money transfers among PA funds and stronger controls within the PA's financial structure to promote an atmosphere of internal accountability and to discourage corruption.
- Greater disclosure of allocation and use of USAID program funding to reduce the chance that the funds will be used to support terrorist activities.

The PA relies heavily upon foreign aid from around the world. It seeks to further establish its presence in global venues, such as the UN. For pragmatic reasons, at least, the PA must listen and will respond to the international community, especially if that community insists upon compliance with human rights agreements the PA, itself, has signed and to which it has thereby expressed commitment, as follows. Therefore:

Continued funding of the Palestinian Authority should be contingent upon carrying out specific reforms that demonstrate their long-term commitment to better human rights conditions for their own people.

The Palestinian Authority pursues, with unflagging persistence, ever greater autonomy and powers of governance over people living in geographic areas which are currently stewarded by the government of Israel. JIJ believes the quality of life of the Palestinian people will be negatively affected if the PA gains increased governing powers before civil reforms are implemented and human rights abuses reduced. We, therefore, view the reforms proposed by this report to be an immediate, urgent concern and, especially, for those who care deeply about the Palestinian people.

At a minimum, the international community should not endorse, much less actively advance, any solution to the Israeli-Palestinian conflict that does not make the human rights of *all* peoples in this region a top consideration, and, particularly, the oft-overlooked basic rights of every person to life and its derivatives. Rephrased, affirmatively:

Advancing the human rights of the Palestinian people will lay the groundwork for making the greatest possible advance towards a solution of the Israeli-Palestinian conflict.