



Palestinian Political Rights



A Review of the Palestinian Authority and Hamas
Political Right Violations in the West Bank & Gaza



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Report presented by:

Jerusalem Institute of Justice

P.O. Box 2708

Jerusalem, Israel 9102602

Phone: +972 (0)2 5375545

Fax: +972 (0)2 5370777

Email: contactus@jij.org

Web: www.jij.org

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.

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Introduction

“Under occupation we felt brute force...But we never felt the humiliation we do today, because we are oppressed by our own Authority.”¹

In this report, the Jerusalem Institute of Justice (JIJ) examines political rights and freedoms in the West Bank and Gaza under the Palestinian Authority (PA). Through comprehensive research and interviews with those living and working in the West Bank and Gaza, this report aims to illuminate the situation on the ground with regard to political rights for Palestinians in these territories.

The United Nations human rights system is made up of an International Bill of Human Rights which incorporates three specific treaties: the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) as well as their two Optional Protocols. In 1984, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), which established the vision and principles that recognize the interdependence and indivisibility of all human rights: “a vision that guarantees people civil and political freedom as well as economic and social well-being.”²

Civil and political rights are wide and far-reaching and constitute some of the most fundamental human rights, guaranteed by multiple international human rights treaties and legal instruments. Articles 20 and 21 of the Universal Declaration of Human Rights (UDHR) specifically guarantee freedom of association and electoral rights as fundamental human rights.³ While Palestine is not a recognized state, in 2012 it achieved “non-member observer state” status from the UN General Assembly and became eligible to become a signatory to several major human rights treaties.

Subsequently, in April 2014 as a result of the State of Palestine’s acceptance as an Observer State in the United Nations, President Mahmoud Abbas signed and acceded to multiple international humanitarian and human rights treaties and conventions, obliging them to uphold the rights enshrined therein.⁴ Following its accession to these treaties and conventions, the State of Palestine should submit initial reports on the

¹ Stephen P Marks, ‘Domestic Application of International Human Rights Standards: Criminal Justice and Public Security Under Palestinian Self-Government’ in ‘Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories’, Stephen Bowen (Ed.), Kluwer Law International 1997.

² United Nations Human Rights System: Treaties, Mechanisms and Documents available at: <https://www.escr-net.org/docs/i/425203> accessed on January 27, 2016.

³ UN General Assembly, Universal Declaration of Human Rights 1948, Articles 20(1) and 21(1).

⁴ Independent Commission for Human Rights, ‘The Status of Human Rights in Palestine’, 20th Annual Report 2014, available at: <http://www.ichr.ps/en/2/6> p.14

status of human rights in its territories and the procedures adopted to improve human rights.⁵ The first reports should have been submitted in May of 2015, reporting on the status of the implementation of the International Covenant on Civil and Political Rights 1976, the United Nations Convention Against Torture 1987, the International Convention on the Elimination of All Forms of Discrimination 1969, and the Convention on the Elimination of Discrimination Against Women 1979. As of today, no reports have been submitted.

The treaty with which this report is most concerned is the International Covenant on Civil and Political Rights 1976 (ICCPR). The ICCPR is a comprehensive human rights treaty that is chiefly concerned with “committing its signatories to respect and observe civil and political rights and freedoms of the people over whom the respective signatories have power”.⁶ The ICCPR contains over 50 articles, however this report will narrow its focus to a specific three: Article 21 guaranteeing the right to Freedom of Assembly, Article 22 of the right to Freedom of Association and Article 25 on Electoral Rights. This report will evaluate the extent to which these freedoms exist and are upheld in the West Bank and Gaza under the requisite Palestinian Authority in those areas.

The situation for the Palestinian people in the West Bank and Gaza is intensely political. Currently, while they are supposed to be acting as a unity government, Fatah and Hamas are in fact, warring political factions, with Hamas governing in Gaza, and Fatah in the West Bank. Article 21 and 22 of the ICCPR guarantee rights to freedom of assembly and association, yet peaceful gatherings in homes are frequently being broken up by Palestinian security forces and individuals are being detained for their political views.⁷ One source finds that “The security agencies in the West Bank and Gaza Strip lack any political references or accountability and are free to act without oversight. They have detained citizens without legal charges, engaged in torture and ill-treatment, and repressed rights and freedoms, including the freedom of opinion and expression, freedom of peaceful assembly and to form associations.”⁸ The political situation has also had grave ramifications on the system of general elections, which have not taken place within the Palestinian Authority in almost a decade.

⁵ Independent Commission for Human Rights, ‘The Status of Human Rights in Palestine’, 20th Annual Report 2014, available at: <http://www.ichr.ps/en/2/6> p.14

⁶ David Mennie, ‘The Role of the International Covenant on Civil and Political Rights in the Israeli-Palestinian Conflict: Should Israel’s Obligations Under the Covenant Extend to Gaza and the Other Occupied Palestinian Territories?’, (2013) 21 *Transnational Law and Contemporary Problems* p.525.

⁷ The Independent Commission for Human Rights, Monthly Report on the Violations of Human Rights and Freedoms in the Occupied Palestinian Territories July 2015, accessed via: <http://www.ichr.ps/en/2/5/1397/July-2015-Report-of-Human-Rights-Violations-July-2015-Report-of-Human-Rights-Violations.htm>

⁸ Independent Commission for Human Rights, ‘The Status of Human Rights in Palestine’, 20th Annual Report 2014, available at: <http://www.ichr.ps/en/2/6> p8.

Methodology

This report is written using a compilation of freely available online sources, NGO reports, reputable news outlets and first-hand accounts from those living and working in the West Bank and Gaza. The report takes into account the relevant legal standards nationally and internationally that govern the political rights of freedom of expression, association and electoral rights. To protect the safety and privacy of those involved, names have been withheld and records maintained internally by the Jerusalem Institute of Justice.

Part I: Freedom of Assembly



1. Legal Framework in the West Bank and Gaza

The legal history and current legal situation in the West Bank and Gaza is complex and multi-faceted. There is no concrete legal system, nor any form of a constitution, as it is understood by Western democracies. This is largely a result of the fact that these areas have been ruled by multiple political regimes since their separation from the Ottoman Empire in late 1917 and are now a mixture of several legal systems.⁹ When the West Bank and Gaza territories formed part of the Ottoman Empire, the existing legal system and legislation had its roots in Islamic and Continental Law. Up until 1948, and as part of the British Mandate of Palestine, the West Bank and Gaza were subject to British legislation that was largely built from its common law system, which was effective in all of the British Empire controlled territories.¹⁰ From 1948 onwards, the legal influences split between the West Bank and Gaza. While they each operated under a largely continental legal system between 1948-1967, their influences came from distinct sources. In the West Bank, the legal influences were Jordanian, and in the Gaza Strip, Egyptian.

The Independent Commission for Human Rights, a governmental organization in the West Bank, comments on the complexity of the current legal system in the West Bank and Gaza in stating: “Everyone who came to this country for a certain period of time tried to influence the legal framework, so there are consequences. There are British Mandate laws, Jordanian law in the West Bank, Israeli, PA, and in Gaza you have Egyptian, Israeli, PA and Ottoman.”¹¹

⁹ Mutaz M. Qafisheh, ‘Juvenile Justice System in Palestine: Current Situation and Reform Prospects’, (2011) 25(3), *International Journal of Law, Policy and the Family* p.365.

¹⁰ *Ibid.* p.366.

¹¹ Interview with X, Ramallah, November 25, 2015.

Despite this, there is currently a supreme law of the State of Palestine, known as Palestinian Basic Law, ratified in 2002 and amended in 2003 and 2005, which acts as a temporary constitution. The Basic Law provides a general right that Palestinians are “equal before the law and the judiciary, without distinction based upon race, sex, color, religion, political views or disability,” and that freedom of the person is a “natural right.”¹² However, its provisions under Article 4 find that Shari’a (Islamic Law) is the main source of legislation, effectively “opening the door to discriminatory provisions based on conservative interpretations of Islamic principles.”¹³ The application of laws in the West Bank and Gaza remains fragmented and inconsistent, despite attempts of the Basic Law to make them more uniform. The political situation only exacerbates this problem, as “the political division between the Palestinian Authority in the West Bank and the Hamas-led government in Gaza from 2007 to June 2014, has led to a worsening environment for the protection of fundamental freedoms in both areas.”¹⁴

1.1 International law

Under international law, each treaty within the UN’s International Bill on Human Rights guarantees the right to freedom of assembly. Firstly, and the treaty with which this report is concerned, on April 2, 2014 the State of Palestine became a signatory to the International Covenant on Civil and Political Rights 1976 (ICCPR). Its provisions for freedom of assembly are found in Article 21 of the ICCPR, which reads:

“The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”¹⁵

It should be noted that concurrent with this right, is the right to freedom of opinion and expression, enshrined in Article 19 of the ICCPR.¹⁶ UN General Comment No. 34 states that Articles 19 and 20 work in tandem as they are compatible with and complement each other, and that “[F]reedom of expression is integral to the

¹² Suheir Azzouni, “Palestine: Palestinian Authority and Israeli-Occupied Territories” in *Women’s Rights in the Middle East and North Africa: Progress Amid Resistance* ed. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010).

¹³ Suheir Azzouni, “Palestine: Palestinian Authority and Israeli-Occupied Territories” in *Women’s Rights in the Middle East and North Africa: Progress Amid Resistance* ed. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010).

¹⁴ Euro-Mediterranean Human Rights Network, Report on Freedom of Assembly 2014, Palestine. Available at http://euromedrights.org/wp-content/uploads/2014/12/FOA2014_EN_PALESTINE.pdf accessed on January 27, 2016.

¹⁵ International Covenant on Civil and Political Rights 1976, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> accessed on January 7, 2016.

¹⁶ Freedom of opinion and expression is outside the scope of this report. For more information, see JIJ’s Report on Freedom of Expression, available at: <http://jij.org/>

enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote.”¹⁷ The right to freedom of expression is outside the scope of this report, but it is understood that where mention of this right is made, it is due to it being concurrent with the right to freedom of assembly.

Aside from the ICCPR, the right to freedom of assembly is also contained within the Universal Declaration of Human Rights under Article 20 (1), which states:

“Everyone has the right to freedom of peaceful assembly and association.”

While the State of Palestine has signed onto these treaties and provisionally agreed to uphold the rights therein, their application on the ground is quite different. In an interview with L, an individual working in Ramallah, he commented on this issue: "Yes, [we have] the Palestinian Basic Law, the Universal Declaration of Human Rights, the ICCPR, and other international treaties... Legally, when it is written it is beautiful but in practice [it] is something different.”¹⁸

1.2 Domestic laws

a. West Bank

The legal framework in the West Bank is composed of a variety of legal codes and its application is often inconsistent. The annexation of the West Bank by Jordan in 1948 brought with it the laws of the Hashemite Kingdom, largely derived from the Latin/French legal school.¹⁹ Jordanian legal influences largely replaced former British influences, implementing a continental legal system rather than the previous common law system imposed by the British under British Mandate law. After the Six Day War of 1967, Israel occupied the West Bank and Gaza but did not extend their legal system to the territories (with the exception of East Jerusalem). Israel continued to enforce all pre-1967 legislation but introduced their own military orders to replace or amend existing legislation. These military orders, however, were mainly introduced in the realm of security and did not extend to such areas as the juvenile justice system, health, or education.²⁰

Two forms of domestic law in the West Bank currently govern the right to Freedom of Assembly: Palestinian Basic Law and Public Meeting Law No. 12 of 1998. Together they

¹⁷ Human Rights Committee, 102nd Session, International Covenant on Civil and Political Rights, General Comment No. 34, September 2011. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> accessed on January 20, 2016.

¹⁸ Interview with L, Ramallah, November 24, 2015.

¹⁹ Mutaz M Qafisheh, ‘Legislative Drafting in Transitional States: The Case of Palestine’, (2014) 7 *International Journal of Legislative Drafting and Law Reform* p.8.

²⁰ Independent Commission for Human Rights, ‘The Status of Human Rights in Palestine’, 20th Annual Report 2014, available at: <http://www.ichr.ps/en/2/6> p.8.

form the constitutional and legislative framework that governs this right.²¹ Previous Ottoman (Gaza) and Jordanian (West Bank) Meeting Law statutes heavily influenced the creation of Meeting Law No. 12 of 1998, which was later approved by the Palestinian Legislative Council to uphold the right to Freedom of Assembly.

Palestinian Amended Basic Law of 2003

Article 26 of Palestinian Amended Basic Law of 2003 provides as follows:

Palestinians shall have the right to participate in political life, both individually and in groups. They shall have the following rights in particular:

“To conduct private meetings without the presence of police members, and to conduct public meetings, gatherings and processions, within the limits of the law.”²²

Under the PA, individuals are required to provide permits for demonstrations, and those demonstrations that are against PA policies are often dispersed.²³ While a broad range of non-governmental organizations operate freely in the West Bank, many Hamas-affiliated civic associations have been shut down for political reasons. One source in the West Bank noted that given the intense political situation in the West Bank and Gaza, freedom of expression and assembly regarding issues such as women’s rights, do not often result in a police presence, but where politics is involved, so also, are the police and PA security forces.²⁴

Public Meetings Law No. 12 of 1998

Article 2 of Public Meetings Law No. 12 of 1998 states:

“Citizens shall have the right to hold public meetings, gatherings and processions, which shall not be infringed upon or restricted, except pursuant to the provisions of this law.”

Under this legislation, a public assembly is defined as any public gathering of 50 or more persons in a public open space (Art. 1). The statute goes on to provide restrictions to this right, such as the need for a 48-hour written notice of the assembly to be submitted to the Director of Police (Art. 3), for that notice to be signed by at least three organizers of the assembly, and for notification of the time, place, and purpose of the

²¹ The Palestinian Centre for Human Rights, (2010) Report on the Right to Freedom of Opinion and Expression and the Right to Peaceful Assembly under the Palestinian Authority (PA), available at <http://www.pchrgaza.org/files/2011/freedom%202010.pdf> accessed on October 8, 2015, p.6

²² Amended Palestinian Basic Law 2003, available at: <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law> accessed on November 13, 2015

²³ Freedom House Reports: *Freedom in the World* – West Bank. Available at <https://freedomhouse.org/report/freedom-world/2011/west-bank> accessed on October 8, 2015.

²⁴ Interview with Y, Ramallah, November 23, 2015.

meeting (Art.4). Any indoor gathering and any gathering of less than 50 people is not subject to these provisions.

Following this, in 2000, the Executive Bill of Meeting Law No. 12 was brought into force, bringing with it severe restrictions to the rights laid out in Article 2 of the Public Meetings Law. The Executive Bill issued by the late President Yasser Arafat, limited the right by giving police the right to “disperse and end any meeting upon determination [by the police] that the meeting is not following its stated purpose or objective.”²⁵ Further, the Executive Bill outlined requirements that organizers of meetings take account of the provisions set out in Presidential Decree No. 3 of 1998 concerning the “perpetuation of national unity and incitement prevention.”²⁶ Presidential Decree No. 3 contradicts the Basic Law due to its “vague, elastic and controversial provisions”²⁷ and enforcing reliance on this Decree increases the possibilities for vague or ambiguous provisions being applied to persons attempting to hold meetings or rallies. This makes it more difficult for Palestinians to exercise their right to freedom of assembly, and leaves considerable room for abuse of executive power.

b. Gaza

Egyptian rule of the Gaza Strip between 1948 and 1967 did not have the same effect on Gaza as Jordanian rule had had on the West Bank. Where Jordan imposed Jordanian laws and legal influences, Egypt administered in Gaza but retained the British-enacted legislation. Alongside this, Egypt did issue specific legislation influenced by Egyptian/French law, but it did not wholly replace the former British law.²⁸ Current statute governing the right to Freedom of Assembly is the same in Gaza as it is in the West Bank. Article 26(5) of the Palestinian Amended Basic Law and Article 2 of Public Meetings Law No. 12 of 1998 are both active but with a slightly different application in each territory given the drastically different governing body in place in each.

Under Hamas rule in Gaza, Public Meetings Law No. 12, specifically its accompanying restrictions under the Executive Bill, has become an excuse for Hamas security forces to ban, attack and forcibly disperse many assemblies and public meetings.²⁹ This is often done under the pretext that the organizer of the assembly failed to obtain permission for the assembly (despite the fact that in some cases, permission was not required in

²⁵ Report on the Right to Freedom of Opinion and Expression and the Right to Peaceful Assembly under the Palestinian Authority (PA), available at <http://www.pchrgaza.org/files/2011/freedom%202010.pdf> accessed on October 8, 2015, p. 7

²⁶ Ibid.

²⁷ Ibid.

²⁸ Mutaz M Qafisheh, ‘Legislative Drafting in Transitional States: The Case of Palestine’, (2014) 7 *International Journal of Legislative Drafting and Law Reform* p.367.

²⁹ Tariq Mukhimer, ‘Hamas Rule in Gaza: Human Rights Under Constraint’ (2012, Palgrave Pilot) p.77-83

the first place³⁰), and Hamas security forces thus disperse many assemblies using excessive force, regardless of whether permission was obtained.

In an interview with L, a human rights organization in Ramallah, our source commented on the situation in Gaza under Hamas: “[T]hey don’t respect the human rights. They act out of courts. Hamas is not a government, it’s not their duty to implement the laws. In the last war, during two days twenty people were killed, executed, accused of collaborating with Israel. So it is not responsible for anything. It is not their duty. For example, Hamas has used death penalty without decrees. They just issue statements.”³¹ As Hamas are not responsible, they simply “decide and implement.”³² This is a blatant violation of the rights provided by both the Palestinian Basic Law and Public Meetings Law No. 12, which guarantee freedom from government interference with the right to public assembly subject to certain conditions, and complete freedom from interference with private assembly.



2. Separation of Powers

One of the foremost issues with guaranteeing these rights is the need for a separation of powers between the executive, legislative, and judiciary in the West Bank and Gaza. This is already a challenge, given the conflicting powers governing these territories and the lack of a functioning legislative council and judiciary. The requirement of a separation of powers is stipulated in Article 2 of the Basic Law, which reads: “The people are the source of power, which shall be exercised through the legislative, executive and judicial authorities, based upon the principle of separation of powers and in the manner set forth in this Basic Law.”

The executive and the legislature, which should act as independent branches, are actually combined, the power of which lies in the hands of PA President Mahmoud Abbas. After the elections in 2007, the Palestinian Legislative Council ceased its work, leaving the authority entirely in Abbas’ hands, which is contrary to the provisions set out in the Basic Law.³³ A journalist for Al-Monitor described the Palestinian Legislative Council as having “slipped into a deathly coma, from which it has yet to emerge.”³⁴ The Independent Commission for Human Rights in Ramallah also made reference to this problem: “So with the absence of a functioning legislative council the President has the

³⁰ This relates to issues of private assembly, where permission from the authorities is not required. In practice, the security forces and the PA often disregard this distinction between requirements for public and private assemblies.

³¹ Interview with L, Ramallah, November 24, 2015.

³² Interview with L, Ramallah, November 24, 2015.

³³ Interview with C, Ramallah, November 23, 2015.

³⁴ Ahmad Melhem, ‘Palestine’s crippled legislative authority’, Al-Monitor, June 3, 2015. Available at <http://www.al-monitor.com/pulse/en/originals/2015/06/palestine-gaza-legislative-council-totalitarian-regime-law43.html#> accessed on February 2, 2016.

legislative power. But we don't like this situation because the President is not supposed to be a legislator; that should be Parliament. So this is the dilemma. You want the President to issue laws while at the same time you don't want him to practice this."³⁵

The implementation of international treaties is ensured through the modification (or drafting anew) of national, domestic legislation, which the state can implement through the judiciary. In the State of Palestine, however, the lack of separation between the branches of government results in a lack of national laws giving effect to international treaties, and thus there is no civilian access to the rights and remedies afforded by international law. In the State of Palestine, international law is given effect through the publishing of new laws through the *Official Gazette*. Several sources in the West Bank commented that the lack of publication of laws in the *Official Gazette* is one of the primary reasons for the right to Freedom of Assembly not being ensured by the local authority and government. One source commented, "...[O]ur judges, they don't tend to accept the direct implementation of international treaties, so it would need not only to be published in the *Official Gazette*, [but] national laws need to be changed in order to become consistent with the treaties. And the problem here is that we don't have a functioning legislative council."³⁶ When asked about why these international treaties have not yet been implemented on the ground, another source said: "They did not publish. If they want to forbid torture or respect human rights, they must publish all agreements [in the *Official Gazette*] and consider them as the law."³⁷ The same source went on to say that without publication of laws in the *Official Gazette*, the provisions of international treaties are "useless."

The separation of powers is paramount in upholding the rule of law – a principle pursued by the State of Palestine under their Basic Law. In its introduction, the Basic Law states that it shall "ensure the rule of law, [and] strike a balance between the executive, legislative and judicial branches." In practice, this is not the case.



3. Private Assemblies

a. Facilitation of Private Assemblies by the Authorities

As noted above, the right to Freedom of Assembly is, in theory, protected under Palestinian Law, and in conformity with international legal standards. That said, the legislation also notes a subtle but important difference between public and private assemblies – a difference often overlooked by the authorities and security forces.

³⁵ Interview with X, Ramallah, November 25, 2015.

³⁶ Interview with X, Ramallah, November 25, 2015.

³⁷ Interview with C, Ramallah, November 23, 2015.

Under Article 26(5) of the Palestinian Basic Law, a clear distinction is made that there are rights to conduct *private* meetings without the interference of police members.

This was confirmed during an interview with X, a human rights organization in the West Bank, who made comments differentiating between the actions of security forces against public and private assemblies. X claimed that “[In the West Bank] in general meetings indoors are fine, I don’t remember any cases where it is not. It’s not a phenomenon. In Gaza it happens a lot. The security forces prevent activities, even if it takes place inside closed doors. Although according to the Palestinian Law on general assembly activities that take place indoor do not require any kind of permission or permission of any authority. But in practice sometimes this is violated.”³⁸ Another source made similar comments stating that when it comes to secret meetings, generally speaking, there is no interference in the West Bank. However, in Gaza, the situation is different, and Hamas commonly breaks up private meetings in homes, violating the Basic Law on a regular basis.³⁹

b. Use of Force and Detention in Private Assemblies

According to the Palestinian Centre for Human Rights, on March 8, 2014 security forces in Gaza dispersed a memorial service for three martyrs organized by the Fatah movement and the Al-Qassas family. According to victims and eyewitnesses, police arrived at the house of the Al-Qassas family and ordered the participants to end the service and evacuate the home. This caused disagreements, which erupted into violence and forcible dispersal of the participants by security forces that beat them, and opened fire in the air. Many participants were arrested, questioned, and kept in detention.⁴⁰

When the situation was investigated, the family was told that the security forces became involved, as they had not obtained a permit to hold the assembly. However, PCHR argued that a permit was not required in this case as Public Meetings Law No. 12 of 1998 does not cover assemblies held in private, closed places, and thus the family were under no legal obligation to notify the authorities of their *private* assembly. Additionally, Palestinian Basic Law Article 26(5) provides the right to hold private meetings *without the presence of police*. There is a clear distinction between the legal requirements for holding private assemblies versus public assemblies – in this case, a distinction ignored by security forces. Their actions were in blatant violation of both the Public Meetings Law and Palestinian Basic Law, thereby infringing this right of the Palestinian people.

³⁸ Interview with X, Ramallah, November 25, 2015.

³⁹ Interview with Q, Bethlehem, July 12, 2015.

⁴⁰ Palestinian Center for Human Rights, *PCHR Denounces Forcible Dispersal of Private Assembly and Arrest of Number of Participants in Khan Yunis*. March 9, 2014. Available at <http://pchrgaza.org/en/?p=1680> accessed on January 11, 2016.

Further, PCHR reported on the incident that along with dispersing the assembly, security forces raided the premises in which the assembly was taking place. This is a violation not only of the right to private assembly, but also of Article 17 of the Palestinian Basic Law which provides that homes “shall not be inviolable; they may not be subject to surveillance, broken into or searched, except in accordance with a valid judicial order and in accordance with the provisions of the law.”⁴¹ As noted above, the actions of the security forces were in violation of the right to hold private assemblies, and as such would also be in violation of Article 17 on the same grounds.



4. Public Assemblies

a. Facilitation of Public Assemblies by the Authorities

The right to hold public assemblies is clearly guaranteed under Article 26 of the Basic Law and under Public Meetings Law. As noted above, there are far more restrictions regarding public meetings, such as notifying the authorities and obtaining permission for the assembly. Security forces often claim their dispersals of public meetings, peaceful assemblies, and protests are justified by these restrictions, despite security forces’ use of excessive force in these situations.

On occasion, the assembly is banned before it can even take place. A source in Bethlehem commented on one such situation, stating: “Last week, the families of Palestinians killed by the Palestinian Authority tried to organize a strike in downtown Ramallah, actually outside the offices of ICRC, the Red Cross. And who banned them? The Palestinian Authority. Why? Because they were [planning] to say some things against the Palestinian Authority.”⁴² This illustrates that where the assembly covers an issue related to politics, the authorities are likely to become involved, either in the form of security forces or through banning the assembly altogether. This is again, a blatant violation of the right to assembly as guaranteed by both the Basic Law and the Public Meetings Law.

b. Use of Force and Detention in Public Assemblies

The use of disproportionate force to break up peaceful assemblies in the West Bank and Gaza is shockingly commonplace. According to Human Rights Watch, in March 2011 several pro-national-unity assemblies were organized and the Hamas authority, in an attempt to improve their image in Gaza, appeared to join the initiative with Hamas senior political leader Ismail Haniyeh stating that he had ordered the Ministry of Interior to “provide a suitable atmosphere in the field to make the popular protests

⁴¹ Article 17 of the Amended Basic Law 2003 is available at <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law> accessed on January 21, 2016.

⁴² Interview with Q, Bethlehem, July 12, 2015.

successful.”⁴³ In reality this had been a political stunt in order for Hamas to take over the assemblies, and when the organizers of the assemblies made the last-minute decision to change the location of the assembly, Hamas forces appeared at the new location, and violently attacked assembly members by beating them with sticks, clubs, and batons. One assembly member reported to Human Rights Watch, that five personnel in plainclothes attacked him and started to beat his head and hand with batons.⁴⁴

In January 2014, PA policemen forcefully broke up a protest of Palestinian youths north of Ramallah with between 60-70 protestors being wounded in the head and legs after policemen had attacked them with clubs and stun grenades.⁴⁵

Human Rights Watch also reported in May 2015, that at Birzeit University, Palestinian security forces, in the wake of the annual student council vote had arrested 25 students. The vote is held annually and pits Fatah-supporting students against those backing the rival Islamist Hamas movement. Sarah Leah Whitson, HRW’s Middle East and North Africa Director stated that Palestinians “should be able to express critical political opinions without being arrested or beaten.”⁴⁶

An interview with a prominent human rights organization in the West Bank confirmed these reports stating that in general, “assemblies that take place outdoors, sometimes the security forces try to prohibit it, and sometimes they deal with violence when they prohibit it. We have documented cases of security forces using a disproportionate power to disperse peaceful assembly.”⁴⁷



5. Accountability of Security Forces

Accountability in ensuring the right to Freedom of Assembly is essential. Enacting and enforcing legislation to guard this right is important, but so too, is the right to redress when that right is violated. This is undoubtedly a role for the authorities. In 2012, peaceful protests were held in Ramallah in objection to a planned meeting between the PA President Mahmoud Abbas and Israeli politician Shaul Mofaz. Police and PA security forces in plainclothes arrived at the location of the meeting and violently broke up the protest. Amnesty International reported on this incident stating that following this use of excessive force, Abbas took the surprising step of ordering an investigation

⁴³ Tariq Mukhimer, ‘Hamas Rule in Gaza: Human Rights Under Constraint’ (2012, Palgrave Pilot) p.80

⁴⁴ Tariq Mukhimer, ‘Hamas Rule in Gaza: Human Rights Under Constraint’ (2012, Palgrave Pilot) p.82

⁴⁵ Khaled Abu Toameh, *Palestinian Authority Human Rights Violations Ignored by Media*, West. February 11, 2014. Available at <http://www.gatestoneinstitute.org/4169/palestinian-authority-human-rights-violations> accessed on January 10, 2016.

⁴⁶ International Middle East Media Centre, *Human Rights Watch: Palestinian Students Abused over Politics by PA Forces*, May 8, 2015. Available at <http://www.imemc.org/article/71509> accessed on January 10, 2016.

⁴⁷ Interview with X, Ramallah, November 25, 2015.

by establishing an Independent Investigative Committee to look into the incident and hold accountable those responsible for the violence. Additionally, an investigation took place within the Interior Ministry. Officials from the Ministry of Interior informed Amnesty that disciplinary measures were reportedly taken against as many as 12 officers, though none were actually prosecuted.⁴⁸

The investigative report on the incident found that the use of force against the demonstrators was unjustified, and called for officials to be questioned. It also stated that all of the officers who mistreated and detained protesters should also be transferred to judicial authorities for questioning and disciplinary action.⁴⁹ Human Rights Watch reported on the incident stating that on July 24, the committee presented the report to Abbas and called for the prosecution of the head of the Ramallah police station, the chief of police for the Ramallah area, and the head of the criminal investigations unit, among others.⁵⁰ This appears to be a step in the right direction for accountability; however, Human Rights Watch also states that although the PA claims to have carried out disciplinary action against these officials, they have not published their names or any other verifiable information about the cases as proof of disciplinary action or prosecution.

More recently, on September 19, 2015, Palestinian Authority security forces used excessive force to disperse a rally taking place in the Azza Refugee Camp in Bethlehem. A video posted on social media documented the violence from security forces against a teenager, resulting in outcry from Bethlehem residents.⁵¹ Following the release of the video on social media, further protests broke out in Bethlehem in the Duheisha Refugee Camp – specifically protesting the use of excessive force by PA security forces. Ironically, the protest was then dispersed by a plainclothes PA security officer who opened fire on the crowd using a handgun.⁵² The Ma'an News Agency reported on the incident, stating that several Palestinian officials did recognize the actions of the security forces to have been against Palestinian laws and “completely unacceptable.”⁵³

⁴⁸ “‘Shut up we are the police’: Use of Excessive Force by Palestinian Authority in the Occupied West Bank”, Amnesty International Briefing. Available at <https://www.amnesty.ch/de/laender/naher-osten-nordafrika/israel-besetzte-gebiete/dok/2013/autonomiebehoerde-muss-polizeigewalt-stoppen/bericht-shut-up-we-are-the-police-pdf-30-s>. Accessed on February 1, 2016.

⁴⁹ ‘Inquiry: Police chiefs should be questioned over Ramallah violence’, Ma’an News Agency, July 26, 2012. Available at <http://www.maannews.com/Content.aspx?id=507861> accessed on January 31, 2016.

⁵⁰ ‘Palestinian Authority: Hold Police Accountable for Ramallah Beatings’, Human Rights Watch, August 27, 2012. Available at <https://www.hrw.org/news/2012/08/27/palestinian-authority-hold-police-accountable-ramallah-beatings> accessed on February 2, 2016.

⁵¹ The video showed PA security forces violently attacking a teenage boy and beating him with clubs. It is available here: <https://www.youtube.com/watch?v=-uOpsGV6isc&feature=youtu.be> accessed on February 2, 2016.

⁵² ‘PA forces disperse Palestinian protest in Bethlehem’, Ma’an News Agency, September 20, 2015. Available at <http://www.maannews.com/Content.aspx?id=767733> accessed on February 3, 2016.

⁵³ ‘Excessive Force used by PA security during rally under investigation’, Ma’an News Agency, September 19, 2015. Available at <https://www.maannews.com/Content.aspx?id=767702> accessed on February 1, 2016.

The article notes that Palestinian Prime Minister Rami Hamdallah reportedly appointed a committee to investigate the events, and that a delegation representing the national security forces was to arrive in Bethlehem on the Saturday following the event to apologize to the teenager and his family. An article posted five days later, reported that nine PA officers received disciplinary action, including five high-ranking officers, who were sent to disciplinary jail for three months and have been forbidden promotion for one year.⁵⁴

While this is an encouraging step forward for accountability, this disciplinary action came only after a video on social media went viral, causing civilians to take to the streets to protest specifically against the actions of security forces. Despite PA officials speaking out about the incident, protests against the PA and President Abbas continued for several days.⁵⁵ These being some of the only reported occasions where disciplinary action was actually taken against officials, calls into question the motivations behind the PA's actions. It is indicative of a temporary solution to pacify the people rather than of a desire for long-term change and an effort to uphold the right to Freedom of Assembly.

Part II: Freedom of Association



6. Legal Framework

6.1 International law

The rights to freedom of assembly and association are often linked and used interchangeably; however, there is a difference in the situations to which this right applies. Assembly rights, as noted above, refer to rights to have public and private meetings, demonstrations, and protests. Association, on the other hand, refers more specifically to individual and workers' rights through the freedom to form associations or organizations, trade unions, non-governmental organizations, and charities, among others.

The right to freedom of association is guaranteed under both the ICCPR and the UDHR. Article 20(1) of the UDHR is stated above, and will thus not be repeated here. Under the ICCPR, freedom of association is protected under Article 22, which reads:

⁵⁴ '9 PA officers receive disciplinary action for excessive use of force', Ma'an News Agency, September 20, 2016. Available at <http://www.maannews.com/Content.aspx?id=767726> accessed on February 3, 2016. And 'PA officers disciplined over video of them beating Palestinians', The Times of Israel, September 20, 2015. Available at <http://www.timesofisrael.com/pa-officers-disciplined-after-video-of-beating-emerges/> accessed on February 2, 2016.

⁵⁵ 'PA security forces suppress peaceful Palestinian march in Ramallah', Ma'an News Agency, December 30, 2015. Available at <http://www.maannews.com/Content.aspx?id=769583> accessed on February 3, 2016.

“1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interest of national safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.”

Article 22 provides protection for workers’ rights through the freedom to join trade unions that will, in turn, represent their labor rights. This right, along with the rights to freedom of expression and assembly are considered essential to the functioning of a pluralistic and democratic society⁵⁶ - a society that the State of Palestine, by virtue of their accession to the ICCPR, is claiming to build and ensure.

6.2 Domestic laws

The domestic laws on association and trade unions in the West Bank and Gaza are complex, incomplete and inconsistently applied. Having been under the control of multiple legal influences dating back to British Mandate time, the legislation today governing this right is a result of several jurisdictions. Trade union work is said specifically to have emerged in Palestine in the context of the sufferings of Palestinian workers and society during the era of the British mandate.⁵⁷

The West Bank and Gaza, under the split governance of Hamas and Fatah respectively, have distinct legislation governing the right to freedom of association. It is worth prefacing this by saying that the laws governing this right in the context of work are divided, and the numbers of those who could even exercise this right is alarmingly low as only the employed can join trade unions. Statistics from the Palestinian Central Bureau of Statistics show that in the first quarter of 2015, the unemployment rate for

⁵⁶ Universal Declaration of Human Rights Articles 19 and 20. Available at <http://www.un.org/en/universal-declaration-human-rights/> accessed on December 2, 2015.

⁵⁷ “Report about the regional meeting on: Independent trade unions in the Arab countries: situation, challenges and future perspectives” Democracy and Workers Rights Center, Imad Tmeizi on Palestine, September 2014. Available at <http://www.dwrc.org/files/Report%20on%20indpt%20trade%20unions%20meeting%20-%20Amman.pdf> accessed on February 7, 2016.

Palestinians was high, at 16.3% in the West Bank, and 41.6% in the Gaza Strip.⁵⁸ This section of the report aims to illuminate a right that is often less vocalized than other civil and political rights of a similar nature. The rate of unemployment could itself be a reason why this right is less documented, but that by no means renders it less important.

West Bank and Gaza

As noted above, the Palestinian Basic Law of 2003 currently serves as the temporary constitution for the State of Palestine, under which Article 26 provides the general right to freedom of association. It reads:

“Palestinians shall have the right to participate in political life, both individually and in groups. They shall have the following rights in particular:

To form, establish and join political parties in accordance with the law.

To form and establish unions, associations, societies, clubs and popular institutions in accordance with the law.

Under this article, individuals have the right and freedom to form associations, groups or clubs, whether political in nature or otherwise. However, freedoms are more regularly violated when they involve any form of political discussion. Issues such as women’s rights or LGBT issues are simply not as much “under fire” from the authorities as those involving politics.⁵⁹ This does not mean, however, that women and the LGBT community enjoy full political and social freedoms. Quite the opposite, in fact, but rather than the publicly contentious nature of politics, women’s and LGBT rights are considered socially taboo. This is not to belittle the seriousness of the need for these freedoms, but currently they lie outside the scope of this report.⁶⁰ A source in Ramallah commented that Hamas and Fatah are sensitive to any kind of criticism towards them, whether it is an opinion posted online, a political demonstration, or the activities of a political association.⁶¹ This “sensitivity” often results in an infringement of these rights to associate through police violence in demonstrations, rallies, and political arrests.

In the West Bank and Gaza, the Law of Charitable Associations and Community Organizations No. 1 of 2000 (hereafter Associations Law), and the Palestinian Labor Law No. 7 of 2000 (hereafter Labor Law) also govern the right of association. This right can best be assessed when split into two categories: Charitable Associations and Community Organizations, and Trade Unions.

⁵⁸ Press Release on the Results of the Labour Force Survey: January-March 2015. Available at: <http://www.pcbs.gov.ps/site/512/default.aspx?tabID=512&lang=en&ItemID=1397&mid=3172&wversion=Staging> accessed on February 18, 2016.

⁵⁹ Interview with Y, Ramallah, November 23, 2015.

⁶⁰ For more information on these freedoms in the West Bank and Gaza, see JIJ Reports on Freedom of Expression and Women’s Rights. Available at: www.jij.org

⁶¹ Interview with O, Ramallah, June 12, 2015.



8. Charitable Associations and Community Organizations

The Associations Law of 2000 defines an association as any institution with “independent legal personality, established upon an agreement concluded among no less than seven persons to achieve legitimate objectives of public concern, without aiming at attaining financial profits to be shared among the members or achieving any personal benefits.”⁶² More generally, under the Associations Law, Palestinian citizens have the right to “practice social, cultural, professional, and scientific activity in all freedom, including the right to establish and run Associations and Community Organizations.”⁶³ This includes the rights to form associations such as non-governmental organizations (NGOs) and charities. The legal framework itself appears to place few restrictions on the exercise of this right; however, the political division between Fatah and Hamas has led to significant government interference with operations in the NGO sector of Palestinian society.⁶⁴

Formation of Associations

In the West Bank and Gaza, while the current Associations Law guarantees freedom of association, a series of administrative directives and decisions undermine its effective implementation.⁶⁵ Firstly, under the Associations Law any and all associations must be registered with the authorities in order to carry out their activities. The law outlines a procedural role for the Ministry of Interior and stipulates, under Article 4, that groups do not need authorities’ permission to establish an association. The registration process is designed simply to notify the authorities that a charitable association exists and that it will begin its work once it has acquired legal status.⁶⁶ Further, under Article 4(3) of the Associations Law, a charitable association will be considered legal and registered with no response from the authorities, after a period of two months from submitting the application.

At first glance, the laws themselves in this area place almost no limitations on the exercise of the right to freedom of association for Palestinians, yet there exists

⁶² Article 2 of the Law of Charitable Associations and Community Organizations No 1 of 2000. Full text available at <http://www.icnl.org/research/monitor/palestine.html> accessed on January 25, 2016.

⁶³ Full PDF of the Law of Charitable Associations and Community Organisations No 1 of 2000 available at: <http://www.icnl.org/research/monitor/palestine.html> accessed on January 25, 2016.

⁶⁴ ‘Reports on Human Rights Practices: Palestinian Territories’, 2013. Available at: <http://www.jewishvirtuallibrary.org/jsource/anti-semitism/hropt.html> accessed on January 25, 2016.

⁶⁵ ‘Freedom of Association in Palestine’ SOLIDAR, June 19th 2015, Available at: http://www.solidar.org/IMG/pdf/2015_06_19_enp_up_close-2.pdf accessed on February 4, 2016.

⁶⁶ ‘Freedom of Association in the Euro-Mediterranean Region: Palestinian Territories – Monitoring Report 2009’, Euro-Mediterranean Human Rights Network. Available at: http://www.ohchr.org/Documents/Issues/FAssociation/Responses2012/other_contributions/World-EMHRN2009_Annual_Report_on_Free_Association.pdf accessed on January 25, 2016.

significant government interference in practice. Through administrative directives, the registration system has become a licensing process. The Ministry of Interior has repeatedly reformed the registration requirements for associations and as of 2015, there are 15 elements required when submitting an application for registration.⁶⁷ Additionally, by virtue of Presidential Decree 16 of 2007, the Minister of Interior has the authority to review all licensing certificates, and as per Ministry of Interior Decision No. 20 of 2007, associations in the West Bank must refer to security agencies for the completion of registration procedures.⁶⁸ This is said to contravene the provisions set out in the Associations Law as it gives undue power to the Ministry of Interior. In Gaza, all registered associations are subject to security checks and must present a clean criminal record and a certificate of good conduct for all of their members.

Funding and Finance

There are legal barriers to activity within organizations through government control of funding. While associations are free to seek funding both nationally and internationally, by virtue of Article 6 of the Associations Law, the Ministry of Interior "may scrutinize the activity of any association or organization to ascertain that its funds have been spent for the purposes for which they were allocated." This may allow inappropriate government intervention in NGO activities. Additionally, although the law provides that associations are allowed to set up branches in both the West Bank and Gaza, it has been reported that authorities in the West Bank may refuse to allow the opening of organizations registered in Gaza, and vice-versa.⁶⁹ Their activities are again interrupted when it comes to opening a bank account out of which to operate. The Monetary Authority has issued instructions to banks in the West Bank and Gaza, that associations must present certification of legal status to the bank when wishing to open an account. This leaves many associations and organizations unable to open an account as many, despite having legal status by virtue of the two-month time lapse under Article 4(3), have not received any formal documentation from the Ministry of Interior to prove this. For this reason, from a legal standpoint, many associations have legal status, but are prevented from carrying out their activities due to restrictive administrative decisions (or complete lack of decision) from the Ministry of Interior.

Dissolution of Associations

According to the International Centre for Not-For-Profit Law, in 2011 Mahmoud Abbas added an amendment to the law in this area granting the Ministry of Interior unlimited

⁶⁷ These 15 requirements can be found at: <http://www.icnl.org/research/monitor/palestine.html> accessed on January 25, 2016.

⁶⁸ 'NGO Law Monitor: Palestine' The International Centre for Not-For-Profit Law, September 19, 2015. Available at <http://www.icnl.org/research/monitor/palestine.html> accessed on January 25, 2016.

⁶⁹ 'NGO Law Monitor: Palestine' The International Centre for Not-For-Profit Law, September 19, 2015. Available at <http://www.icnl.org/research/monitor/palestine.html> accessed on January 25, 2016.

discretion and authority to transfer the funds and assets of an organization into the Palestinian National Authority public treasury when that organization is dissolved.⁷⁰ Prior to this amendment, organizations could decide for themselves where their funds and assets should be given in the event of dissolution, and any funds not allocated, would automatically be given to a Palestinian organization with similar objectives. This amendment clearly opens the door to corruption and misuse of funds by government officials with political motivations for dissolution.⁷¹ It hinders the operations of civil society through placing the power for operations in the hands of the authorities.

This form of government control is excessive, which is especially noticeable when looking at freedom of association in other nations such as the US and the UK. In the UK, in order to register an association, individuals must submit formal documentation to the UK Charity Commission. This often includes what is referred to as a 'governing document,' detailing information on how a charity will be run, its purpose, how trustees will be appointed, payments to trustees and information on how to close the charity.⁷² If an association dissolves for any reason, the responsibility for the remaining funds is left to the trustees who must then use the remaining assets for the purposes of the association, or transfer them to an association with similar objectives.⁷³ At no point, does the money return to a government body, as it does in the West Bank and Gaza.

The system in the United States is similar with regards to setting up an association or dissolving its assets when the association closes down. In setting up an association, there is no need for government involvement or approval, and individuals must simply provide a short description of the organization, its mission, name and the name of an agent when registering. Most states in the US have a general incorporation statute that makes the registration process a routine matter, and thus no government official or approval from the legislature is needed.⁷⁴ If an organization dissolves in the US, like the UK, the assets can be transferred to an organization with similar objectives.⁷⁵ Again, this process neither requires nor invites government interference or control.

The right to freedom of association is clearly enshrined in the Basic Law and many other domestic legal instruments. Its system of operation as an individual right,

⁷⁰ 'NGO Law Monitor: Palestine' The International Centre for Not-For-Profit Law, September 19, 2015. Available at <http://www.icnl.org/research/monitor/palestine.html> accessed on January 25, 2016

⁷¹ 'NGO Law Monitor: Palestine' The International Centre for Not-For-Profit Law, September 19, 2015. Available at <http://www.icnl.org/research/monitor/palestine.html> accessed on January 25, 2016

⁷² 'Set up a Charity', Available at: <https://www.gov.uk/setting-up-charity/governing-document> accessed on March 28, 2016.

⁷³ 'How to close a charity', Available at <https://www.gov.uk/guidance/how-to-close-a-charity> accessed on March 28, 2016.

⁷⁴ 'Fact Sheet: NGO's in the United States' Available at: <http://www.humanrights.gov/fact-sheet-non-governmental-organizations-ngos-in-the-united-states.html> accessed on March 28, 2016.

⁷⁵ 'How to dissolve the assets of a non-profit', Available at: <http://smallbusiness.chron.com/dissolve-assets-non-profit-22856.html> accessed on March 28, 2016.

however, is fragmented and has become significantly controlled by the authorities. While it is understood that this right is not absolute and is subject to conditions, by virtue of control of the Ministry of Interior, associations are becoming increasingly subject to more regulations, making their practical functions almost impossible. The establishment of associations, their funding and occasionally dissolution, is almost entirely in the hands of the authorities. This is concerning given the issue of the separation of powers (or lack thereof), a principle the Palestinian Authority claim to uphold. This right for Palestinians thus becomes not a free civil society right, but one that is politically controlled and restrictively exercised.



9. Trade Unions

The second element of freedom of association covers workers' rights, and their freedom to join trade unions and thus have their rights and views as workers, protected. Along with the Basic Law and the ICCPR's provisions, on a domestic level, Palestinian Labor Law No. 7 of 2000 (which replaced the former Jordanian Labor Law No. 2 of 1965) governs this area under Article 5:

*"In pursuance of this law laborers and employees have the right to establish labor organizations (right of association) on a professional basis in order to protect their interests and defend their rights."*⁷⁶

The organization SOLIDAR, which works to advance social justice in Europe and worldwide, commented on some challenges facing trade unions in the West Bank, stating that its problems stem from the lack of a functioning Palestinian Legislative Council. This in turn, results in a lack of accountability for government actions and decisions.⁷⁷

In November 2014, the Palestinian Authority declared the Union of Public Employees (representing 40,000 public sector employees) in Ramallah to be illegal and closed its office following a series of protests and strikes called for by the Union. The PA also arrested and detained the president Bassam Zakarneh, and vice-president Moein Ansawi of the Union, in violation of law and legal procedures.⁷⁸ In line with the declaration that the Union was an "illegal entity with no legal existence," the PA banned all Union activities. This effectively deprives public sector employees in the West Bank from being represented by their elected representatives and from

⁷⁶ Full version of the Palestinian Labor Law No. 7 of 2000 available at <http://www.sawa.ps/en/Views/PageView.aspx?pid=600> accessed on February 8, 2016.

⁷⁷ 'Freedom of Association in Palestine' SOLIDAR, June 19th 2015, Available at: http://www.solidar.org/IMG/pdf/2015_06_19_enp_up_close-2.pdf accessed on February 4, 2016.

⁷⁸ 'Freedom of Association in Palestine' SOLIDAR, June 19th 2015, Available at: http://www.solidar.org/IMG/pdf/2015_06_19_enp_up_close-2.pdf accessed on February 4, 2016.

undertaking any collective bargaining or any form of dialogue with their employer, the Palestinian government, in order to safeguard their rights and interests.⁷⁹

The removal of dialogue between the PA and Palestinians serves to worsen access to the right of association. Unions should act as a bridge between Palestinian society and the government, encouraging communication and providing a forum by which Palestinian voices on work-related issues can be heard. The PA's closure of one of the largest Unions in the West Bank serves to gravely violate the right to freedom of association, a right they have obligated themselves to uphold by virtue of their accession to the ICCPR.

Available information on trade union activity in Gaza is unfortunately low, although in 2013, Hamas introduced a new Trade Unions Law No. 2 of 2013 to replace the former Egyptian Law for Trade Unions, which had been in place since 1954. Progressive though this might seem, the new Trade Unions Law has been said to place severe restrictions on the exercise of the freedom of association and assembly.⁸⁰ Unfortunately, the specifics of this cannot be commented upon, as the Trade Unions Law itself is only available in Arabic.

Part III: Electoral Rights

The first thing to note in this section of the report is that no general elections have taken place in the Palestinian Authority since 2006. This general election followed the presidential election of Mahmoud Abbas in 2005, one year earlier. The laws in place governing this area stipulate that general and presidential elections should be held every four years⁸¹ – the reality is quite different.



10. Legal Framework

10.1 International law

Electoral rights are prominent in multiple instruments of international law. The right to take part in political life is enshrined in the Universal Declaration of Human Rights under Article 21 stating that the will of the people shall be expressed in periodic and

⁷⁹ 'PALESTINE: Democracy and Workers Rights Centre Press Release', International Federation of Workers' Education Associations, January 13, 2015. Available at: <http://www.ifwea.org/?x637150=821011> accessed on February 20, 2016.

⁸⁰ 'Country Report: PALESTINE. Monitoring of the ENP Progress Report 2014', SOLIDAR. Available at: http://www.solidar.org/IMG/pdf/palestine_2014_final.pdf accessed on January 23, 2016.

⁸¹ 2005 Amendment to the Basic Law, Articles 36 and 47 – Clause 3. Available at: <http://www.palestinianbasiclaw.org/basic-law/2005-amendments> accessed on February 29, 2016.

genuine elections.⁸² General Comment No. 25 on the ICCPR also states that electoral rights ensure that individuals may freely determine their political status and choose the form of their government or constitution. By extension, Article 25 of the ICCPR itself allows that individuals may participate in those processes that constitute the conduct of public affairs.⁸³ These public affairs are described in the Covenant as follows:

Article 25 of the ICCPR reads:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

To take part in the conduct of public affairs, directly or through freely chosen representatives;

To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

To have access, on general terms of equality, to public service in his country.”

10.2 Domestic laws

Various forms of legislation govern elections in the Palestinian Authority under domestic law. Firstly, the overarching right to vote and run as a candidate in elections is found in the 2003 Basic Law under Article 26 (3) and (4), which details that individuals shall have the right:

“To vote, to nominate candidates and to run as candidates for election, in order to have representatives elected through universal suffrage in accordance with the law.

To hold public office and positions, in accordance with the principle of equal opportunities.”

The Basic Law, as mentioned above, operates as a temporary constitution for the State of Palestine. Elections law in the West Bank and Gaza is not only covered by the Basic Law, but also by separate general and local election laws passed either by the Palestinian Legislative Council or by decree of President Mahmoud Abbas. The electoral system in the State of Palestine has shifted over several years, from one of a simple majority system to a system of proportional representation. This has occurred through legislative shifts of general and local elections law statute and presidential decrees.

⁸² To read Article 21 of the UDHR in full, see: http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

⁸³ General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), Office of the High Commissioner for Human Rights, 57th Session of the Human Rights Committee July 12, 1996. Available at: <http://www.refworld.org/docid/453883fc22.html> accessed on January 27, 2016.



11. General Elections

The first general election was held in 1996 and was governed by Election Law No. 13 of 1995. It was the first election to be held in accordance with Election Law No. 13 and adopted a simple majority system. This meant that the West Bank and Gaza Strip were divided into 16 districts, out of which 88 Palestinian Legislative Council members were elected. The process operates whereby on their ballot, a voter chooses a number of candidates equal to or less than the number of seats allocated to the district and the winning candidates are those who obtain the highest number of valid votes.⁸⁴

Elections Law No. 9 of 2005, issued by the PLC, later replaced Law No. 13 and implemented a mixed electoral system of a majority system and a system of proportional representation. Under this elections law, 50% of the total PLC seats were elected under a majority system, and the other 50% by proportional representation. The system of proportional representation functions through nominations carried out nationwide by closed lists. The names of electoral lists appear on the ballot but the candidate names do not, and the voter must choose one list. Candidates are ordered sequentially according to priority and each list must have a minimum of seven names, including one woman in the first three positions, another woman in the next four positions and at least one woman among each of the subsequent five positions.⁸⁵

In 2007, Law No. 9 was annulled and replaced by Election Law by Decree of 2007, issued as a presidential decree by Mahmoud Abbas. It replaced the mixed electoral system with a system of full proportional representation.

The first Presidential Election took place in 2005 whereby Mahmoud Abbas was elected President of the Palestinian Authority, replacing former President Yasser Arafat who died on November 11, 2004. One year later, the legislative elections took place to elect members of the Palestinian Legislative Council. The Change for Reform Party (Hamas) had a resounding victory, winning 74 of the 132 seats over the ruling Fatah party, who won only 45 seats. Following this, President Abbas unilaterally changed the voting system by decree (Election Law by Decree of 2007) to one of full proportional representation, and it is the system that stands today.

⁸⁴ *'The Electoral Systems for General Elections'*, Central Elections Commission – Palestine. Available at: <https://www.elections.ps/tabid/740/language/en-US/Default.aspx> accessed on February 29, 2016.

⁸⁵ *'The Electoral Systems for General Elections'*, Central Elections Commission – Palestine. Available at: <https://www.elections.ps/tabid/740/language/en-US/Default.aspx> accessed on February 29, 2016.



12. Local Elections

Local elections in the West Bank and Gaza have a rather tumultuous history. The first local elections took place in 2004-2005 under Local Elections Law No. 10 of 2005 and were carried out in five rounds of elections. The next elections were due to take place in 2010, but were postponed indefinitely after the Central Elections Commission (CEC) for Palestine (the body governing elections) announced that it would not be possible to conduct voter registration in Gaza and Jerusalem.⁸⁶ Another attempt at local elections was made in February 2011 when the Cabinet issued a statement that local elections would be held nationwide on July 9, 2011. The elections were to be held in 295 localities in the West Bank and 25 in the Gaza Strip, but were again postponed due to the political split between Hamas and Fatah and the closure of CEC's offices in Gaza. In May, the Cabinet decided to postpone the elections until October in order to enable the Commission to re-open its offices in Gaza, and on August 22 the President issued a decree postponing the elections further until there were suitable conditions for elections to be carried out in all governorates.⁸⁷

In July 2012, the Cabinet issued another statement that local elections would be held in all West Bank districts on October 20, 2012. Voting took place in only 92 of the region's 353 municipalities and did not take place in the Gaza Strip. Hamas refused to participate in the local elections and even urged its supporters to boycott the polls. The Palestinian Authority claimed the elections represented a victory for the Palestinian people, and one spokesperson for the PA mentioned that she hoped that elections would also take place in the Gaza Strip as an individual's right to vote "cannot be held hostage to any political faction."⁸⁸

Unfortunately, this is exactly what is happening. One source, Q, in the West Bank commented on the effect of the political division between Hamas and Fatah for the younger generation. He noted that universities in the West Bank were being used to get young people off of the streets and out of unemployment, but also to influence them to affiliate themselves with a political party. S stated that: "This way, these people are wrapped up in their college, and there they quickly realize they need to belong to a political party to get scholarship, to pass exams and to ensure a future job.

⁸⁶ Palestinian Local Elections 2010 Briefing Paper, June 9, 2010. Available at: http://ifes.org/sites/default/files/palestinian_local_elections_062010_0.pdf accessed on March 6, 2016. p.3

⁸⁷ 'The Electoral Systems for General Elections', Central Elections Commission – Palestine. Available at: <https://www.elections.ps/tabid/740/language/en-US/Default.aspx> accessed on February 29, 2016.

⁸⁸ 'Fatah claims Palestinian election victory' The Telegraph, October 21, 2012. Available at: <http://www.telegraph.co.uk/news/worldnews/middleeast/palestinianauthority/9624112/Fatah-claims-Palestinian-election-victory.html> accessed on March 6, 2016.

So the university becomes the place where the people become assimilated to one of the political part[ies].”⁸⁹

In a wave of protests in Gaza in 2011, Arab youth from universities made clear their desire for elections: “Our demands are simple: immediate unity and reconciliation among the main Palestinian political factions as well as free and fair elections.” One individual went on to say: “We lived through the first Intifada, second Intifada and the Israeli occupation. Is that not enough for us to justly demand to live a better life and secure a better future? We, the youth, are more than 65% of the population here. We should have the right to decide that our political division must end and soon. We demand the right to free and fair elections observed by international monitors.”⁹⁰



13. Hamas-Fatah Political Divide

The disruptions to local and general elections in the West Bank and Gaza is undoubtedly a result of the Hamas-Fatah political divide. Following Hamas’ victory in the 2006 legislative elections, tensions rose between the two factions with Hamas later seizing control of the Gaza Strip in 2007. There have been multiple attempts at reconciliation between the two parties but the relationship has continued to deteriorate.

There have been five separate agreements made between the parties, beginning in February 2007, to the most recent in April 2014.⁹¹ Ismail Haniyeh, the senior political leader of Hamas along with a representative of the Palestinian Liberation Organization, signed the agreement, known as the Gaza Agreement, on April 23, 2014. The purpose of the Gaza Agreement was that of reconciliation between the parties, the formation of a national unity government and with the responsibility of organizing general elections to take place in December. As a result of the Gaza Agreement, the new consensus government was sworn in on June 2, 2014. According to an article from *Al-Monitor*, one of the main duties of the new government was “to prepare for elections, since the Legislative Council was disabled and no longer had any powers. Furthermore, the institutions of the West Bank and the Gaza Strip were to be unified under the

⁸⁹ Interview with S. Ramallah, November 24, 2015.

⁹⁰ Adam Horowitz, Mondoweiss: The War of Ideas in the Middle East, ‘Gaza ‘March 15’ protests continue amidst ongoing crackdown’ March 18, 2011. Available at <http://mondoweiss.net/2011/03/gaza-march-15-protests-continue-amidst-ongoing-crackdown> accessed on January 12, 2016

⁹¹ ‘Another Hamas-Fatah Reconciliation Agreement Bites the Dust’, *Al-Monitor*, March 1, 2016. Available at: <http://www.al-monitor.com/pulse/originals/2016/03/palestinian-reconciliation-hamas-fatah-qatar-meeting.html#> accessed on March 6, 2016.

supervision of a government based on popular support.”⁹² Unfortunately, while the intentions may have been there, by the end of 2014, there had still been no progress towards holding or setting a date for Palestinian general elections in order to renew the legitimacy of the Palestinian leaders and the legislative council.⁹³

The PLC convened in 27 legal sessions between their election in 2006 until June 2007, when their activities were disrupted due to clashes between Hamas and Fatah, and the former’s seizure of control in the Gaza Strip. Since then, the PLC have failed to pass any legislation, despite the agreements signed between the two parties and the domestic law governing elections; and the relationship between Fatah and Hamas continues to deteriorate.⁹⁴

The political divide is one of the, if not the most, prominent reason that both presidential and legislative elections have not taken place in almost ten years. When interviewed by JIJ, and asked why no elections have taken place since 2006, an organization in Ramallah responded: “Both sides can’t agree on elections. Why? Because they don’t trust each other. How can you hold free and democratic elections in the West Bank when the Palestinian Authority is arresting Hamas people? And how can you hold free and fair elections in Gaza when Hamas is cracking down on the Fatah people? How are they gonna run the election and what guarantees does each party have that it’s going to be a fair and free election?”⁹⁵

Others have cited similar reasoning for the lack of free and fair elections in the West Bank and Gaza – the need for agreement between Hamas and Fatah. One stated: “As a practical matter, they cannot hold elections unless other government agencies cooperate – such as the security services and the Ministry of Education. Control of these in the West Bank falls under one government and in the Gaza Strip under another government. In other words, Hamas and Fatah would have to agree.”⁹⁶

Q, a representative of an NGO in Ramallah, claimed that Palestinians themselves might be conflicted as to whether or not they want elections: “People are divided on that. Some people don’t want elections because they will tell you it’s not going to change

⁹² ‘The deepening rift between Fatah, Hamas’, Al-Monitor, March 20, 2015. Available at: <http://www.al-monitor.com/pulse/originals/2015/03/palestine-hamas-fatah-plo-accusations.html#ixzz4286T06bG> accessed on January 15, 2016.

⁹³ Palestinian Centre for Human Rights, Annual Report 2014. Available at: http://www.pchrgaza.org/files/2015/annual_pchr_eng_2014.pdf accessed on January 10, 2016.

⁹⁴ ‘How Palestine’s Parliament is Squandering Millions of Dollars’, Al-Monitor, February 10, 2016. Available at: <http://www.al-monitor.com/pulse/originals/2016/02/palestinian-legislative-council-mps-expenditures.html> accessed on February 28, 2016.

⁹⁵ Interview with Q, Ramallah, July 12 2015.

⁹⁶ ‘Palestinian Presidential Elections: Fact Sheet’, Carnegie Endowment for International Peace 2008. Available at: http://carnegieendowment.org/files/brown_palestine_elections.pdf accessed on February 29, 2016.

anything. It might even get worse.”⁹⁷ He went on to say that the postponing of elections is likely a deliberate political move on the part of Abbas, over fears that his party would lose in the next election. People on both sides of the political conflict are fed up with the other, and leadership continues to postpone elections for fear of loss of control. This continuous executive control over a legislative issue has resulted in Palestinians’ violation and loss of a fundamental human right at both the international and domestic level.

It can clearly be seen that the violation of electoral rights is not due to a lack of appropriate legislation on the issue (despite the fact that the PLC have not produced legislation in over eight years), as there is clear coverage of this right in statute within the ICCPR, Palestinian Basic Law and Palestinian Electoral Law. The gross infringement of this right is rather to do with the political divide, its ramifications at the local level, and abuse of executive power by political leaders. Abbas’ term as president should have ended in 2009, yet this year marks his tenth year as President of the Palestinian Authority with no presidential elections in sight. As with Freedom of Assembly, this is an issue with the separation of powers. The legislature is not separate from the executive, whose political division is causing the continuous violation of the Palestinian right to vote. Given that the separation of powers is a fundamental principle of democratic society, this should be of great concern to the international community.

Conclusion

The State of Palestine acceded to the International Covenant on Civil and Political Rights in April of 2014 and as such, is obligated to uphold the human rights documented therein. Concurrent with this, is the obligation that the State of Palestine submit an internal report one year after accession, documenting the status of human rights in the West Bank and Gaza. This report is still to be submitted, and the status of human rights is in dire need of reform in order to bring it into alignment with standards in international law.

Freedom of Assembly is routinely violated throughout the West Bank and Gaza either by unlawful police interference in private assemblies, or disproportionate use of force in public assemblies. Freedom of Association is severely restricted, with the Ministry of Interior assuming control over the set-up, funding and dissolution of associations and charities. By virtue of the domestic law in this area, many associations should be accorded legal status after a period of two months from the date of application regardless of a response from the Ministry of Interior. However, banks do not allow associations to open an account without formal documentation of legal status, and

⁹⁷ Interview with Q, Ramallah, July 12, 2016.

such documentation can only be issued by the Ministry of Interior. This often means that many “legal” associations cannot carry out their actions as they are prevented from opening a bank account out of which to function. This is in direct contravention of the legal provisions. Electoral rights under the Palestinian Authority have essentially been absent for ten years. This fact alone presents a severe violation of the human right to vote. By virtue of the law, elections, both presidential and legislative, should take place every four years and this has not been the case for a decade. These rights are fundamental rights in international law and treaties, and should be accorded such significance. As it stands currently, the Palestinian Authority and Hamas are making little effort to protect and promote these rights of the Palestinian people and are thus in violation of international law.

Recommendations

Freedom of Assembly:

- The Palestinian Authority should give effect to Article 26(5) of the Basic Law providing the right to private assembly free from police interference.
- The Palestinian Authority should hold their security forces accountable for the use of excessive force in dispersing public assemblies.
- The Palestinian Authority and Hamas should recognize the principle of the separation of powers and seek to keep the judiciary and the executive separate in their functions.
- The Palestinian Authority and Hamas should not disproportionately interfere in public assemblies involving political matters. Its political content does not justify unlawful interference by police forces.

Freedom of Association:

- The Ministry of Interior should create a system whereby formal documentation is issued to associations who have applied for registration, and after the two-month time lapse, heard no response from the Ministry. They should receive documentation to prove their legal status, as stipulated under Palestinian law.
- Associations undergoing dissolution should be free to allocate the remainder of their funds wherever they decide; this authority should not be given to the Minister of Interior.

Electoral Rights

- The Palestinian Authority and Hamas should recognize that the failure to hold elections in the West Bank and Gaza since 2006 is in direct violation of Article 26 of the ICCPR and their own domestic law.
- The Palestinian Authority should seek to facilitate new presidential and legislative elections as soon as possible, in conformity with international law.
- Active steps should be taken to ensure that the Palestinian Legislative Council resumes its legislative functions.



Tali Ilan | 052-5513437

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