

**Report on the Freedom of
Association in the Palestinian
controlled Territory**

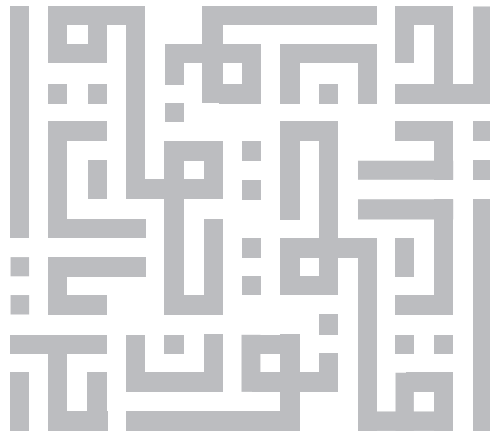
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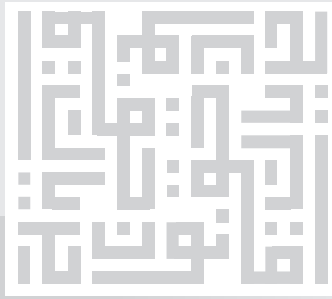


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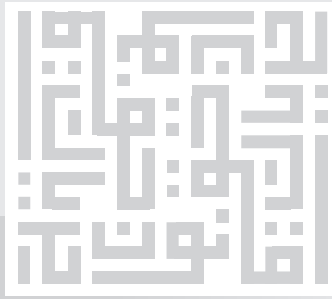
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Introduction

The right to form charitable associations and community organizations is one of the most important forms of political and social participation for individuals and groups in their countries as stipulated by the International Covenant on Civil and Political Rights and national legislations. Article (20) of the Universal Declaration of Human Rights¹ stresses the importance of this right while Article (22/1/2) of the International Covenant on Civil and Political Rights² perceives the right to form associations as a genuine expression of commitment to the values of democracy, equality and freedom.

The Palestinian national legislation addresses the freedom of association particularly in Article (26/2)³ of the Basic Law. The Law of Charitable Associations and Community Organizations No. (1) of the year 2000⁴ is considered the highest and the most complex and

¹ -1 Everyone has the right to freedom of peaceful assembly and association -2 .No one may be compelled to belong to an association"

²«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 organization in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. 3- Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize 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. "

³ Palestinians, as individuals and groups, have the right to participate in political life and the following rights in particular: the right to formation of trade unions, societies, associations, clubs and popular institutions in accordance with the law"

⁴ Palestinians have the right to freely pursue social, cultural, professional and scientific activities, including the formation and operation of societies and organizations in accordance with the law"

practical expression that aims at regulating the exercise of this right in the territory under the control of the Palestinian National Authority (PNA)⁵.

The formation of associations in the Palestinian-Controlled Territory has become increasingly politicized especially after Hamas took control over the Gaza Strip by military force on 14/6/2007. The issue of forming associations has been subject to political considerations by both sides of the divide, which forced a decline in the exercise of rights and public freedoms, especially with regards to the right to form and join associations. Both parties have targeted Palestinian associations through a multitude of violations that weakened the exercise of this right. Both parties have given primacy to the security considerations and measures over the exercise of rights which in itself is an unprecedented violation of the stipulations of the Basic Law and the Law of Charitable Associations and Community Organizations No. (1) of 2000. The level of violation has been unprecedented and contradictory to provisions of the law and has manifested itself in the creation of several policies, decrees, regulations, and instructions issued by the official authorities after 17/6/2007 in both the West Bank and the Gaza Strip.

This paper sheds light on a number of violations regarding the restriction of the right to form associations by both parties to the political divide in the West Bank and the Gaza Strip, and as a direct product of the many decrees, decisions and measures taken by the Ministry of the Interior (MoI) of the Palestinian National Authority (PNA) and its counterpart ministry run by the Deposed government in the Gaza Strip. The paper also addresses the persistence of Israeli policies to constrict the exercise of the right to association in the Palestinian-controlled Territory, especially in the West Bank, as manifested in the closure of organizations and/or confiscation of their properties, draining up of their financial resources and the frequent detention of their personnel under the pretext of fighting terrorism⁶.

⁵ It should be noted here that the Palestinian National Authority (PNA) does not enjoy the status of a "state" therefore it can not officially join the International conventions and treaties. Nevertheless, Article (10/2) of the Palestinian Basic Law expressed PNA commitment, and without tally, to become a state party to the international covenants and declaration that aim at the protection of human rights.

⁶ In March ,2008 the Israeli High Court issued a decision that allows the Israeli military commander in the West Bank to close and confiscate the properties of any charitable society working in the Palestinian territories under the pretext of fighting terrorism. Following this decision, the Israeli army closed and confiscated the properties of some associations such as Young Men Moslem Association, the Islamic Charitable Organization in Hebron. This amounts to a grave violation of the legal status based on Oslo Agreement which bestowed on the PNA the right to regulate such rights. For more information on this topic, visit the website of the Israeli ministry of Foreign Affairs <http://www.altawasul.com/MFAAR>.

I. The National Legal Framework for the Formation of Associations and Civil Organization Organizations

The Law of Charitable Associations and Community Organizations No. (1) of the year (2000) guarantees Palestinians the right to form associations and civil society organizations. The Law gives the Ministry of Interior a procedural role and explicitly specifies the process of formation of associations which should be made by submitting an application for registration rather than licensing. Article (4/1) states that: "The founders of the Association or organization shall submit a written request to the relevant department of the Ministry of Interior that satisfies the requirements and signed by at least three of the founding members who are authorized to sign on behalf of the association or community organization. The application for registration shall include three copies of the Association's statute signed by the members of its founding Committee."

In this regard, the most critical question remains whether 2009 has witnessed any substantive positive changes with regard to the policies pertinent to the right to form associations on behalf of either the Mol of the Caretaker government or the Mol of Deposed government? The answer is a definite "no" since Palestinian associations in the West Bank and the Gaza Strip are still subjected to a long list of infringements on their rights. Indeed, the instructions issued in the aftermath of the political divide violated the spirit and stipulations of the law and have manifested themselves into norms that have become difficult to overcome. Many of the decisions issued by the minister of Interior in the Gaza Strip stresses respect for associations' right to function but they have not been carried out because of lack of commitment by the security agencies to the application of such instructions.

Hence, the multitude of decrees, decisions and instructions issued by the PNA and the Deposed government on the restriction of this right are entirely contradictory to the provisions of the Basic Law and the Law of Charitable Associations and Community Organizations and its regulations in particular¹.

¹ Presidential Decree No. (16) of the year 2007 on granting of the Minister of the Interior the power to review all licensing certificates, Council of Ministers Resolution No. (8) of the year 2007 regarding Association engaged in activities against the law, and the Minister of Interior's Decision No. (20) of the year 2007, according to which associations are obligated to refer to security agencies for the completion of registration procedures. As for registered associations in Gaza, they are subject to security clearance and the obtainment of a certificate of good conduct and a clear criminal record of association's members which has become a pre-requirement for registration at the Mol of the Deposed government.

Based on the above, ICHR believes that the Mol of the Deposed government should revoke its decision demanding certificates of good conduct for an association's members as a binding legal condition for accepting receipt of its application for registration. Such a move would potentially constitute an important step in the right direction. ICHR also perceives that the issuance of instructions by the Minister of Interior of the Deposed government on the non-interference of security agencies in the associations' registration process⁸ reflects an inclination towards respecting the rule of law.

ICHR also believes that the Mol of the Caretaker government has shown signs of commitment by sending notifications to charitable societies that have not complied with the provisions of the law, within the time limit which is a positive indicator of the government's orientation towards respect of formal procedures that should be followed before dissolving organizations in accordance with regulations in force.

It is nevertheless possible to highlight a number of violations of the freedom of association in the Palestinian-controlled Territory, both in the West Bank and the Gaza Strip:

1. Violations Pertinent to Registration of Associations

The number of registered associations in the West Bank totaled (2100) at the end of the August, 2009. During 2009, The Mol in the West Bank received (170) applications for registration and issued (100) registration certificates while the remaining (70) are still in the process of registration⁹. In comparison (136) applications were submitted by associations to the Mol in 2008, none of which were granted official registration¹⁰ despite the expiry of the two months time limit specified by the law¹¹.

⁸ On 9/7/2009 the Minister of Interior in the Deposed government, Fatahi Hammad, issued a decision on the security agencies' interference in the work of charitable societies and civil society organizations. The Decision was addressed to the General Directors of security agencies in the Gaza Strip according to which the minister prohibited the security agencies from inference in the affairs of associations except with the limits set by the law.

⁹ Statistics provided to ICHR by the Mol of the Caretaker government on 13/8/2009.

¹⁰ For further information, revise ICHR Report on Freedom of Association in the Palestinian-Controlled Territory During 2008.

¹¹ Paragraph (3) of Article (4) of the charitable societies law states that the association is considered legal and registered in accordance with the law in the event that the two months period has expired after the submission of the application without receipt of official response from the Ministry'

According to Advocate Majdi Daraghma, it has not been possible for the Mol to process all applications within the sixty days specified by the law¹² because of its work load. As noted by Mr. Ahmed Abu Zaid, the Director of Association Affairs at the Mol of the Caretaker government, the ministry forwards copies of all registration applications to the security agencies for security clearance of the applicants in accordance with instructions from the Minister of Interior¹³.

In the Gaza Strip, the number of registered and functional associations reached a total of (899) in 2008, while in 2009 a total of (101) registration applications have been submitted to the Mol of the Deposed government which approved (44) and rejected (35) applications. The ministry has not responded to (22) applications despite the expiry of the two months time limit after the submission of the applications to the competent department at the Mol¹⁴.

ICHR noted that although Article (3/4) of the Law of Charitable Associations and Community Organizations explicitly states that the applicant association becomes legally registered in case the ministry failed to provide a response before the expiry of two months as of the submission date, both Mols have not only failed to adhere to this legal stipulation but knowingly violated the aforementioned article and without any legal justification. Apparently for political considerations, the Mol prohibits any association from carrying out any activity or open bank accounts without prior approval from the ministry. The law specified the ministry's role in this process which should be limited to receiving applications and verifying that the applicant association meets all requisites for registration.

2. Storming into and Seizure of Associations' premises

Since the political divide between the West Bank and the Gaza Strip, security agencies have repeatedly broken into, and taken over the premises of many associations on the grounds that are contradictory to Palestinian

¹² Interview dated 12/8/2009 with Adv. Majdi Daraghme, the Legal Advisor on associations' affairs at the Mol in Ramallah.

¹³ Interview dated 13/8/2009 with Mr. Ahmed Abu Zaid, the director of Associations' Affairs at the Mol in Ramallah.

¹⁴ interview dated 3/8/2009 with Abdul Khaliq Badwan, the Deputy Director of Public Affairs at the Mol of the Deposed government in the Gaza Strip

legal provisions. The Report on the status of the right to association issued by ICHR in 2008 highlighted these violations in both regions.

For Example in the West Bank, on 1/8/2008, ICHR documented the forced entry of the Palestinian General Intelligence into the prosthesis factory of one of the associations in Qalqilia. Elements of the same security agency had on 6/8/2008 also stormed into the premises of Tafouh Organization for Culture and Arts. The Preventive Security broke into Althaheryeh Charitable Organization and confiscated its properties. In 2009, one case was reported when the Preventive Security stormed into the Medical Organization in Qublan. The building was searched the Administrative Board of its Board of Trustees was replaced by a new one appointed by the Mol.

Similarly, security agencies of the Deposed government in the Gaza Strip carried out raids on a number of societies during 2008-2009. Some of the premises belonging to associations were converted into official or public offices and police stations. On 6/5/2009, for example, the five storey headquarters of the Palestinian Commission for University Students was overtaken as the new offices for the Financial and Administrative Monitoring Bureau of the Deposed government. The Palestinian Al-Tahir Organization in Beit Hanoun was also converted into a police station. The Young Scientist Forum is currently being used by the Internal Security in the Gaza Strip despite a decision by the Mol to reopen this organization and allow it to resume its functions.

All of these practices entail that both parties to the internal political divide have violated Article (41) of the Law of Charitable Associations and Community Organizations, which stipulates that "Closure, inspection and seizure of funds of any organization or commission or its branches or affiliated centers are prohibited unless authorized by a prior decision issued by a competent judicial body"¹⁵. It could be derived from Article (41) of the Law of Charitable Associations and Community Organizations and Article (39) of the Palestinian Procedural Law, that premises of associations can be considered as private homes (and dealt with accordingly) that may

15 It should be noted that Article (39/1) of the Criminal Procedural Law No (3) of the year (2001) states that "entry to and inspection of houses is an investigative task shall not be performed unless permitted by a warrant issued by the Public Prosecution or in its presence, on the basis of indictment against a person residing in the house to be inspected for committing or being an accomplice to a felony or misdemeanor, or due to the existence of strong evidence of possession of things pertinent to the crime.»

not be entered or searched except by a judicial authorization from the competent authority. This indicates that the security agencies in both the West Bank and the Gaza Strip have not adhered to the provisions of the law, but violated it systematically.

3. Dissolution of and Interference in the Management of Associations

Article (22) of the Law of Charitable Associations and Community Organizations explicitly addresses the issue of associations' governance and dissolution. The aforementioned article specifically states that: "1- In the event that the Governing Body has not been able to convene, due to resignation or death, the remainder of the Governing Body's members (as an interim committee) should assume the function of the Governing Body for a maximum period of one month, a period during which the General Assembly is invited to the selection of a new Governing Body. 2- In the event of mass resignation of the Governing Body, or in case the interim committee has not fulfilled its functions referred to in Paragraph (1) of this Article, the minister shall appoint an interim committee from amongst the General Assembly members to assume the responsibilities of the Governing Body for a maximum of one month during which the General Assembly shall be invited for a meeting to elect a new Governing Body"

In the West Bank, ICHR observed that the appointment of interim committees to run associations has continued in 2009 as (11) interim committees¹⁶ were appointed in a number of associations. In most of these cases, the appointments were not in line with the provisions of the law. It should be noted that (28) such interim committees were assigned in 2008.

In addition, a total of (22) associations have been dissolved in the West Bank until August 2009 in comparison to (69) in 2008. Their dissolution was made in accordance with the provisions of the law such as the failure of the Governing body to convene, or the failure of the association to function during the first year of registration. However, Ms. Fadwa Shaer, the Director General of the Department of Nongovernmental Organizations in the Mol in the West Bank, stated that the closure of some associations was based

¹⁶ Interview dated 12/8/2009 with Adv. Majdi Daraghmeh, at the Mol in Ramallah/West Bank.

upon a political decision in order to maintain the requirements of “national security”¹⁷.

In the Gaza Strip, Mr. Abdul-Khaliq Badwan, the Deputy Director General of Public Affairs, maintained that the ministry interfered in the affairs of three associations, namely: Ishraqat Al-Khair Organization, the patients’ Friends Organization, and Al-Huda Development Organization in Bani Suhaila. New governing bodies were formed for these associations. In addition, the Mol has ordered the dissolution of (40) associations¹⁸ in the Gaza Strip until August 2009 in comparison to (171) in 2008.

The Law of Charitable Associations and Community Organizations clearly specifies situations where associations are dissolved. Article (37) stipulates that “the association shall be dissolved in the event that: 1- the issuance of a decision for dissolution by the General Assembly provided that the Ministry is notified immediately. 2- If the association failed to launch its activities within the first year of the date of registration unless caused by a force majeure due to compelling circumstances beyond the control of the association. In this case the registration shall be revoked by the ministry after issuing the association a written warning. 3- if the association is proven to have fundamentally violated its statute and had not rectified its positions within a period not exceeding three months from the date of being warned in writing by the minister or relevant department”. The law also specifies the official body with the jurisdiction to dissolve an organization or an association in accordance with Article (38)¹⁹.

Despite the fact that the Mol of the Caretaker and Deposed governments had issued a series of warnings (in accordance with Article (37)), prior to the initiation of the dissolution procedures (in accordance with Article (38) of the law), ICHR strongly believes that most of those warnings have political motivations emerging from the state of political divide between

¹⁷ For more information, refer ICHR 2008 report entitled “The Status of Charitable Societies in the Palestinian –controlled Territory in 2008, page 36.

¹⁸ ICHR interview with Mr. Abdul-Khaliq Badwan, the Deputy Director General of Public Affairs, which took place in Gaza on 3/8/2009.

¹⁹ Article (38) states that: «1 - in case a decision is issued by the minister to cancel the registration of any association or body, the decision must be justified and documented in writing. The association or Organization can appeal before the competent court .2 - if the appeal is filed against the decision to dissolve the Assembly before the competent court, the association or organization may continue its work until the final or an interim injunction is issued for its suspension or dissolution”

the PNA and the Deposed government in the Gaza Strip, although both parties claim otherwise. According to ICHR documentation, there has been no registered cases of dissolution of associations or the replacement of their boards since the establishment of the PNA, and it was only after the political divide in 2007 that such violations against associations were registered. On the contrary, the PNA encouraged the formation of community organizations and associations through the enactment of the Law of Charitable Associations and Community Organizations and its bylaws at the beginning of the year 2000.

.4. Freezing of Associations' Banks Accounts, Exercise of Financial Scrutiny, and Financial and Administrative Reporting Measures by the Ministry of Interior

The Law of Charitable Associations and Community Organizations addresses the issue of oversight on the performance of community organizations and associations. Article (6) stipulates that: "This task falls under the jurisdiction of the competent ministry which is permitted by the law to monitor the actions of any organization or association provided that a justified written decision is issued by the competent minister in every case to ensure that the organization's resources are expended in the achievement of the purpose they were allocated for and in accordance with the provision of the Law of Charitable Associations and Community Organizations and the bylaws of the organization or association. The organizations shall enable the relevant ministry to enforce this decision to guarantee that they are assuming their functions in a manner compliant to the provision of this law".

It is noticeable from the aforementioned article that monitoring the function of each association falls under the jurisdiction of the ministry responsible for the sector that the association is specialized in. For example, an emergency humanitarian and relief organization shall submit its application for registration to the MoI. The relevant competent ministry -the Ministry of Social Affairs in this case- then monitors its activities.

It should also be noted in this regard that the legal provision places many restrictions over the right to oversight the performance of associations. This right is not absolute but rather conditioned by a written decision issued by

the competent Minister giving justifications in each case for undertaking such monitoring and oversight. In addition, monitoring should only be limited to cases where verification is needed to clarify whether funds were disbursed for the purpose for which they were allocated. Further more, Article (13) of the Law stipulates that it is mandatory for each association to submit an annual report to the competent ministry on its activities as well as a financial audited statement prepared by a certified auditor.

Nevertheless, the Mol inspected the work of (210) societies in the West Bank until the month of August 2009 while (200) financial and administrative reviews were conducted throughout 2008. In the Gaza Strip, the Mol of the Deposed government exercised control over (170) associations until August 2009 compared to a total of (375) associations in 2008. Moreover, the Monetary Authority issued instructions to operating banks in the West Bank and the Gaza Strip to restrict the opening of bank accounts for civil society organizations since every association is obliged to obtain a written document from the Mol of the Caretaker/Deposed government to certify the legal registration status of the association in question. Many organizations never received such documents nor did receive any rejection notice. Thus, these instructions violate the law and Article (4/3) in particular, which ascertains that an association acquires legal personality if the two-month period after submission of the application registration expires without receiving a rejection notice from the ministry. This theoretically entails that the association can proceed with carrying out its activities.

Based on all of the above, ICHR concludes that the Mols of the Deposed and Caretaker governments have exercised administrative and financial control over the Palestinian associations in stark violation of the provisions of Article (6) and (13) of the Law of Charitable Associations and Community Organizations. Such practices also represent an encroachment on the mandates and functions of other ministries. This substantiates ICHR's conclusion that security and political considerations were given priority over the system of rights and the rule of law in the Palestinian-controlled Territory because of the persistence of the political divide between the West Bank and the Gaza Strip.

5. Associations Denied Registration, Governing Bodies Dissolved or Replaced, Resort to the Judicial System

In line with the provisions of the Palestinian Basic Law²⁰, the Law of Charitable Associations and Community Organizations prohibits the indemnification of any decision or administrative action from judicial oversight. Articles (4/4) and (38) permit associations to undertake legal action to appeal the administrative decisions that may be issued by the minister pertaining to the denial of registration or dissolution or replacement of the governing body of an association.

In the West Bank, a limited number of associations petitioned the Supreme Court of Justice with regard to the denial of registration and opening of bank accounts, or the dissolution or replacement of governing bodies. One case in point is the Al-Worood Charitable Organization for which the Supreme Court ruled in favor of the complainant association. This obliged the MoI to reopen the association's bank account at the Arab Bank. On the other hand, the Supreme Court of Justice set a precedent by affirming the decision of the Minister of the Interior to appoint an interim committee to replace the Board of Directors of the Palestinian Housing Council, although the law does not provide for the replacement of governing bodies without legal justification in violation of (Article (22) of the Law of Charitable Associations and Community Organizations). The Supreme Court of Justice declined to issue an injunction to enable the elected body from assuming its functions. However, it decided to proceed with the case and not revoke the decision of the Minister of the Interior.

In the Gaza Strip, there are (10) law suits against the Ministry of the Interior for the dissolution of several associations, of which two cases were rejected and the remaining eight are pending before the courts²¹.

²⁰ Article (30/2) of the Basic Law stipulates that "No law should indemnify any decision or administrative action from the oversight of the Judiciary"

²¹The list of associations which have petitioned the Supreme Court of Justice that is formed by the Higher Council of Justice upon a decision by the Deposed government include: Medical Doctors Organization, Association of Auxiliary Engineering Professions, Al-Amal Institute for Orphans, The Palestinian Center for Human Communication, The Palestinian Administrators Organization, The Future For Youth Organization, Gaza Voluntary Efforts for Rapid Relief Organization, Dentists' Association, The Organization for the Development of Martyer Mohammed Durra Compound (case rejected) and Esharaqat Al-Khair Charitable Organization (the court rejected the case).

6. Harassment and Detention of Directors of Associations and Members of Governing bodies.

The security agencies in the West Bank and the Gaza Strip continued their harassment of the directors and members of governing bodies of certain associations. The security agencies maintain that the detention and harassment of those persons are not linked to their affiliations with associations, but took place due to them committing certain legal offences.

In the West Bank, ICHR documented arrest of Mohammed Ahmed Izraiqat, and Harb Izraiqat, respectively the president and treasurer of the Tafouh Center for Culture and Arts by the General Intelligence in 2008. The General intelligence also detained a number of staff members of The Islamic Charitable Organization in Ramallah. In 2009, the General Intelligence Service arrested Dr. Raed Na'irat, who is the president of the governing body of Palestinian Center for Democracy and Studies.

In the Gaza Strip, the Internal Security forces arrested Jamal Shwaiki, the President of the Palestinian Civil Organization, and detained Mr. Abdul-Latif Abu Odeh, the deputy president of the Palestinian al-Tahir Organization in 2008. In 2009 there has been an attack on Ms. Ebtisam Za'anin, the head of Al-Attaa' Charitable Organization.

III. Conclusion and Recommendations

On the basis of the aforementioned violations of the freedom of association in the Palestinian-controlled Territory, it is possible to conclude that despite the presence of a modern legal framework governing the registration and operation of associations, the current political and security considerations prevail over the system of rights and public freedoms. This situation puts the exercise of the right to form and join associations in jeopardy. The current orders and regulations turned the process of registration, which is stipulated by the law, into a process of licensing. The replacement of elected governing and administrative bodies has become the norm, although such a measure is only limited to exceptional cases as stipulated by the Law.

Similarly, a policy of dissolution of associations has been adopted, not for substantial reasons stipulated by the law, but rather utilized for political and “security” considerations that do not comply in form and in content, with the provisions of the law and its regulations. Moreover, the security agencies persist in forcing their ways into associations for inspection and arrest of their governing boards without prior judicial authorization, or for the seizure of their property without legal justification or warrants issued by a competent authority. Furthermore, security agencies have seized the premises of some organizations for use by official and security agencies as is the case in the Gaza Strip. ICHR also believes that the Monetary Authority has prohibited the opening of bank accounts for charities and associations until they rectify their status and/or obtain registration certificates from the Mol of the Caretaker government in the West Bank for other considerations than legal ones.

In general, it could be said that there is a decline in the role of associations and civil society organizations due to the political division between the West Bank and the Gaza Strip. To serve its own political interests, each party seeks dominance over civil society organizations without paying attention to the legal considerations and the systems of public rights and freedoms.

Based on all this, ICHR recommends to the Caretaker government in the West Bank the following:

1. The need to invoke the provisions of the Charitable Societies and Associations Law No (1) of the year 2000 and its regulation, and to immediately halt the policy of dissolution and replacement of associations’ governing bodies which occurs in a manner inconsistent with the provisions of the law.
2. The Mol should stop the practice of handing associations’ applications for registration over to security agencies in order to carry out a security check (“security clearance”) rather than resorting to the law and let the Mol examine the fulfillment of the application for registration in accordance with due process.

Recommendations for the Deposed government in the Gaza Strip could be summarized as follows:

1. The need to invoke the provisions of the Charitable Societies and Associations Law No (1) of the year 2000 and its regulations, and to immediately halt the dissolution and replacement of associations' governing bodies in a manner consistent with the provisions of the law.
2. The Ministry of Interior should ensure the implementation of its decisions which permit associations to resume their functions, so as the security agencies are evacuated from the headquarters of such organizations.