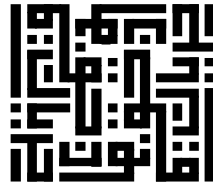


**Independent Commission for Human Rights  
(ICHR)**

**The Status of Human Rights  
in the Palestinian-Controlled Territory**

**Fourteenth Annual Report  
Executive Summary**

1 January– 31 December 2008



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**THE INDEPENDENT  
COMMISSION FOR HUMAN RIGHTS**

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**Board of Commissioners  
Commissioner General – Mamdouh Aker**

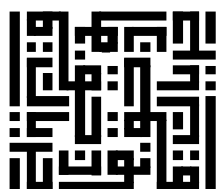
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**Independent Commission For Human Rights  
(ICHR)**



**A Palestinian State where the rule of law and equity are promoted,  
and where human rights and freedoms for all are respected**

**Law - Rights - Freedoms**

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## Foreword

It has become obvious that the Palestinian internal division has had dangerous results and repercussions not only on the overall status of the Palestinian national cause, but on the internal political scene as well. The repercussions of this division have practically led to the existence of two political entities with separate authorities.

It has also become obvious that the separation of the West Bank from the Gaza Strip was a strategic objective towards which Israel has relentlessly pushed by creating the conditions that could lead to it, or strengthen and consolidate it. For example, during the Oslo Agreement negotiations, Israel never agreed to the existence of a land corridor that would link the Gaza Strip and the West Bank and embody the theoretical or symbolic recognition that the Palestinian land constitutes one geographical unit. Consequently, the Oslo Agreement resulted, among other things, in the acceptance of a safe "passage" as opposed to a land "corridor"! Yet Israel refused to even provide such a safe passage which remained under its mercy controlling it whenever and in whichever way it desired. If Palestinian leadership possessed a certain amount of political insight at the time, the Israeli attitude towards the safe passage should have raised a flag, a sort of early warning, about Israel's objectives and plans within the context of its relentless efforts to separate the Gaza Strip from the West Bank.

Then there was Sharon's plan to withdraw the soldiers and the settlers from the Gaza Strip but not to end its occupation. Again, political insight was lacking in terms of seeing the context within which Sharon's move was taken, which was merely a process of redeployment that transformed the Gaza Strip into a big prison, particularly in view of the ensuing unjust siege that was imposed upon the Strip, constituting the ultimate form of collective punishment. As such, Israel has made advanced strides on the path of the Gaza Strip-West Bank separation, isolating and controlling the West Bank, the subject of the colonial Zionist project's greed.

Although the Palestinian official and national position insistently opposed this planned scenario for the Gaza Strip, it failed to go beyond a theoretical rejection into the formulation of a practical, behavioral, and policy-oriented position for managing Gaza Strip and West Bank affairs in a manner that strengthened their unity, and which was capable at the same time of bridging the numerous gaps that accumulated over time as a result of the different historical experiences of the two.

However, the Gaza events of June 2007 and the resulting division have constituted another turning point in this context, as they led to a Palestinian auto-descent, this time down a road that plays ultimately into the hands of the Israeli separation scenario. The worst part of this descent is that it appeared to be an expression of the Palestinians' will rather than a result that the Israeli establishment has relentlessly worked for over a long period of time. In other words, it appeared as if the separation of the Gaza Strip from the West Bank had gone from being an arbitrary Israeli-induced separation into a Palestinian internal division.

With the continuation of this Palestinian auto-descent and the strengthening of aspects of heated polarization and fierce media campaigns, the national cause started deteriorating at the national, Arab, and international levels in the manner that we have all witnessed. In the meantime, Israel

accelerated its settlement projects, intensified its siege on the Gaza Strip, the judaization of Jerusalem, the building of the annexation Wall, and the dismemberment of the Palestinian homeland with hundreds of military checkpoints. Then there was the brutal destructive aggression against the Gaza Strip, in an Israeli attempt to take advantage of the circumstances of the Palestinian division, among others, to eliminate the spirit of resistance of the Palestinian people as a whole and break their will and determination. This can be discerned from the words of General Moshe Yaalon, the Chief of Staff of the Israeli occupation army when he said in 2002: "We should infiltrate deep into the consciousness of the Palestinians the idea that they are a defeated people." Certainly, defeating any unified people is more difficult, if not impossible, than it would be when a people are divided from within.

To make things worse, amidst this division and under its pretext, if not as a direct result of it, a dangerous phenomena has started to gradually appear on the internal Palestinian scene, namely the materialization and consolidation of human rights violations outside the control and oversight of the rule of law. In an atmosphere of mutual fear of each other's intentions, mistrust and mutual skepticism amongst the parties to the division, we started to notice not only increasing levels of violations in both the West Bank and the Gaza Strip, but also new patterns of these violations. Indeed, arbitrary or political arrests have been documented, regardless of what term one uses, as long as they are not conducted according to sound legal procedures. Various forms of torture are taking place in detention centers, as well as resorting to the military judiciary in an attempt to bypass or even undermine the civil judiciary, instead of strengthening it and bolstering its independence. There is also a state of disregard to the decisions of the High Court and a phenomena of "street justice" without resorting to fair trials; taking the law into one's own hands as well as extra-judicial killings. Additionally, appointments or dismissals from service of civil servants are subjected to the specific instructions and recommendations of security agencies, accompanied by warnings of imposing house arrests to those who violate the orders of field punishment. Amidst all this, we also find cases of attacks against journalists, assaults against the freedom of opinion, expression, and of assembly. We also notice the restrictions imposed upon many civil society organizations and the closure thereof. This poses a big question on where we are heading. Are we heading towards a police regime?

It is not difficult to foresee a situation where security agencies break out of the control of the political levels, should these phenomena persist unrestrained. This is not something we desire to witness. The report that **ICHR** puts before the decision-makers, those who influence it, and before the public opinion reveals the high cost that we pay as a result of the on-going state of intra-division. It documents many violations that could eventually lead to that situation. The continuation of political arrests, torture, street executions and firing at people's limbs, severe beatings, disrespect of and refusal to implement High Court decisions, attacks against journalists, and restrictions on the freedoms of opinion, expression, and assembly would all lead to the materialization of a situation whereby the political levels could lose control over the security agencies.

Among the priorities of steadfastness and confronting occupation and settlements is the existence of internal coherence and immunity within the society. The lessons of history and the experiences of societies and countries near or far from us teach us that the internal immunity of any society erodes and collapses when police or repressive regimes take control over it.

Our responsibility at the Independent Commission for Human Rights is to raise the alarm, particularly since we have warned, in our previous report one year ago, of the existence of alarming indicators of a potential shift towards a police regime. However, the continuation of

these violations indicates a further deterioration of matters towards that shift. The first and most important step towards stopping this transformation is to put an end to the destructive division of the society and of the Palestinian cause, and abide by the underpinnings of our highest interest, and all the aspirations of the Basic Law to lay the foundations of a democratic and pluralistic regime that is governed by the rule of law, and that expresses the aspiration of Palestinians for freedom and justice, as constantly expressed in the finest manner by our late poet Mahmoud Darwish, whom we lost as a country and as a Commission since he was one of **ICHR**'s founders and commissioners.

Finally, if I dare to describe this report as being a distinguished report in different aspects, the credit for that should be given to the special efforts of all members of **ICHR**'s executive and technical staff, under the leadership of the Executive Director Ms. Randa Siniora, in both the West Bank and the Gaza Strip. Their positive interaction with the Board of Commissioners and its instructions in a race with time has made this report possible. I thank them personally and on behalf of the Board of Commissioners for their distinguished efforts.

Dr. Mamdouh Aker  
Commissioner General of the Independent Commission for Human Rights

## Introduction

**As I write the introduction of the Fourteenth Annual Report on the Status of Human Rights in the Palestinian-controlled Territory**, I cannot but describe the year 2008 as the year of big challenges *par excellence* for the Independent Commission for Human Rights (ICHR) in particular, and for the Palestinian citizens in general, in terms of facing the on-going and unprecedented deterioration of the status of human rights and public freedoms in the Palestinian-controlled Territory, and the significant deterioration of their human rights and public freedoms. **ICHR** has worked relentlessly and persistently during the year 2008 to stop many of the violations committed against Palestinian citizens, with the aim of protecting and safeguarding their rights in view of the continuation and deepening of the internal division throughout the year, and the internal challenges that accompanied it.

**ICHR** worked under extraordinary circumstances as a result of the continued Israeli military occupation and its repressive policies against the defenseless Palestinian people, the imposition of a total siege upon the Gaza Strip, which culminated with the Israeli military aggression against the Strip that started in the last week of 2008, and resulted in high casualties among civilians, war crimes, killings, destruction and targeting of civil properties, buildings, as well as the assets and public institutions of the Palestinian people.

Israel continued its policies during 2008 which ranged from the imposition of a siege on the Gaza Strip, to the restriction on the freedom of movement and travel in the West Bank through setting up military checkpoints, the completion of the construction of the Annexation Wall, the confiscation of lands and settlement expansion, the isolation of the city of Jerusalem, extra-judicial killings, arrests, the launching of a destructive war against civilians in the already strangled Gaza Strip, the destruction of civil buildings, and other forms of collective punishment against Palestinian citizens, thus committing grave breeches amounting to the level of war crimes in accordance with international humanitarian law, and in violation of all international human rights norms and charters.

On the internal front, the year 2008 was characterized, from **ICHR's** point of view, by systematic policies of human rights violations. Through our on-going monitoring and documentation of these violations, and through the hundreds of complaints that **ICHR** received in the West Bank and the Gaza Strip, the emergence of specific patterns of human rights violations became apparent to us. The violations were given a legal cover despite the fact that they often took place in violation of the Palestinian Basic Law which safeguards those rights and reiterates the need to respect them and prohibits attacks or restrictions against them. Many of the violations were also covered and justified by such slogans as the need to "preserve security and public order to serve the best interest of the Palestinian people" and through claims that the measures and actual practices on the ground are carried out in a manner that respects "the soundness of legal procedures"; "corresponds with Palestinian laws and legislation" and that "it serves the best public interest and upholds freedoms"!

It has become evident from the continued state of division between the West Bank and the Gaza Strip which deepened in 2008, that the policies taken by the Palestinian National Authority (PNA) and the *De facto* Authority in the Gaza Strip consolidate and deepen the differences. The two parties, apparently, agree only on one issue, namely imposing their political agenda and putting "security" considerations over human rights by continuing to violate the human rights of Palestinian citizens. Palestinian citizens were and continue to be the victims who pay the price as a result of the on-going and deepened state of division.

All aspects of public rights and freedoms have been violated, and there is no space anymore for freedom of opinion and expression, peaceful assembly, freedom of press and media, and freedom of work for organizations because they are closed, subjected to restrictions in their work or have had their registration rejected. These organizations have given a lot over the long years of occupation and constituted the backbone of the Palestinian society. They laid the foundation for a strong civil society seeking to consolidate the principles of democracy, pluralism, respect of opinions, which all are concepts and ideals that we have called for throughout the past decades, and since the establishment of the PNA. However, we have unfortunately noticed a significant deterioration of these principles during 2008 which were replaced by the general policy oriented towards building a "security" "police" regime in the West Bank and the Gaza Strip which destroys everything that the Palestinian society has sought to achieve and represented as a distinguished model for the Arab region. This deterioration reflected negatively upon the human rights and freedoms of Palestinians.

It is not surprising then that a Palestinian citizen would be dismissed from public service or have his salary cut "for failure to abide by the legitimacy". It is also not surprising for a Palestinian citizen not to be hired or the procedures for his hiring not to be completed because security agencies did not recommend it under what has become to be known as "security considerations", or for a civil servant to be removed from his job in Gaza Strip and have his rights guaranteed by law violated because of his political affiliation or participation in strikes.

The concern and the denunciation of and by **ICHR** persisted in 2008 regarding the phenomenon of arbitrary detention, ill-treatment of detainees, and their subjection to torture in the Palestinian-controlled Territory. Hundreds of complaints were received regarding the lack of sound legal procedures during arrests and detention processes, as well as forcing civilians to appear before military courts, which usurped the powers of the civil judiciary, which is the original competent party to look into such cases. The military judiciary based on the Revolutionary Law of 1979 started to gradually replace the civil judiciary in both the West Bank and the Gaza Strip, which led to the arrest and arbitrary detention of hundreds of civilians in the absence of the safeguards of a fair trial. This opened the door to a situation of "political arrests" that lack any legal basis and were conducted in violation of the provisions of the Palestinian Basic Law and the Palestinian Penal Procedural Code. Political arrests are practiced on a daily basis for "security" and "political" considerations only.

The Palestinian General Intelligence (PGI) and the Preventive Security Services (PSS) agencies in the West Bank have arrested and detained civilians without presenting them, in most cases, even to the public prosecution or the military court. Detention periods were extended merely through the written approval of the chief of the military judiciary. On the other hand, the internal security and other security agencies of the Deposed Government in the Gaza Strip forced civilians to appear before the military judiciary without any legal procedures. The PGI and the PSS agencies in the West Bank have both failed to respect Palestinian High Court decisions regarding the illegality of presenting civilians before military courts, and the order for the immediate release of the detainees.

Both agencies delayed the implementation or tried to by-pass the court orders and in many cases did not implement them, in violation of article (106) of the Basic Law which stipulates that: "Judicial orders are binding, and refraining to implement them or obstructing their implementation in any manner is a crime" punishable by law.

In 2008, military courts in the West Bank and the Gaza Strip went back to issuing death sentences after more than two years of abstention. Again, this is an indicator of the clear regression of the right to life, to a fair trial, to proper legal procedures, in disregard to all efforts exerted towards eliminating capital punishment and replacing it with other penalties. Despite our conviction that the elimination of capital punishment requires an amendment of our national legislation, our only hope at the time was that the President of the PNA would not endorse these sentences. However, that hope faded away quickly when during the Israeli aggression on the Gaza Strip, masked men claiming to be members of the Palestinian security agencies of the Deposed Government in the Gaza Strip, committed extra-judicial killings of detainees against whom death sentences were issued by military courts in the Gaza Strip but who were still under the trial phase.

Scores of citizens were subjected to assaults against their right to life and their physical safety because of their political affiliations, as masked men claiming to be members of the Internal Security agency of the Deposed Government shot them in their legs. A large number of citizens were beaten up and ill-treated and had their physical safety compromised, which led to deaths or serious injuries amongst them. Tens of house arrest orders were issued against members of the Fatah movement who were threatened by "street penalties" if they violated these orders.

What made matters even more difficult was the lack of accountability and liability, and lack of procedures needed to pursue and hold accountable those who violated human rights, particularly when they committed grave crimes such as extra-judicial killings and torture. These crimes as well as attacks against personal freedoms or the privacy of personal life are, according to article (32) of the Palestinian Basic Law "a crime that is not subject to the statute of time limitations in terms of criminal or civil liability." However, it was obvious in 2008 that the issue of accountability and liability were not the priority of the Palestinian security agencies in view of the "security culture" that evolved and increased during the year. No neutral investigation committees were formed to look into these violations and findings of investigations were not published for public review by Palestinians to generate amongst them a sense of safety and security, rule of law, and confidence that these violations, particularly the grave ones, will not pass without accountability and that none of those who committed them will escape punishment.

It is in this context that we present **ICHR's** Fourteenth Annual Report regarding the Status of Human Rights in 2008 reflecting a year of big challenges and underlining patterns of violations against Palestinian citizens that have compromised their basic human rights and freedoms. The report comes in three main parts and three appendices. The first part has two chapters: the first chapter discusses the political environment and the legal variables and their implications on Palestinians' human rights and freedoms during the year, while the second chapter addresses the impact of Israeli violations on the PNA's performance, particularly in view of the on-going siege imposed upon the Gaza Strip and the Israeli aggression that started in the last week of the year followed by the destruction of the infrastructure and Palestinian official institutions.

The second part discusses in seven chapters the rights and public freedoms that were violated during 2008 and constituted clear patterns of violations. **ICHR** has intentionally separated in this report, and for the first time, the violations that took place in the West Bank from those that happened in the Gaza Strip. **ICHR** adopted a different approach in presenting these rights and

violations in order to convey the picture in a clearer manner, and to follow up on the specific recommendations that were concluded together with the concerned party that committed these violations.

Part three addresses the question of accountability and liability for human rights violations. This is the new challenge that **ICHR** has set for itself for the first time in its annual reports. This challenge comes from a conviction that the essence of defending and safeguarding human rights lies in holding those responsible for human rights violations accountable, demanding them to establish internal monitoring and accountability systems to ensure respect and protection of human rights and to underline the need to hold violators accountable and prevent them from escaping punishment.

Finally, this report on the status of human rights would not have seen the light, or distinguished itself in terms of its presentation and discussion of issues, had it not been for the tremendous efforts exerted by the executive team of **ICHR**, its main research team, its technical teams in both West Bank and Gaza Strip programs, and the technical and administrative support of all its staff members. This report represents a tremendous effort that reflects a high sense of commitment among **ICHR's** staff to issues and questions of human rights. It also reflects a collective effort through team work and the solid conviction of **ICHR's** staff in the culture of human rights and their sense of commitment to its cause.

Randa Siniora  
*Executive Director*

## **Executive Summary**

The Fourteenth Annual Report (2008) is comprised of three parts and three annexes which describe the status of human rights in the Palestinian-controlled Territory during the year. Part I addresses the political environment and the variables indicative of the status of human rights in the Palestinian-controlled Territory, including the impact of Israeli violations on these rights. Part II discusses the status of public rights and freedoms through the monitoring of patterns of violations. Part III deals with the theme of accountability and its impact on human rights and freedoms.

The following is a summary of the highlights covered in the three Parts and a description of the three annexes to the 2008 annual report:

### **Part I: The Political Environment and Variables Indicative of the status of Human Rights in the Palestinian-controlled Territory**

Part I consists of two chapters - Chapter I: The political environment and its impact on human rights, and Chapter II: The Impact of Israeli violations on the performance of the Palestinian National Authority (PNA) and its ability to protect human rights.

#### **Chapter I: The Political Environment and its Impact on Human Rights**

This chapter focuses on the legal and political variables as well as on the impact of public policies on the status of human rights in the Palestinian-controlled Territory

The challenges that the Palestinian political system faced throughout 2008 has intensified the effects of the political split that first took shape during 2007, after Hamas took control of the Gaza Strip by force. The political divide has not only led to the deterioration of the status of human rights and public freedoms in the Palestinian-controlled Territory, but also provided the Israeli occupation with an unprecedented opportunity to tighten its measures and policies, in the following manner: The expansion of Israeli settlements, the tightening of the siege on the Gaza Strip, the continued construction of the annexation wall, the isolation of Jerusalem, the maintenance of military checkpoints, the restriction on the freedom of movement of Palestinian citizens and goods, and the killing and detention of Palestinians. Israel persistently refuses to release the detained members of the Palestinian Legislative Council (PLC) who continue to be tried before Israeli military courts that have issued harsh sentences against many of them, especially against Dr. Aziz Dweik, the president of the Palestinian Legislative Council.

In light of these challenges and changes, the Palestinian National Authority continues to function in a very complex situation and unprecedented circumstances that place the development of the Palestinian political system and the entire Palestinian question at a historic juncture. The *De facto* political division between the West Bank and the Gaza Strip has exacerbated during 2008 to the point where two separate governments are running the political affairs and lives of the Palestinian people. Each government has power over a part of the Palestinian-controlled Territory, in addition to separate political and economic agendas, administrative organs, and security and civil

institutions and powers. The Palestinian people has gradually lost the political and geographical unity embodied in the formation of the first Palestinian National Authority created on the national land in 1994.

Within this context, the Independent Commission for Human Rights (**ICHR**) affirms that citizens' rights and freedoms are constitutionally guaranteed, and may not be violated or constricted, except in accordance with the provisions of the law. Therefore, the enforcement of discrepant, even contradictory, policies and measures on part of the Deposed Government in the Gaza Strip and the Care-Taker Government in the West Bank has led to the consolidation of a political split, to the extent that public rights and freedoms, which the Basic Law emphasizes to preserve and protect, are jeopardized.

Based on observations of its policy orientations, it is noticeable that the Care-Taker Government is operating without accountability or oversight, given the inability of the Legislative Council to convene in ordinary or exceptional sessions. The PLC is rendered incapable of enforcing any of its oversight, accountability and responsibility mechanisms or discussing, approving, and referring draft legislations to the President of the PNA, as stipulated in the Basic Law. Consequently, the Care-Taker Government, through its 2008 Legislative plan, prepared draft laws and submitted them for discussion within the various institutions and organs of the Executive Authority, then referred them directly to the PNA President, to be issued as laws in the form of resolutions, in accordance with Article (43) of the Basic Law.

This indicates that the system of separation of powers is in grave danger. If such policies continue, it may lead to adapting the legislation to the benefit of the Executive Authority and consequently, the usurpation of the Legislative Authority powers for the executive branch. This would endanger and greatly impact the system of rights and public freedoms, which have been consolidated since the establishment of the Palestinian National Authority on the Palestinian-controlled Territory..

In light of the continuing separation between the two Palestinian regions, the Deposed Government continued to function in 2008 as the *De facto* authority in the administration of the citizens' affairs in the Gaza Strip and in the adoption of a series of decisions, measures and procedures that reflected negatively on public rights and freedoms of the Palestinian people in the Gaza Strip. For example, the "Higher Council of Justice" was created as an alternative to the Higher Judicial Council in stark contradiction to the provisions of the Basic Law. Throughout 2008, the Deposed Government relentlessly continued to present draft law packages to PLC members' representatives of the Change and Reform parliamentary bloc in the Gaza Strip, and to take all necessary measures to tighten control over the management of the public sector in the areas of health, education, infrastructure, communications and transport. The new decisions and directions led to the creation of a new legal status that replaced the existing legal status of the Palestinian-controlled Territory.

In conclusion, and on the basis of approaches and public policies adopted by the *Deposed* and Care-Taker Governments, the changes in the policies that dictated the course of the Palestinian political system in 2008 are clarified in three trends: Firstly the consolidation of the political divide in the Palestinian-controlled Territory; secondly, the continuation of the Israeli occupation and its oppressive measures against the people of the Palestinian occupied Territory which culminated in the most recent attack on the Gaza Strip; and thirdly, the deterioration of the status of human rights, public rights and freedoms enjoyed by Palestinian citizens.

In contrast, the Executive Authority in the **West Bank** played a major role in the legislative policy-making and in the preparation of draft laws in 2008. The Care-Taker Government referred a number of laws to the President of the PNA for issuance as decisions with the power of law, based

on Article (43) of Palestinian Basic Law, which states that the President of the National Authority shall have the right in exceptional cases, which can not be postponed, and while the Legislative Council is not in session, to issue decisions and decrees that have the power of law. However, the decisions issued shall be presented to the Palestinian Legislative Council in the first session convened after their issuance; otherwise they will cease to have the power of law. If these decisions were presented as mentioned above, but were not approved, then they shall cease to have the power of law. President Mahmoud Abbas issued (11) decisions with the power of law in 2008 which were published in the Official Gazette by the Jurisprudence and Legislation Bureau ("*Diwan Al-Fatwa*" at the Ministry of Justice) in Ramallah, which contains decisions, legislations and regulations issued by the President of the Palestinian National Authority.

**ICHR** believes that that the Care-Taker Government, through the package of legislation attributed to the President which were issued in the form of decisions with the power of law, is functioning as an ordinary government, in stark contrast to the provisions of paragraph (3), Article (78) of the Basic Law which stipulates that: "Upon the completion of the term of the Prime Minister and members of his government, they will temporarily exercise their work, as an interim Care-Taker government, during which they may take decisions only necessary to run the executive work, until a new government is formed"

Clearly, the executive branch has sought, through the issuance and adoption of a package of legislation and policies, to establish the parameters for a new political, legal, social and economic system, which gives primacy to political considerations over fundamental rights and freedoms. For example, the Executive Authority has not enforced, through the Ministry of Interior, the judgments of the High Court of Justice for the release of a number of detainees in the custody of security services upon the decision of the chief of the Military Judiciary Commission, which represented a violation of the Basic Law.

In the absence of the Legislative Council and other regulatory bodies, the resumption of these policies and legislations, and their implementation, could lead to the formation of a legal system in the West Bank completely separate from the Gaza Strip, the weakening of the separation of three powers, and providing the Executive Authority with mandates inconsistent with the provisions of the Basic Law, at the expense of the legislative and judicial authorities.

In the **Gaza Strip**, members of the Reform and Change Bloc in the PLC continued to hold meetings through the so-called "power of attorney" system. A number of laws were discussed and passed in 2008 in relation to four legislations which were published in its own "Official Gazette". The issuance of this Gazette is another indicator of the political split between the West Bank and the Gaza Strip. **ICHR** maintains that the laws passed by the PLC deputies of the Reform and Change Block lacks the legal legitimacy in constitutional terms, in accordance with paragraph (1) of Article (41) of the Basic Law. Furthermore, these legislations were approved by some PLC members in the absence of the PLC's legal quorum. Most laws were of political nature and fall under the category of the Palestinian national core issues unanimously held by all Palestinians regardless of political and factional affiliations (the law on the Right to Return for Palestinian Refugees, and the law on the prohibition of Relinquishing Jerusalem), thus affirming the claim that they were merely issued for political considerations..

In 2008, Israeli policies, which sought to undermine the PNA's efforts to impose law and order, have had a profound impact on the system of freedoms and rights. The newly formed Care-Taker Government attempted to carry out a security operation to put an end to vigilantism in the West Bank while Israel began political and legal efforts to undermine the Palestinian-efforts to regain

control over Area (A). Israel's repeated incursions into these areas to arrest and extra-judicially kill Palestinian activists was culminated by the decision of the Israeli Supreme Court of Justice, issued on March 18, 2008. The Court vested in the Military Commander of the West Bank region, in the context of the fight against so-called "funds linked to terrorism", the power to issue military orders for the confiscation of funds of a person/persons, in the same amount transferred to him/them by illegal organizations under Israeli law, without the need to prove the source of the appropriated funds.

These policies were reflected in the arrest and assassination of Palestinian political activists by Israeli occupational forces in area (A) which are under the full sovereignty of the PNA. In addition to arrests, Israel continued to close down Palestinian associations and confiscate their property, and raided some Palestinian banks where funds were confiscated under the pretext of "counter-terrorism". The policy is complemented by, for example, the Commander of the Central Region issuing a military order to shut down the main trade center in the city of Nablus and the Young Men Muslim Association in Hebron in July 2008.

The Oslo agreements, and the political agreements that followed, clearly state that area (A) is sovereign Palestinian territory, and that the PNA has the sole jurisdiction of the populations of the remaining parts of the Palestinian-controlled Territory. Therefore, the systematic application of Israel's policies in the West Bank seeks to change the boundaries of the legal reality that took shape by virtue of the Oslo Agreement. Israel deliberately aims at converting the PNA to an authority responsible for running the civil affairs of the population. This represents a violation of the agreements signed between Israel and the Palestine Liberation Organization and prevents the PNA from extending its authority as well as carrying out its development and reform programs, and directly impacts other rights acquired by Palestinian citizens by virtue of the PNA's existence and work. More importantly, it prejudices the Palestinian right to self-determination and independent statehood on the Palestinian land occupied in 1967 with East Jerusalem as its capital.

Moreover, Israel has considered the Gaza Strip a hostile entity after Hamas seized power there and subsequently adopted policies that contributed to the deterioration of the status of fundamental rights and freedoms of Palestinian citizens in the Gaza Strip. Israel began tightening its siege on the Gaza Strip, preventing Palestinians from entering the West Bank, thus violating the right of movement. As a direct outcome, the right to health also deteriorated in the Gaza Strip, as medicine and medical equipment were not allowed to be brought into the territory, except in special cases. Closed border crossings prevented patients from receiving treatment abroad and resulted in the death of dozens of Palestinian citizens. Furthermore, the recent Israeli military aggression on the Gaza Strip that began in the last week of 2008 represented an all-inclusive assault on the very foundation and values of human rights. This was reflected in the death and injury of thousands of citizens, as well as in the destruction of homes, schools, educational and cultural institutions, and the networks and infrastructure of water, electricity and sanitation, all which demonstrate a policy that caused the status of human rights and the humanitarian situation in Gaza to deteriorate to unprecedented levels

The changes to the Palestinian political, legal, economic and social environment have had direct consequences on rights and public freedoms which can be summarized as follows:

**Firstly**, the political factions, each of which has its respective government, agencies, organizations, regulations, fiscal and administrative policies that differ in form and substance from the other. The Care-Taker Government has bestowed upon itself exceptional legislative mandates that allows it, in the absence of the Legislative Council and its inability to convene its sessions, to

nominate laws to the President for issuance as decisions with the power of Law. The military judiciary is encouraged to exercise civil jurisdiction through the arrest and extension of detention of civilians without any legal guarantees. The door was also opened for arrests of political activists that have been widely practiced since the creation of the PNA. In this way, personal liberties are violated despite being enshrined in the Palestinian Basic Law and international declarations and conventions. This provided an opportunity for a parallel judiciary to emerge and gradually replace the civil courts of inherent competence and jurisdiction. This occurred as a result of giving primacy to “security considerations” in all aspects of Palestinian life, including the recruitment, promotion and dismissal from public office which violates the principle of the rule of law and respect for human rights and public freedoms.

On the other hand, the Deposed Government formed a "Higher Judicial Council", a "Supreme Council for Police Administration", and a military justice system. It also proposed draft legislations to PLC members of the Reform and Change Bloc. Furthermore, the Deposed Government restructured the security agencies and eliminated from the Civil Prosecution all personnel affiliated to Fatah movement in the Gaza Strip. This indicates a reduction of the jurisdictions of the three authorities in a merely political context, which ultimately led to a serious decline in the status of human rights and freedoms of Palestinians.

**Secondly**, the consolidation of the legal and political divide between the West Bank and the Gaza Strip has reflected on the entire rights and freedoms of the public. The deepening of the political separation between the West Bank and the Gaza Strip started to impact the lives of citizens. “Security considerations” became the norm for the recruitment, dismissal, and elimination of public office holders. Arbitrary detentions on the grounds of political affiliation have also become a part of the security agencies' daily routine in the West Bank and the Gaza Strip, in violation of legal safeguards guaranteed in the Palestinian Penal Procedural Code; where the presentation of civilians before the military judiciary continues to be practiced contrary to the provisions of the Palestinian Basic Law. These practices were widely adopted despite the fact that the High Court of Justice ruled against the legality of civilian arrests upon a decision of the military judiciary. The Executive Authority and its security agencies ignored the decisions of the court which, when not implemented, constitute a crime under Article (106) of the Basic Law, punishable by dismissal from public office if the civil servant refuses to carry out the rulings of the courts.

The policies of the *De facto* Authority tightened the grip of the Deposed Government on the remainder of the Legislative Authority and established, contrary to the provisions of the Basic Law, the "Higher Council of Justice" to replace the Higher Judicial Council which was created in accordance with the Law of the Judiciary. Therefore, the Deposed Government's policies and decisions reflect negatively on the system of public rights and freedoms guaranteed by the Basic Law, leading to detention on the grounds of political affiliation, as well as the widely adopted policy of presenting civilians before military courts.

Furthermore, unprecedented restrictions were imposed on the freedom of media, as many press outlets were prohibited from printing, publishing, and distributing, thus constituting a grave media censorship which included withdrawal of licenses of some media institutions, and dissolution or closure of some media associations or interference in their work. Public marches and festivals were banned contrary to the provisions of the law. In this manner, the security system has substituted the integrity of the human rights system, and has given priority to political, rather than legislative, considerations. Certain provisions of the Palestinian Basic Law and other laws have selectively been used to justify these policies, the continuation of which is a premonition for the collapse of the system of rights and freedoms guaranteed by the Basic Law.

**Thirdly**, the Israeli policies of 2008 have had the most impact on the status of human rights of Palestinians in the West Bank and the Gaza Strip. Violations have come in different forms such as the violation of the right to life, collective punishment, direct military attacks, closure of crossing points, destruction of infrastructure (water, electricity, and sanitation networks), and the destruction of educational institutions, ministries and PLC headquarters. Many of the Israeli violations were grave and constituted war crimes and crimes against humanity, especially in the Gaza Strip, as pointed out by Richard Falk, the United Nations Special Rapporteur for Human Rights to the Palestinian occupied Territory.

Israeli policies were applied in the West Bank as well. The list includes the imposition of restrictions on the freedom of movement across Israeli checkpoints, "cantonization" of the Palestinian territory, arrests, assassinations, and military incursions into Palestinian-controlled areas.

Israeli occupational authorities began the trials of the detained PLC representatives of Hamas who were kidnapped by Israel months before, which also contributed to the paralysis of the PLC. Other unprecedented measures were also adopted, such as the closing down of Palestinian associations and confiscation of their property under the pretext of fighting terrorism, in accordance with a decision by the Israeli High Court of Justice on March 18, 2008. The impact of these policies on the fundamental rights and freedoms guaranteed by the international covenants and agreements affected both the jurisdiction and the role of the PNA in a way that actually enhanced the internal Palestinian divide between the West Bank and the Gaza Strip.

## **Chapter II: The Impact of Israeli Violations in the Performance of the Palestinian National Authority and its Ability to Protect Human Rights**

In 2008, Israel intensified its violations of Palestinian human rights in the 1967 Occupied Palestinian Territory which adversely affected the performance of the Palestinian Authority and undermined its role in the protection of human rights and freedoms in the territory under its control. The violations weakened the Palestinian Authority's efforts and disrupted the progress it had achieved in 2008 with the creation of an environment conducive to security and public order. With the persistence of the Israeli oppressive measures, it is not possible to demand from the PNA to assume a proactive role in ensuring respect for the basic rights of its citizens in the Occupied Palestinian Territory in the West Bank and the Gaza Strip, given the ongoing violations that take place on a daily basis as a result of policies targeting Palestinian civilians and their properties.

During the Israeli military aggression on the Gaza Strip, air strikes systematically targeted Palestinian public and private property and the basic elements of its existence. For example, Israel bombed all headquarters of the Palestinian Legislative Council and the Ministries of Education and Higher Education, Justice, and Interior. In ICHR's opinion, Ministries' offices are not the property of the Hamas movement or any particular political party, but constitute the public institutions of the entire Palestinian people, the destruction of which entails a long-term negative impact on the capabilities of those institutions in the provision of services to Palestinian citizens and hence negatively affect their rights. Moreover, international humanitarian law classifies police stations and their law-enforcing personnel as civilians, and prohibits targeting their premises at any time during which they are not engaged in any acts of military combat

According to Israel, the Gaza Strip remained a "hostile entity" against which a series of harsh measures and actions were adopted including a stricter blockade and drastically-reduced supplies of the basic requirements, such as food, fuel, water and electricity. Threats were also made to completely ban the entry of such basic supplies to the Gaza Strip. Furthermore, the Palestinian economy suffered serious economic losses in vital sectors ensuing from the blockade, such as investment, foreign trade, agriculture, industry, accompanied by a general increase of unemployment. Subsequently, the impact was clearly felt on the performance and growth rates of the Palestinian economy, while exacerbating the economic, social, health and mental health crises in the Gaza Strip.

The Israeli military occupation also continued to impact the functions of the three authorities throughout 2008. Israeli impediments to the work of the Palestinian judiciary in general, both courts and prosecution, continued through the disruption of the movement of judges and other elements of justice, thus limiting the ability of the judicial authority to provide guarantees of a fair trial, the right to litigation, and prompt adjudication of cases. Israeli measures still constitute an impediment to the implementation of court judgments and the arrest of fugitives from justice, and disrupt the judicial communication systems and police activities, not to mention the restrictions on the movement of witnesses, litigants, judges and prosecutors.

At the Legislative Authority level, Israel continued to detain at least forty PLC members. With almost one third of its members in Israeli detention, the PLC has practically been frozen in 2008, resulting in the disruption of both its legislative and regulatory functions throughout the year. The most prominent of the detained deputies are PLC president, Dr. Aziz Dweik, and the Secretary General, Mahmoud Ramahi in addition to Marwan Barghouti and Ahmad Saadat. All appeals and interventions with the Israeli government for their release by a host of local, Arab, and international human rights organizations has fallen on deaf ears.

The Israeli policies have also influenced the Palestinian national institutions in many ways. The increase in the number of detainees in Israeli prisons required the Ministry of Detainees and Ex-Detainees Affairs to double its efforts, especially in light of the shortages of resources required for the rehabilitation of released ex-detainees, especially education. At present, the number of detainees in Israeli detention is estimated at (9000), hundreds of whom are administrative detainees. The figure also includes (75) women, (265) children, and (40) former PLC members and a former minister. Palestinian detainees, including the sick, are confined under very harsh conditions characterized by systematic repression, torture, and life-threatening medical neglect and procrastination of treatment for sick detainees. One form of support is provided by the Palestinian Government which caters for some needs of the detainees and their families which may come in the form of salaries, prisoners' canteen allowance, and family subsidies for those with families, and legal fees for advocates.

Moreover, the increased demand in health services pressured the sector beyond its modest capacities, due to the skyrocketing numbers of injures and deaths caused by the Israeli incursions into the Gaza Strip, more particularly among children and women. The impact of the Israeli blockade, combined with the toll of military operations among Palestinian civilians, meant that the rapidly depleting medical supplies and shortages of equipments and medications would soon render Gaza's health system unable to cater for the thousands of sick and wounded and would force many to seek expensive medical help across the borders. However, Palestinians were not allowed to travel. The ban on travel continues to endanger thousands of lives: (274) citizens died as a result of this ban. It is estimated that the ban will intensify the current shortages in medical supplies, equipments, and medication which are estimated to approximately (140) items.

Gaza's population has suffered a shortage of drinking water because of the continuing power cuts caused by the shortage in the industrial fuel needed to operate the power plant, resulting in the disruption of the delivery of water services to citizens. Moreover, the non-use of chlorine disinfectants in drinking water has also caused major health problems since the Gaza Strip has no supply of the disinfectant which is usually used in the amount of (60) cubic meters per month. The number of water wells in Gaza is estimated at (145) wells, about a hundred of them operated for 60% of its capacity while (45) wells operated for 80% of the time, compared to (10) wells which completely stopped due to power cuts, fuel shortages, and lack of spare parts for pumps and generators. Consequently, the consumption of water decreased by 40% from the daily estimate of (220,000) cubic liters.

The educational sector did not escaped the damage resulting from the closures, Israeli checkpoints, the annexation wall, or the repetitive incursions into Palestinian cities and towns. About (100) schools suffered from disruption leading to the loss of at least (150) school days in 2008. The Israeli measures have also caused the death of more than (40) Palestinian students, (33) of which were amongst the students in various districts of the Gaza Strip. In addition, more than (180) school students, (60) college students, and (18) teachers and personnel members were arrested; a matter that stretched the capacity of educational sectors and caused emotional hardship for the students.

**Some of ICHR's main recommendations in this regard could be summarized as follows:**

1. Call upon the international community to work seriously to end the prolonged Israeli military occupation of all Palestinian territories since 1967, which is both a leading cause for the ongoing war crimes and systematic collective punishment in the Gaza Strip and other occupied Palestinian territories, and an obstacle to the right of the Palestinian people to independent statehood and self-determination, guaranteed by the international conventions and standards of all human rights. In addition, urge the international community to end the Israeli aggressions, the repeated incursions into the Palestinian territory, and the blockade imposed on the Palestinian territory, especially on the Gaza Strip.
2. Activate the immediate intervention mechanisms by the United Nations and its organizations, and pressure Israel to oblige it to respect and comply with the international conventions and resolutions of international legitimacy, and to urge the High Contracting Parties to the Fourth Geneva Convention for the application of the General Assembly resolution No. (A/RES/ES-10/15) dated July 20, 2004, on the advisory opinion of the International Court of Justice on the annexation wall.
3. Urge the international community, represented by the United Nations organizations and other international organizations, to support the institutions of the Palestinian Authority for the development of the status of human rights, and provide the requirements for human life and human dignity of the Palestinian people that has been living under occupation for more than forty-one years.
4. Call upon the Palestinian Authority to demand from the Occupying Power to immediately release all detainees of the Palestinian Legislative Council, to enable the Council to play its inherent role in the legislation and supervision of the performance of the Executive Authority.

5. Urge the international community to put pressure on the occupying state to stop the policy of incursions and invasions into Palestinian cities, lift checkpoints and barriers, and allow mobility and freedom of movement between them, respect human rights, and stop all violations in this regard, and work to enable the Palestinian Authority, in all of its institutions, to perform the tasks and duties entrusted to them, including the protection and safeguarding of the rights of its citizens to the fullest.

6. Invite the High Contracting Parties to the Fourth Geneva Convention to fulfill their obligations contained in Article (I) of the Convention, according to which they undertake to respect, and ensure respect for, the Convention in all circumstances, as well as to fulfill their legal obligations contained in Article (146) of the Convention in relation to the prosecution of those accused of committing grave breaches of the Convention.

7. Stress the geographical unity of the Occupied Palestinian Territory and obligate the Israeli occupation to open the safe passage between the West Bank and the Gaza Strip as a pure Palestinian entitlement, end the strict Israeli Blockade of the Gaza Strip and immediately reopen all border crossings, including Erez and Rafah crossings, and allow the entry of humanitarian and medical supplies.

8. Call upon all National Human Rights Institutions to pressure their respective governments to put an end to the Israeli Occupation and protect the civilian population of the Gaza Strip and the West Bank, and call on them as High Contracting Parties to the Fourth Geneva Convention of 1949, to fulfill their obligations contained in the Convention.

## **Part II: The Status of Human Rights and Freedoms in the Palestinian-controlled Territory**

Part II contains the following 6 chapters: 1- the right to life and physical safety; 2- the right to proper legal procedures during arrest and detention; 3 – the right of access to justice and litigation; 4- the right to hold public office; 5- the right to health; 6-the right to freedom of opinion, expression, and peaceful assembly; and 7- the right to form associations, trade unions, and to strike.

In this part of the annual report, **ICHR** focuses on the general status of some fundamental rights and freedoms, and presents its findings of the monitoring of violations of these rights which also infringed upon the guarantees enshrined in the international human rights conventions and relevant domestic legislations.

Bellow is a summary of the major themes and findings addressed in each of the aforementioned seven chapters.

### **Chapter I: Right to Life and Physical Safety**

In 2008, **ICHR** registered a total of (191) cases of extra-judicial killings in the Palestinian-controlled Territory, of which (136) cases were in the Gaza Strip and (55) in the West Bank. The figure includes (16) children and (19) women. **ICHR** observed a decline in murder cases in 2008 compared to the year before where a total of (585) deaths were documented, including (503) cases in the Gaza Strip, and (82) in the West Bank.

Cases of killings recorded in the **West Bank** in 2008 were committed on a variety of grounds such as family feuds and revenge (33 deaths). One more death case has been registered as a result of misuse of arms by a law enforcement officer. Moreover, the official investigations have not been able to explain the reasons for the additional (12) cases of deaths under mysterious circumstances that occurred in the West Bank in 2008. As for murder on the ground of the so-called "family honor", **ICHR** recorded one case in the West Bank.

In the Gaza Strip, a total of (136) cases of killings occurred in 2008 committed on many grounds: (4) were killed during the internal fighting, (23) died due to family disputes and acts of revenge and (24) deaths resulted from the misuse of arms by citizens. Two homicide cases in the Gaza Strip were committed on the grounds of the so-called "family honor". As for death by misuse of arms on part of members of the security agencies of the Deposed Government, the number has actually risen to (33) in 2008. On the other hand, **ICHR** documented (19) cases of deaths in mysterious circumstances in the Gaza Strip this year. Furthermore, **ICHR** documented (29) deaths inside the tunnels linking the Gaza Strip and the Arab Republic of Egypt.

In the **West Bank**, (3) children under eighteen years of age were killed: two children were killed during family fights, while the third was killed in mysterious circumstances. In addition, (12) pre-term infants died in the Ramallah public hospital. As for the number of deaths inside the penitentiaries and prisons in the West Bank, (5) persons died in the prisons and penitentiaries run by the police of the security agencies. In the Gaza Strip, **ICHR** reported the death of two individuals in these centers.

The military courts in the West Bank have ruled in favor of the death penalty for (6) persons, while the military and civil courts sentenced (7) persons to the death penalty in the Gaza Strip. The return of the practice of capital punishment has been evident in 2008, particularly by the military courts, whose rulings have always been rejected by **ICHR** on the ground that such courts do not provide guarantees of a fair trial. From this perspective, **ICHR** maintains that death penalty sentences in the Palestinian-controlled Territory issued by the military courts in particular, is an encroachment on the right to life, the principle of the right to a fair trial, and the inherent jurisdiction of the civil courts.

**ICHR** has also found, through its regular visits to detention centers and through citizens' complaints, that some detainees were subjected to torture or ill-treatment during their detention at different civilian police stations. Some complaints were received by **ICHR** in which citizens claimed that they, or their loved ones, were tortured at the hands of officers at the police station where they were detained.

Patterns of torture are possible to distill from the complaints filed to **ICHR** during its periodic visits to detention centers and prisons of the security agencies in the West Bank, especially the Preventive Security and the General Intelligence agencies. The list expands to include acts such as: verbal insult and abuse, beating on different body parts, prolonged standing on small chairs with hands tied behind the back, slaps to the face, punching by hand, kicking, covering the head with a bag, chaining tied hands behind the back to the cell's door, and sleep deprivation by making noise. According to detainees' complaints, most torture and ill-treatment happened during interrogation, on charges of membership in the Hamas movement or the Executive Force, or the acquisition of a weapon without a license.

In the Gaza Strip, citizens affiliated to the Fatah movement were tortured in prisons run by the security agencies of the Deposed Government that ranged from various forms of insults (such as

placing shoes on detainees' heads, cursing and verbal insults) to physical harm (such as prolonged exposure to sunlight, forced listening to very loud songs, blindfolding, beating with rifles, blows to the face, feet, head and other body parts, forced standing on one leg, beating with electric sticks, tying hands and legs together, tying the person to pipes and stick, nail removal, pouring of hot water on the body, and the breaking of arms or legs).

**The most important recommendations in this regard are:**

**Recommendations to the Palestinian National Authority:**

1. Call upon the President not to endorse the death sentences issued by Palestinian courts and to refer all cases of citizens sentenced to death by military courts to the civil courts of inherent jurisdiction to ensure that these cases are reviewed.
2. Call upon the President and the Ministry of Interior to issue clear instructions to the security agencies to refrain from torture and ill-treatment in detention centers.
3. Call upon the Preventive Security and the General Intelligence agencies to conduct serious investigations into allegations of ill treatment and torture of citizens on the hands of law enforcement personnel, and to take appropriate actions and measures against those found guilty of such crimes.
4. Call upon the Civil Public Prosecution in the West Bank to investigate all cases of murder, identify their perpetrators and bring them to justice.
5. Call upon the Civil Public Prosecution to assume its oversight role over all detention centers run by the security services in the West Bank, to ensure that detainees are not subjected to ill treatment and torture, and to investigate cases that may indicate any form of torture and/or ill-treatment of detainees.
6. Call upon the Civil Public Prosecution to investigate all cases of enforced disappearance and to disclose the whereabouts of these persons.
7. With regard to the battering and killing of women on the ground of so-called "family honor", **ICHR** believes that there is a need to: a- institutionalize procedures and measures aimed at the protection of threatened women as knowledge or suspicion of such threats is brought to the attention of the police until the cause ceases to exist; b- provide protection and safe houses in various locations of the Palestinian-controlled Territory; and c- strengthen the family protection units of the police departments in the districts by providing a professional team qualified in dealing with these cases; d- work actively on the development of penal legislation, and a special law for the protection of women from gender-based violence to ensure that women's rights are safeguarded against such violations; and e- reopen the files of women killed in mysterious circumstances for investigation by the Civil Public Prosecution.

**As for the recommendations addressed to the *De facto* Authority in the Gaza Strip, ICHR stresses the following:**

1. Call upon the Ministry of Interior of the Deposed Government to issue clear instructions to its security services prohibiting the use of excessive force against citizens in the Gaza Strip

for the protection of the right to life and physical integrity, and to prevent the reoccurrence of events similar to the “Helles” and “Daghmarsh” incidents and the sufferings encountered during those two incidents resulting in dozens of deaths and injuries.

2. Call upon the Deposed Government in the Gaza Strip to investigate all murder cases, identify their perpetrators and bring them to justice and to investigate all cases of enforced disappearances and disclose the whereabouts of those persons.
3. Call upon the Ministry of Interior of the Deposed Government to conduct serious investigations into allegations of ill treatment and torture of citizens, and to take appropriate actions and measures against those found guilty of such crimes.
4. Call upon the PLC members of the Change and Reform Bloc in the Gaza Strip to stop the adoption and passage of legislation affecting the right to life and physical integrity until the PLC convenes regularly and in full session.

## **Chapter II: Right to Proper Legal Procedures during Arrest and Detention**

**ICHR** observed an increase in the practice of arbitrary detention, without following proper legal arrest and detention procedures, through **ICHR**'s follow up with dozens of complaints in both the West Bank and the Gaza Strip. Not only have the security agencies not respected the legal procedures at the time of arrest and searches, but they also conducted those arrests and searches in most of the cases on purely political grounds. In this regard, **ICHR** received a total of (393) complaints in 2008 in the Palestinian-controlled Territory, all of which revolved around arbitrary detention on political grounds.

**ICHR** observed that most arbitrary arrests on political grounds, which were carried out in the West Bank, were presented before the Military Judiciary. **ICHR** received complaints and statements in 2008 which suggested that the majority of detainees withheld by the Palestinian Preventive Security and the General Intelligence agencies do not usually appear before ordinary courts, nor was their detention brought to the knowledge of the Civil Public Prosecution. Investigators of both agencies limit their procedure to requesting extension of detention from of the Chief of the Military Judicial Commission, for a duration of up to six months, without representing the defendants even to the Military Prosecution or the Military Judicial Court. The fact that both agencies, the Preventive Security and the General Intelligence, have frequently and repeatedly adopted such procedures, more so with the consent of the Military Judicial Commission, constitutes a grave violation of relevant Palestinian legislations, such as the Amended Basic Law and/or the Penal Procedural Code and is also a clear violation of the Revolutionary Penal Code of 1979 itself.

The detention of civilians in the Gaza Strip was conducted by security agencies of the Deposed Government where members of the “Fatah” movement in particular were arrested and detained apparently on grounds of their political affiliations. The arrests were carried out upon decisions by the military judiciary of the Deposed Government and through the Military Public Prosecution. After pressing certain charges, detainees were then held under the Military Trials Code which grants the Prosecution the authority to hold detainees for a period of 15 days. After the expiry of the initial 15 days, detention is usually extended for a period of 45 days upon a decision by the Central Court, followed by either a third extension by the Permanent Court for up to 6 months or

by the release of the detained in case the prosecution makes no indictment. Although it does not admit to holding political prisoners, the Deposed Government indicts them with charges in accordance with the law, such as the disturbance of factional relationships, but when the charges are read to the defendant, the indictment list accuses the defendant of having made contact with the “Ramallah Government”, or for giving information on some individuals to that Government, or other charges.

In **ICHR's** opinion, despite the presence of these charges, these persons qualify as political detainees. Moreover, since they are civilians, the procedures followed for their arrest and detention are arbitrary and violate the provision of the law. The same is also applicable to military personnel who are referred to those courts and who, according to the Military Prosecution, have committed crimes against the law. Although these charges do not constitute crimes punishable by any Palestinian law, they are used as a pretext in order to provide coverage for political detention.

**The major recommendations in this regard are:**

**Recommendations to the Palestinian National Authority:**

1. The Palestinian National Authority should start the promulgation of a unified Palestinian penal law in participation with all parties to the criminal justice and civil society institutions to ensure that the draft law clearly delineates which acts are considered criminal acts, and that the penal law does not criminalize the exercise of stipulated rights in accordance with international standards of human rights. The penal law must also clearly criminalize the use of torture and cruel, inhumane or degrading treatment or punishment. The law should also stipulate punitive measures against persons who commit such crimes, due to their status as officials and in charge. Meanwhile, the Palestinian National Authority must prohibit the detention and imprisonment of individuals on the basis of exercising the freedom of association and the freedom of expression of thought and political opinion.
2. The Palestinian National Authority should work on the amendment of the Palestinian Penal Procedural Code so as to establish a separation of authorities for investigation from that of indictment since such separation would provide the maximum level of protection of personal freedoms, by safeguarding the right to defense guaranteed in international instruments and in the Palestinian Basic Law, because investigation procedures must be neutral, as opposed to incitement, which depends primarily on adversity.
3. The Civil Public Prosecution should inspect prisons and expand the jurisdiction of this inspection to include other places used for withholding arrested persons, primarily the headquarters of the General Intelligence and Preventive Security agencies.
4. The Palestinian National Authority should adhere to the presentation of all civilian defendants before a competent civil judicial authority so as to provide appropriate guarantees for a fair trial and ensure that they are not deprived of their right to appear before a natural judge, and file for grievance or appeal to a judicial authority of a higher level jurisdiction.
5. It is necessary that the Civil Public Prosecution assume its legal responsibilities *vis-à-vis* the Judicial Police at the time of arrest, detention, interrogation and extension of detention, in accordance with the provisions of the law.

### **Recommendations to the *De facto* Authority in the Gaza Strip:**

1. Terminate the jurisdiction and administrative authority of the Deposed Government over the Higher Justice Council in the Gaza Strip as a step towards its dissolution, and the re-formation of the regular courts in accordance with the rules of the Basic Law and the Judicial Authority Law No. (15) of the year 2005.
2. Demand from the security agencies of the Deposed Government in the Gaza Strip to end their procedure of presenting civilians before the military judiciary, and to adhere to the Palestinian legislations in force.
3. Stop the utilization of armed groups, such as Al-Qassam Brigades- the military wing of Hamas- for the arrest, detention and interrogation of citizens.
4. In an objective and transparent manner, handle all complaints received against the security agencies it runs, and reveal the perpetrators of the crimes of torture and illegal detentions.

### **Chapter III: Right to Litigation**

The judiciary in the Palestinian-controlled Territory has been facing grave internal and external challenges and impediments while carrying out its functions to the fullest extent, in order to achieve justice and promptly adjudicate disputes between citizens. These constraints have been exacerbated in 2008 because of the Israeli practices of disconnecting Palestinian cities and towns through the placement of military checkpoints and the imposition of a strict blockade on Gaza Strip.

However, the political split between the West Bank and the Gaza Strip has presented the judiciary with its largest obstacle, where the formation of the "Higher Council of Justice" in 2008 upon a decision by the Deposed Government in the Gaza Strip violates the provisions of Palestinian Basic Law of 2003 that set forth the functions, composition, and jurisdiction of the judiciary.

Moreover, the judiciary has faced another challenge manifested in the shortages in its material and human resources. By the end of 2008, the performance of the Palestinian judicial authority has also been affected by the weakness, and lack of readiness, of institutions and units in support of the judicial functions, such as the arrest of fugitives, crime investigation or ensuring smooth conduct of trials. For instance, forensic centers and crime laboratories do not enjoy the sufficient level of capacity to provide reports and evidence necessary for proving criminal offenses, particularly with respect to autopsies and detection of arms detection and drugs.

The disruption that the Palestinian Legislative Council has suffered from in 2008 have also had a greater negative impact on the judiciary since the PLC was no longer able to continue with the development of the Palestinian legislative system, especially judicial legislation. The PLC is also rendered ineffective in terms of issuing amendments to specific procedural laws such as Penal Procedural Code, which in turn was posed as an obstacle to judicial reform efforts, slowed down the disposition of cases and delayed court sessions.

Within this context, **ICHR** observed many violations of the right to litigation in the Palestinian-controlled Territory during 2008. In the **West Bank**, fair trial procedures were absent in many

cases since a number of detainees are still held in prisons without presentation to the judiciary. In addition, the year 2008 was notorious by the failure of the Executive Authority, and its security agencies in particular, to respect court judgments and decisions, particularly those issued by the Supreme Court of Justice, whether in terms of refusal to implement the rulings or in terms of circumscribing or procrastinating their implementation. This was particularly noticeable in cases involving arbitrary arrests and closure of associations in addition to other cases where clear decisions were issued by the courts, especially the Palestinian High Court of Justice, which had ruled in dozens of such cases throughout the year.

In the **Gaza Strip**, the "High Council of Justice" continued to assume its functions in 2008 after its establishment upon a decision of the Deposed Government on September 11, 2007. The appointment of the "High Council of Justice" by the Deposed Government in the Gaza Strip represents a major, and explicit, encroachment over the powers and functions of the Higher Judicial Council and the pillars and foundations for the independence of the judiciary as affirmed by Article (98) of the Basic Law. As a result, the unity of the Palestinian judicial authority and the entire justice system was weakened even further, and continued to suffer from in-cohesion and limited ability as a third power to effectively carry out its functions pertinent to the protection of human rights and freedoms in the Palestinian-controlled Territory.

**The most significant recommendations in this regard are:**

**Recommendations to the Palestinian National Authority:**

1. Urge the Executive Authority to adopt appropriate measures to strengthen the independence of the judiciary and non-interference of the security agencies in judiciary affairs.
2. Urge the Executive Authority to respect the decisions of the courts and implement them without further delay.
3. Urge the Higher Judicial Council to activate the role of the judicial inspection in the oversight of the judicial performance in order to guarantee the rights of the accused and the application of the principles of justice. This could be done through the strengthening of the judicial inspection department and the assignment of a number of judges to it for this purpose.
4. Call upon the Higher Judicial Council to increase the number of judges in proportion to the number of courts in each district, and to provide specialized judges, whenever made available, with appropriate training. Compulsory basic training for new judges needs to be maintained and strengthened in many fields while continuous education and training should be offered for seating judges on various topics to determine the target group for each as needed. A program or a plan should be developed for the specialization of judges and their work in the future.

**Recommendations to the *De facto* Authority in the Gaza Strip**

1. Urge the Deposed Government in the Gaza Strip to abolish its decision for the creation of the "Higher Council of Justice", and to allow the Higher Judicial Council to carry out the tasks entrusted to it under the provisions of the Palestinian Basic Law.

2. Urge the Deposed Government in the Gaza Strip not to enforce the Military Judiciary Law passed by the members of Reform and Change Bloc at the Legislative Council.

#### **Chapter IV: Right to Hold Public Office**

The right to hold public office was one of the main rights violated in 2008 in the Palestinian-controlled Territory when security considerations outweighed legal rights and became a major underlying factor behind the recurrence of violations to this right. Violations took many forms such as the dismissal from civil service and suspension of salaries under the pretext of the so-called "lack of commitment to legitimate government" or "security considerations". In addition, violations continue to occur through non-adherence in some cases to proper recruitment procedures and promotion, and non-payment of staff entitlements in accordance with the financial provisions of the Civil Service Law (No. 4) of the year 1998, and its amendments. This means that this year, public policies have projected themselves on the patterns of violations that **ICHR** has documented with regard to the right to public office.

In the **West Bank**, **ICHR** registered dozens of complaints by public civil servants whose appointment was terminated by the Ministry of Education and Higher Education, because the competent authorities had not approved of their appointment, despite the fact that appointment procedures date back to two years, and that all of them had completed their probationary period after the passage of one year. **ICHR** maintains that these decisions had encroached upon the fundamental rights enjoyed by civil servants and guaranteed in the Palestinian Basic Law and the Civil Service Law and its regulations. The decision violated the appointment procedures set forth in the Civil Service Law through the imposition of a new condition not called for in the law, namely that the appointment is hinged upon the approval of the "competent party" without specifying this party. In **ICHR's** opinion, the decisions have even infringed upon the disciplinary procedures and penalties contained in the law. The decisions for the cancellation of appointments had not established or referred to any conduct or disciplinary proceedings that call for the termination of any of the civil servant in question. On the contrary, the complainants had all received guarantees of good conduct from the competent authorities, as required by the Civil Service Law.

Moreover, **ICHR** received complaints of dismissal from civil service and salary suspension upon the recommendation of the Security Committee of the Council of Ministers, in addition to complaints about non-appointment upon the recommendation of the security agencies. It should be noted here that the Council of Ministers had on March 9, 2007 taken a decision to integrate the "security examination into the recruitment process". This decision represents a serious setback from the previous measures adopted by the Council of Ministers in April 2006, that abolished a condition for citizens with interest in joining the civil service who are required to obtain the approval of the security services (Preventive Security and General Intelligence) and limited that to the person's "criminal history" as stipulated in the Civil Service Law.

Against the ground of strike declared by both civil servants and personnel of the health sector in **Gaza Strip**, the Deposed Government temporarily contracted (3000) teachers of all disciplines and school levels in return of a lump sum compensation. Similarly, temporary contracts were also drawn with (150) school secretaries (300) janitors of both genders without a preannouncement of these vacancies or filling them competitively. Those actions were also accompanied by a number

of cases of dismissal and termination of employment by the Deposed Government in the Gaza Strip.

**ICHR proposes the following recommendations in this regard:**

**Recommendations to the Palestinian National Authority**

1. It is necessary for the Care-Taker Government to adhere to the provisions of the Civil Service Law No. (4) of the year 1998, and its amendments and regulations in the process of recruitment, dismissal, or salary suspension of civil servants.
2. It is necessary for the various security agencies to end their interference in the process of recruitment, dismissal of civil servants, since they have no legal basis for such interference.
3. Ministries and administrative authorities should end the dismissal, salary suspension, or non-appointment of civil servants based on recommendations by security agencies.
4. The General Personnel Bureau must stop the application illegal administrative norms that requires the referral of all applications for public service posts to the security agencies for approval.
5. It is necessary to review the cases of dismissal, salary suspension, or non-appointment to civil service upon the recommendation of security agencies, and compensate such persons for the injustice done to them in accordance with the provisions of the law.

**Recommendations to the *De facto* Authority in the Gaza Strip**

1. Call upon the Deposed Government to separate between political conflict and the right of the public servant to strike and refrain from political considerations in the appointment of public servants.
2. The necessity for the Deposed Government to abide by the provisions of the Civil Service Law No. (4) of the year 1998, and its amendments and regulations in the process of recruitment and dismissal of civil servants.
3. Call upon the Deposed Government to respect the right to strike as a legitimate right guaranteed by the Basic Law and international human rights conventions.

**Chapter V: Right to Health**

In 2008 several complaints were filed to **ICHR** that involved citizens' allegations of medical errors in governmental health institutions. The most well-known cases was concerned with the death of (12) premature infants over a period of 3 months at the neonatal department of Ramallah hospital. The Minister of Health issued a temporary injunction or directive to close the present neonatal incubators unit and reopen it with new incubators elsewhere in the hospital. The minister also ordered to take samples from all sites for examination to determine whether bacteria were found in the blood of premature infants or in the site. A technical committee was also formed to investigate the case.

The year 2008 saw another public case concerning the medicines control at the time the Care-Taker Government carried out its security operations or campaigns. The Ministry of Health (MoH) intensified its efforts to monitor the quality of food and medicines, through the inspection for expired and contraband medications. On March 4, 2008, inspectors of the MoH Drug Control Department discovered during the periodic inspection in Nablus district large quantities of expired or non-licensed medicines. While some medicines were imported by agents registered with the

Ministry of Health, but did not carry the agent's label, others were smuggled or donated. The inspectors also seized a number of pharmaceuticals manufactured in China labeled in Chinese, in contravention of the regulations and instructions in force at the MoH.

Complaints of the non-availability of a number of important drugs at the MoH pharmacies and their high price for patients without health insurance were also common in 2008. As stated in the Ministry's quarterly reports for 2008, there was a shortage in medical consumables more and than (140) medications.

**The most important recommendations in this regard:**

1. It is necessary for the Ministry of Health to hold a dialogue with civil society, the private sector and other governmental entities interested in health insurance, including unions, associations, companies, commercial health insurance firms, and others, with the aim of making the core of health insurance the provision of comprehensive coverage for citizens, without discrimination on the basis of gender, and at affordable prices for all citizens.
2. It is necessary for the Ministry of Health to make available all medicines, medical consumables, and spare parts according to transparent and modern procurement mechanisms consistent with the practical needs of the Palestinian health sector, in terms of quantity and timeframe.
3. It is necessary for the Ministry of Health to commence construction of medical warehouses, as a step towards solving the recurrent problem of pharmaceutical shortage.
4. It is necessary for the Ministry of Health to seriously and promptly follow-up with complaints filed against its health facilities, or against practices by their personnel.
5. It is necessary to amend the Jordanian Penal Code No. (16) of 1960, in force in the Palestinian-controlled Territory, so as the burden rests with medical doctors rather than the patient of proof of medical responsibility.
6. It is necessary for the Ministry of Health to publish and disseminate to the public the results of its investigations pertinent to the status of health, so that the public could formulate their own views on the health issues of concern to the Palestinian public.

**Chapter VI: Right to Freedom of Opinion and Expression**

The significant rise in the attack on personal freedoms of Palestinian journalists during 2008 was unprecedented since the establishment of the Palestinian National Authority. **ICHR** monitored (45) cases of arrests of journalists in the West Bank and the Gaza Strip. A total of (32) journalists and personnel of media institutions were arrested upon the decision of the Palestinian security agencies in the West Bank. The security agencies of the Ministry of Interior in the Deposed Government arrested (13) journalists and media personnel throughout the year. In this regard, **ICHR** received (14) complaints from journalists who were arbitrarily arrested by security agencies and without the proper legal procedures. They were either brought before the military judiciary or detained for long periods without presentation before the civil or military prosecutions.

Some journalists in the Palestinian-controlled Territory were subjected to various forms of harassment, such as assassination attempts and use of force to prevent them from practicing their work. **ICHR** documented (14) cases of assaults on journalists, photographers, and reporters of media organizations in the West Bank in which force was used to prevent them from reaching the scene to take pictures or cover unfolding events.

In the **Gaza Strip**, many journalists and personnel of media institutions endured attacks by the security agencies of the Ministry of Interior of the Deposed Government while covering events. Security agencies in the West Bank prevented the printing and distribution of Falastin, Al-Risala, and Minbar Al-Islah newspapers. In the **Gaza Strip**, the security agencies of the Ministry of Interior of the Deposed Government prohibited the entry of some West Bank newspapers such as Al-Quds (on August 23, 2008), Al-Hayyat Al-Jadeeda (July 27, 2008) and Al-Ayyam (February 11, 2008), under the pretext of partiality and bias to one party to the conflict and lack of professionalism.

In the **West Bank**, the right to freedom of opinion and expression suffered violations during 2008 in the hands of the Palestinian security agencies. The Palestinian political split overshadowed the exercise of the freedom of opinion and expression and overburdened people with many imposed restrictions. Many people were arrested or attacked as a result of exercising this right. In the Gaza Strip, the Ministry of Interior of the Deposed Government imposed several restrictions on the exercise of freedom of opinion and expression, where a systematic restrictive policy was followed and many writers and others were arrested, beaten or tried before the courts on the grounds of expressing their views and opinions.

Moreover, **ICHR** monitored cases of various forms of harassment and threats made against some human rights defenders in the Palestinian territories. Some of them were arrested and had their materials and documents confiscated for monitoring and documenting human rights violations on the ground, or for trying to document violations of human rights that were unfolding. Security services deliberately obstructed their work, whether directly or indirectly, to stop them from documenting these violations.

### **The most important recommendations in this regard:**

#### **Recommendations for the Palestinian National Authority in the West Bank**

1. **ICHR** recommends that the Ministry of Interior (MoI) and the security agencies halt all illegal procedures that were taken against journalists and media outlets. Additionally, they should cease to arrest and pursue journalists while opening an official investigation about cases of ill-treatment of journalists during their arrest upon decision of the security agencies.
2. The MoI and the security apparatuses of the Care-Taker Government shall work on removing restrictions on the exercise of the right to freedom of opinion, expression, and the right to peaceful gathering in the Palestinian-controlled Territory in accordance with the provisions of the Palestinian Basic Law.
3. In **ICHR's** opinion, it is necessary for the security agencies to have an official spokesperson to ensure the smooth flow of reliable information to journalists as is the case with the Palestinian police service.

4. **ICHR** also recommends to the MoI and the security agencies to change their procedures with regard to the freedom of expression and opinion and the rights of Palestinian journalists while covering public events such as conference, meetings, marches and the like.
5. It is necessary for the security services to respect the decisions of the High Court of Justice pertinent to journalists and implement them without delay in order to ensure the principle of the rule of law and respect for human rights.
6. **ICHR** recommends that the MoI and the security services allow media outlets that were banned without legal justification to resume their journalistic work including al-Risala and Palestine newspapers.
7. The PNA should work on adopting what is contained in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (also known as the Declaration on Human Rights Defenders).
8. The Security agencies should remove all obstacles and constraints imposed on Human Rights Defenders in order to facilitate their work.

### **Recommendations for the *De facto* Authority in the Gaza Strip**

1. Security apparatuses of the Deposed Government shall halt arrests and persecution of journalists and open an investigation in the cases where journalists were ill-treated and persecuted.
2. The MoI and the security apparatuses of the Deposed Government shall work on the removal of all restrictions over exercising the freedom of expression, opinion, and peaceful gatherings in the Palestinian-controlled Territory in accordance with the provisions of the Palestinian Basic Law.
3. **ICHR** recommends to security agencies of the MoI of the Deposed Government to refrain from preventing journalists from covering events, and allow them full freedom to report the events that occur in the Gaza Strip.
4. **ICHR** recommends that all illegal actions taken by the MoI of the Deposed Government regarding media outlets in the Gaza Strip end and that they be allowed to work in accordance with court rulings.
5. The MoI of the Deposed Government shall allow banned media outlets to resume work in the Gaza Strip and allow the entry of al-Hayyat Al-Jadeeda and al-Ayyam newspapers for distribution.
6. It is necessary for the security apparatuses of the MoI of the Deposed Government to stop the practice of presenting journalists before military courts.
7. All obstacles and constraints imposed by the security agencies on work of the Human Rights Defenders must be removed to facilitate their work.

## Chapter VII: Right to Form Associations and Labor Unions and the Right to Strike

Throughout 2008, the right to form associations in the West Bank and the Gaza Strip continued to be subjected to various forms of violations in stark contradiction to the international conventions of human rights, the Palestinian Basic Law, and the Law on Charitable Associations and Community Based Organizations No. (1) of the year 2000 and its regulations No (9) of the year 2003.

In the **West Bank**, **ICHR** noted that a total of (136) associations under the registration process had applied for registration at the MoI in 2008 but had not been furnished with certificates of registration, despite the expiry of the two-month period provided for by the law. The registration process had further been complicated by the resumption of the application of the decree No. (20) of 2007, which stipulates the referral to the security agencies for the completion of the registration procedures. In 2008, **ICHR** also monitored incidents where the security agencies entered the premises of some charitable and civil society organizations by force which ended in the confiscation or destruction of their properties and possessions.

**ICHR** also observed that the Ministry of Interior of the Care-Taker Government had interfered in the conduct of affairs and management of a number of associations in many ways, such as appointing new management boards and administrations to replace existing ones. In 2008, the MoI ordered the formation of interim management committees for 28 associations in addition to interference in the elections of associations' governing boards in violation of paragraph (3) of Article (46) of the Regulations of the Charitable Societies Law. **ICHR** also noticed that the Associations Department at the MoI of the Deposed Government selects financial auditing committees to audit the revenues of associations although the department is not a competent authority as provided in Article (6) of the Charitable Societies law. Finally, the Care-Taker Government ordered the dissolution of (59) charitable organizations during 2008.

In the Gaza Strip, **ICHR** noted that the MoI of the Deposed Government obliged organizations to present a Certificate of Good Conduct along with their application form. It also observed that a number of associations in the Gaza Strip endured forced entry by the internal security and the police agencies of the *De facto* Authority in the Gaza Strip, with the participation of the Al-Qassam Brigades. Some of the workers in these associations were arrested and pursued. In addition, the MoI of the Deposed Government took upon it the task of financial auditing contrary to the provisions of the law and dissolved (171) associations.

Some measures were adopted during 2008 against the right to form trade unions and union work. In the West Bank, **ICHR** noted that the Jordanian Labor Unions Law No. (35) of the year 1953 left trade unions without any legal framework governing their work. **ICHR** also noted that the Ministry of Labor does not provide certificates of registration for some unions even if they meet all the legal requirements. Regarding the formation of unions, **ICHR** noted that the Ministry of Labor had not registered any union in 2008.

As for the Gaza Strip, provisions of order (331) of the year 1954 are still applicable for unions. While its provisions are considered old-fashioned and in need for amendment, labor unions were still subject to attacks by the security agencies of the Deposed Government .

As for the right to strike, the labor unions of Health Workers, Teachers, and Public Sector Employees in the **West Bank** exercised their right to strike which led the President to issue a Decision with the Power of Law No. (5) of the year 2008 to govern strike-related provisions in the civil service sector. The abovementioned three unions exercised their right to strike in the **Gaza Strip** which was met by the arrest of committed strikers by the security apparatuses of the Deposed Government in order to force them to halt their strike.

**The most important recommendations in this regard are:**

**Recommendations to the Palestinian National Authority:**

- 1- The Minister of Interior should revoke what is called “the security considerations” as a key procedure to fulfill the registration process.
- 2- The Minister of Interior must re-open the unlawfully closed down associations and compensate them for the unlawful destruction of their possessions in compliance with Article (32) of the Basic Law which stipulates that: “Each aggression committed against any personal freedom, private life of human beings, or any of the public right or freedom safeguarded by the law or the Basic Law, shall be considered as a crime. Criminal and civil cases resultant from such infringement shall not be subject to any status of limitation. The National Authority shall guarantee fair indemnity for those who suffered such damages.”
- 3- The Ministry of Interior should intervene to put a halt to the Security agencies’ interference in the affairs of associations.
- 4- Competent specialized ministries, yet not the Ministry of Interior, are to fulfill their roles in following up on the work of associations in accordance with the provisions of the law with respect to the exercise of financial auditing powers and the monitoring of financial and administrative reports of associations.
- 5- The PNA should devise legal mechanisms to confront the Israeli policy of confiscation and closure of associations operating in the Palestinian-controlled Territory as provided in the law.
- 6- It is necessary for the Ministry of Labor to adopt all necessary measures to facilitate the unions’ work until a law is issued to govern their functions.
- 7- It is necessary for the Ministry of Labor to grant registration decrees to the unions which have met all the legal requirements.
- 8- It is necessary for the Ministry of Labor to register all operating unions based on the premise that pluralism is an important aspect of free union works.
- 9- It is important for the Palestinian President to reconsider the decision with the power of law No. (5) of the year 2008 on civil servants' exercising the right to strike and to eliminate all vagueness contained in some of its technical aspects, pending the appropriate time for the issuance of a comprehensive law to govern the right to strike within the civil service.

**ICHR recommendations to the *De facto* Authority in the Gaza Strip:**

- 1- Ensure that the MoI reopens the associations that were closed down and returns their confiscated property.
- 2- The MoI of the Deposed Government should open all the closed associations and return their confiscated properties.
- 3- The Ministry of Interior's intervention should halt the actions of the security forces and Al-Qassam Brigades against associations and civil organizations.
- 4- Act upon recommendations provided by the Committee on Oversight and Human Rights in the Legislative Council that were also addressed to the Minister of Interior on July 29, 2008.
- 5- Call upon the security apparatuses to respect the rights to establish labor unions and to exercise union work.
- 6- Call upon the necessity for security apparatuses to seize interventions in unions and union members.
- 7- The Deposed Government and its security apparatuses should respect the right to strike as a legitimate right safeguarded in the Basic Law and the international conventions of human rights.
- 8- The Deposed Government should disassociate the right to strike neutralize the right to strike in the civil service sector from any political conflicts and connotations, and to call upon the MoI to halt all assaults by the security apparatuses on civil servants.

### **Part III: Accountability and Responsibility for Human Rights Violations**

Recognizing the importance of accountability for the reinforcement and protection of fundamental human rights and freedoms, **ICHR** designates a special section of its 14<sup>th</sup> annual report to the question of accountability and responsibility within the framework of the Basic Law and the safeguards it provides to compensate for harms and amend damages ensuing from the violation of any of the basic rights and freedoms.

In this section, **ICHR** discusses the extent to which the PNA and the *De facto* Authority in the Gaza Strip have addressed the issue of accountability and examines all procedures applied by the executive apparatuses of both the Care-Taker and Deposed Governments. This is done through the review of decisions, instructions and orders that contribute to the enhancement of internal control for the protection and reinforcement of principles of human rights. The review also extends to procedures undertaken to enforce accountability on persons charged with law enforcement who have committed acts of violation of the provisions of the law whether these procedures were disciplinary or penal, or were of an administrative or functional nature, particularly in the event of gross violations of these rights. Special attention is paid to grave violations such as extrajudicial killings, torture, excessive use of force, and other serious acts whose perpetrators should not under any circumstance be allowed to escape punishment or accountability and responsibility, taking into consideration that these crimes are not subject to the statute of time limitation

**ICHR** realizes that this issue is exceptionally challenging to address, especially in light of the political rift between the two Palestinian factions and the absence of the oversight role of the Legislative Council. However, **ICHR** aims through this section to emphasize the important role of monitoring and oversight institutions in urging the public authorities to put this issue back on their official agendas and to be taken into consideration in the formulation of public policies and shaping the conduct of their personnel. This would drive for a culture where human rights become genuine elements of the public work and emphasize our constant affirmation of respect of the rule of law which guides our work in all circumstances and at all times.

The responsibilities that fall on the shoulders of the PNA within the framework of policy making and implementation of its programs through the various executive agencies, both civil or military/security, to obligate itself to a system of public rights and freedoms, the respect of which is made obligatory by the national legislation and the Basic Law which stipulates the punishment of violators of personal freedoms and public rights and freedoms. The law even provides for full and fair compensation for the harm inflicted by or resulting from this violation and encroachment.

The ultimate challenge facing the PNA after the endorsement and implementation of the security plan and the restoration of civic peace, security, and rule of law in the West Bank, lies in the amount of respect of law enforcement officers display towards human rights during the exercise of their functions, which include arrest and search operation, and carrying out court rulings. Dealing with the public is another delicate area, whether in peaceful contexts such as marches, journalistic coverage of events, or while bringing in feuding families to police stations or courts and other direct and long daily contact with Palestinian citizens to enforce the rule of law and respecting its principles.

**ICHR** observed that the security plan adopted in the West Bank had progressive achievements sufficient to bring vigilantism and lawlessness to an end. This was achieved through an active and competent police agency that has increasingly become more capable of responding to community needs and more responsive to monitoring the performance and quality of law enforcement officers. Some officers were also assigned to respond to a stream of **ICHR**'s letters to the Director General of the police service pertinent to claims of human rights violations by some police officers during the conduct of their duties, despite the fact that the majority of police reply letters denied occurrence of such violations. Furthermore, **ICHR** believes that the appointment of legal professionals for the highest posts at the general directorates and governorates and the issuance of "sustainable instructions" by the Director General of police service were conducive to producing fruitful results on the ground as reflected in a higher respect to human rights and public freedoms.

Through its various monitoring roles and mechanisms, **ICHR** strives to ensure protection for public rights and freedoms and seeks to enhance the culture of accountability within the executive agencies. The disciplinary measures that the police had announced in 2008 against some police officers are consistent with the potential impact of a more comprehensive role that monitoring bodies could play for the protection of human rights, through encouraging internal oversight functions within the law enforcement agencies for holding their members accountable for violating any public rights and freedoms. According to the official police report, the number of disciplined members and officers who were punished by the police service reached a total of (430) of "Internal cases of internal disciplinary sessions against police officers and members who overlooked the law when dealing with citizens. Their sentences ranged from expulsion from the service (10 officers were expelled) to demotion, delayed seniority, lowered ranks, salary deduction and reduced leave of absence".

Colonel Adnan al-Dumeiri, the official spokesperson of the police, pointed that one police officer was disciplined for not intervening to stop an assault on a journalist by a member of the security agencies since police officers according to the Colonel, are obliged to defend citizens. In one incident dated December 3, 2008, the police in the Tulkarm governorate intervened to protect a journalist from the assault by a member of the national security services. This reflected efforts taken to protect and respect the human rights.

**ICHR** views the procedures taken by police against violators human rights among law enforcement officers as indicators that the accountability and internal oversight system has begun to emerge as one of the potential key tools for the protection of fundamental human rights and freedoms, which is consistent with what **ICHR** has always called for, until the citizen realizes that no one is immune from persecution in case they commit any violations of human rights

By contrast, neither the Preventive Security Services nor the General Intelligence had, despite the hundreds of complaints that **ICHR** received against them, taken any measures or actions against law-enforcement officers amongst their personnel. According to responses received from these two agencies, **ICHR** has not noticed any kind of internal oversight on their operations and conduct in 2008, although the Director General of the Intelligence Services in the West Bank issued on December 10, 2008 clear instructions to all Intelligence Directorates requesting to allow the Civil Public Prosecutor, and members of the Prosecution, to carry out unconditional inspection of all detention and interrogation centers run by the Intelligence.

**ICHR** perceives this as a positive step towards the activation of oversight mechanisms on the security agencies by the Public Prosecution, as stated in Article (126) of the Palestinian Penal Procedural Code of the year 2001. Obviously, it is not a substitute for internal control mechanisms, and will not be complete without the political will of decision-makers for the respect for the principles of the rule of law, proper legal procedures and human rights on part of the officials during the implementation of their law enforcement duties. This also requires a commitment, in all situations, to the provisions of the law and presentation of civilians before the civil judiciary with the inherent jurisdiction as well as the immediate termination of the practice of bringing civilians before military courts since it constitutes a clear violation of the provisions of the Penal Procedural Code.

In accordance with **ICHR's** documentation and follow-up in the Gaza Strip, the measures, and procedures pertinent to control and accountability for the performance of the Deposed Government performance was limited to the formation of some committees specialized in a number of human rights violations, in addition to the introduction of the Controller General to the Ministry of Interior, in light of noticeable increase in human rights violations in the Gaza Strip in 2008 in comparison to 2007.

In 2008, a number of governmental inquiry commissions were formed by the Deposed Government to address various types of human rights violations, including the Helles family events that took place on August 2, 2008. A large force of police and security agencies of the *De-facto* Authority, with the participation Hamas' military wing, Al-Qassam Brigades, surrounded a number of houses in Al-Shuja'iyya residential area, east of Gaza city, where members of Helles family reside. Armed clashes erupted between the two sides for nearly 11 consecutive hours that ended in the death of 15 persons (13 residents and 2 police officers) and they affected 107 persons with various injuries.

The Deposed Government issued a decision for the appointment of Dr. Hassan Al-Saifi for the post of the Controller General at the Ministry of Interior, who was given the mandate to monitor and control the performance of security agencies and their personnel. He is also authorized to conduct investigations into allegations of violations and wrongdoing by members of the security agencies, and to receive, follow up and address citizens' complaints in this regard. In 2008, a large number of complaints were filed directly to the office of the Comptroller General which cooperated with **ICHR** in addressing many of the complaints filed by citizens to **ICHR**. The Comptroller General have had a positive role in rectifying some legal situations and addressed a variety of offenses.

**ICHR** identified patterns of violations which call for effective investigation procedures to address that the Deposed Government has neglected to undertake. Examples of these violations include the murder of Sami Atiya Khattab, 36, who was kidnapped from his home on April 13, 2008 by a group of unidentified militants. Two days later, his body was found dumped in the open area north of Palestine International University, close to the former "Netzarim" settlement. According to investigations, the Police did not take or follow-up with the legal procedures necessary for the investigation of this incident. **ICHR** also registered a similar deficiency in the investigation of the circumstances of death of Izz Mustafa El-Shafe'i, 22, whose family claims he was beaten on his feet with sticks, and fell from the third floor of the Al-mua'sskarat main police procedures against the individuals who neglected the protection during detention.

**ICHR** commends the appointment of a Controller General of the Ministry of Interior and the formation of a number of investigation committees to inquire into human rights violations. However, **ICHR** believes that those committees lacked clarity in their approaches and performance of their tasks. For example, the committees' members were not announced, nor their procedures and rules disclosed. Since the committees have not assumed a major role in the detection of facts, or published the results of their work to the public, it is debatable whether these efforts have serious intentions and commitment to fact finding and to holding accountable all perpetrators of such crimes and compensating their victims.

## **Conclusions**

On the basis of all of the above, **ICHR** concludes that we are still a long distance away from the emergence of a system of accountability and responsibility which would become an integral component of the functions of public authorities and their executives agencies. This is particularly true in light of the political split, the disruption of the PLC, and the continued Israeli occupation. The lack of political will and the absence of full Palestinian sovereignty on the Palestinian-controlled Territory, are serious impediments to a system of integrity and accountability. The shortest path to achieve this is to introduce the relevant legislative amendments, and develop effective legal mechanisms for accountability, combined with an enabling environment and favorable political will.

It is worth pointing out that the issue of accountability and responsibility should be taken very seriously for the prosecution of perpetrators of human rights violations, especially in those violations that constitute crimes not subject to the statute of time limitations or other serious violations of human rights such as extrajudicial killings, torture, and excessive use of force, enforced disappearances, and other grave physical abuses. In each of these cases, investigation committees must be formed and the results of their inquiries and investigations publicly disseminated. In addition, it is also important to hold the perpetrators who are found guilty of these

crimes and gross violations accountable. Undoubtedly, the formation of impartial and neutral investigation committees is of great importance to disclose the facts and identify cases of human rights violations, the circumstances in which they had occurred, and the underlying factors behind them. They are also necessary to redress the victims or their families, and to ensure fair compensation for them while laying the foundations for the non-recurrence of such types of violations.

### **Annexes to the Annual Report**

The 2008 Annual Report contains three annexes:

**Annex No. (1)** which is comprised of two tables. Table (1) depicts the deaths and killings in 2008 in the West Bank and the Gaza Strip according to reasons of death, distributed by month. Table (2) provides a list of names of persons killed in 2008 in both West Bank and the Gaza Strip.

**Annex No. (2)** provides a summary of the Independent Commission for Human Rights and its mandate and functions.

**Annex No. (3)** contains **ICHR's** annual budget for 2008. The total expenditures incurred 2008 reached (US\$ 1,989,169). This amount was incurred from the implementation of a variety of activities related to human rights training and awareness raising, in addition to the production of various publications and annual and special reports in addition to **ICHR's** administrative costs. It should be noted that **ICHR's** annual income and revenues provided by its Consortium of donors in 2008 had totaled (US\$ 1,928,802). The public dissemination of **ICHR** in 2008 aims at promoting financial transparency in **ICHR's** operations.