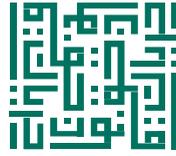


الهيئة المستقلة لحقوق الإنسان ((ديوان المظالم))
The Independent Commission For Human Rights (ICHR)

The Status of Human Rights in Palestine

1 January– 31 December

2011



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The Status of Human Rights in Palestine

The Seventeenth Annual Report
Executive Summary

1 January– 31 December
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A Palestinian State where the rule of law and equality are promoted, and where human rights and freedoms for all are respected

Law- Rights- Freedoms

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Executive Summary

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The Seventeenth Annual Report on the Status of Human Rights in 2011 consists of three parts and two annexes. **Part I** highlights the political environment and the variables indicative of the situation of human rights in Palestine, including Israeli violations of Palestinian citizens' rights and the impact of these violations on the performance of the Palestinian National Authority (PNA) and its ability to safeguard human rights.

Part II highlights major patterns of public rights and freedoms, such as the right to life and physical safety, due process, litigation, public freedoms, establishment of associations, travel and movement, and the right to work. Violations of these rights and their impact on Palestinian citizens, who are entitled to exercise their rights as enshrined in the Palestinian Amended Basic Law of 2003, as well as the policies and measures taken by the PNA and the Government in the Gaza Strip, are discussed in their relevant chapters. Each part also consists of a set of recommendations addressed to the decision makers and legislators in order to ensure respect for public rights and freedoms.

Part III of the report highlights in two chapters the subject of accountability and responsibility for violations of human rights and public freedoms. The first chapter sheds light on the complaints filed by ICHR during 2011 in the West Bank and Gaza Strip, including its monitoring role of the detention centers. In the second chapter, the issue of accountability and

performance of the PNA as well as the Government in the Gaza Strip is highlighted, particularly in terms of pursuing the perpetrators of these violations, taking disciplinary measures against them, bringing them before the competent courts and guaranteeing a fair ruling for the victims of these violations.

What follows is a summary of the major issues and patterns of human rights violations discussed in the three parts of the Seventeenth Annual Report of ICHR for 2011.

Part One

The Political and Legal Environment's Impact on Human Rights

The status of human rights in Palestine 2011- in spite of some positive signs - is still far from the image that the PNA and its departments and divisions have committed themselves to achieving, specifically in (Part II) of the Amended Palestinian Basic Law of 2003, "Rights and Freedoms"¹. This is regardless if these conditions were the result of practices and violations of due process, or implications of legislative and political changes within the overall situation.

I. Political Data

The issue of democracy and human rights attracted great attention during 2011, and this is largely due to what has become known as the "Arab Spring", which resulted in the fall of several dictatorships. The fall of some has led to the restoration of hope in the peoples of the region that they will be blessed with democratic regimes where citizens can enjoy the fundamental rights and freedoms that have been denied them for many years.

This comes at a time in which the political environment surrounding human rights in Palestine maintained the relative stability that prevailed in recent years, with the continued political and geographical division between the West Bank and Gaza Strip. It also comes in light of the continued Israeli occupation of Palestine since 1967, especially in the city of Jerusalem, and the dominance of its discriminatory and

1- Article (5) of the Amended Palestinian Basic Law of 2003 states that the regime in Palestine is a democratic regime, and must be based on respect for public liberties and personal freedoms and human rights in general. By looking at (Part II) of the Palestinian Basic Law, which was dedicated to these rights, recognized them and vowed to join without delay the international and regional declarations and conventions which protect human rights. We find it states explicitly the need to respect the freedom of opinion and belief, for equality in rights and duties before the law (Article 9), personal freedom (Article 11), and the illegality of imprisoning anyone, except in accordance with the provisions of the law (Article 12), the prohibition of coercion and torture (Article 13), and the importance of freedom of opinion (Article 19), freedom of residence and movement (Article 20), the inviolability of home and private life (Article 17), the right to employment and housing, the right to political participation (Article 26) and the right to media freedoms (Article 27).

racist policies on the necessities of life for the Palestinian people. This disrupts - in several ways - the ability of the Palestinian National Authority (PNA) to perform its duty, and this is in violation of international law and international humanitarian law. It blocks the way for political negotiations between the Palestinians and Israelis, a result of the intransigence of the Israeli occupation authorities and its refusal to stop settlement construction in the West Bank.²

The political data monitored by the Independent Commission for Human Rights (ICHR) during 2011, which had a clear impact on rights and freedoms in Palestine are as follows:

1. Escalation of Israeli Occupation Measures

During 2011, the Occupying Power has continued its violations of Palestinian human rights. Israeli policies and measures continued, thus undermining the chances of development at various levels within Palestine. It imposed a suffocating blockade and continued its invasions of Palestinian cities, towns and villages, intensified land confiscation, settlement expansion and construction of the “Apartheid / Separation Wall” and proceeded with its arrest and detention policies.

During the year 2011, Israeli occupation authorities approved the construction of (26,837) settlement units, confiscated (15,525) dunums, demolished (495) houses and facilities, uprooted (18,764) trees, arrested about (3,300) citizens, and killed (180) citizens, of whom (21) were children.³

2. Reconciliation Efforts and Political Division between the West Bank and Gaza Strip

As a result of the numerous, continued efforts made by many local, Arab

2- In accordance with international humanitarian law, Israel is still considered to be engaged in a military occupation of the territories taken in the June 1967 War. However, the Fourth Geneva Convention and other provisions of international humanitarian law apply to these territories. This also includes East Jerusalem, which is also still occupied territory, where Israeli settlement policies and practices violate Article (49), paragraph (6) of the Fourth Geneva Convention, which prohibits the occupying power from transferring groups of its own civilian population into the territory it occupies.

3- Report entitled, “People under Occupation”, issued by the PLO Department of International Relations in Ramallah on 28/12/2011.

and international parties for reconciliation between Fatah and Hamas, a Reconciliation Agreement was signed on May 2011, ending four years of division and estrangement between the two movements. This fulfilled the aspirations of the Palestinian people as a whole to end the division, and it took place after holding several sessions of dialogue between the parties to discuss the outstanding issues, most notably, the PLO file and the security services, and the formation of the Palestinian Government.

ICHR hopes that the Palestinian reconciliation achieved will bring an end to the numerous patterns of human rights violations which have been consistently monitored and documented by ICHR, such as arbitrary detention, security clearance conditions for public office, procrastination and delay in the implementation of some court rulings, and torture and ill-treatment in the West Bank and Gaza Strip.

3. Postponement of Local Elections

On 22/08/2011, Palestinian President Mahmoud Abbas issued a presidential decree postponing the local elections in the northern governorates of the West Bank, and these had been scheduled to take place on 22/10/2011. As stated in the preamble of the resolution:

“with reference to the delay in forming the Government, to contribute to efforts to end the division and to achieve national reconciliation and unity, and in support of the national and Arab efforts to end the division and to achieve national reconciliation and unity and for the purposes of providing the atmosphere to achieve this, and to give opportunity to the Central Election Commission (CEC) to complete readiness for the elections throughout the governorates, and in pursuance of the higher interest and the public interest.”

The postponement decision was made after a prior decision of the Palestinian Cabinet on 17/05/2011 to postpone the local elections which were scheduled for 17/07/2011, and this was in implementation of the Palestinian High Court decision from 22/10/2011. The Council of Ministers’ decision states that the delay was

“In light of the CEC inability to start the technical measures for the local elections in the Gaza Strip, and in implementation of the Local Elections Act No. (15) of 2005 to hold elections throughout the Palestinian-controlled territory in one day, with signing the Reconciliation Agreement, and provision of the appropriate atmosphere for holding elections in the Palestinian territory according to law.”

On 13/12/2010, the Palestinian High Court of Justice had issued a decision to abolish the Council of Ministers’ decision on the postponement of local elections. According to the court decision:

“the holding of elections is a democratic merit and does not threaten international peace and security according to the public prosecution in this regard, confirming that the lawsuits filed are right in all legal aspects and elements pertaining to challenging the Government’s decision and its reasons. Since the division was in place before issuing a resolution for setting a date for local elections, there has been nothing new in this regard during the period between April 2010 and its postponement decision on 10/06/2010.”

The court also confirmed its decision that the election was a constitutional right and did not threaten national security and peace, but rather reinforced it, especially regarding the fact that all security services and the competent authorities were ready to be held as scheduled on 17/07/2010. In addition, the CEC did not request a postponement.

II: Impact of the Continued Division on the Status of Human Rights

Despite the reconciliation efforts between Fatah and Hamas during 2011, and the registration of a decline in the allegations and complaints submitted to ICHR, the continued state of division, and the closure of the political horizon held Palestinians in the West Bank and Gaza Strip with the burden of the results of the political dispute between the parties. During 2011, ICHR monitored a number of human rights

violations in the West Bank by the Palestinian Government in the West Bank as well as the Palestinian Government in the Gaza Strip. Violations include:

1. Violations of the right to life - issuance of death sentences without guarantee of a fair trial

ICHR monitored the issuance of (9) death sentences in the Gaza Strip: (1) issued by the civil courts, and (8) by the military courts. However, the most serious development occurring in the issuance of the death penalty was the Government's implementation of a death sentence on 04/05/2011, which was contrary to the provisions of the Palestinian Basic Law and required ratification by the President of the PNA when issued by the civil or military courts and prior to carrying out the death sentence.

2. Violations of the right to physical safety - allegations of torture and ill-treatment⁴

During 2011, ICHR received (214) complaints in this category, including allegations of torture and / or ill-treatment. There were (112) in the West Bank against the security services, and (102) in Gaza Strip against the security services. ICHR found, through its periodic visits to the detention centers and following up citizens' complaints, that some detainees have been exposed to torture or ill-treatment, according to affidavits, noting here that ICHR is still banned from visits in the Gaza Strip.

ICHR is deeply concerned over the exposure of detainees in detention centers to beating, ill-treatment and torture during arrest and

4- The basic definition of torture, as set out in the United Nations Convention Against Torture (1984) and in accordance with Article (1) states: "For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." The General Assembly of the United Nations adopted on 9 December 1975 the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article (2) of this Declaration states: "Any act of torture or other cruel, inhuman or degrading affront to human dignity condemned as a denial of the purposes of the United Nations and a violation of human rights and fundamental freedoms enshrined in the Universal Declaration of Human rights."

interrogation by members of the security services. ICHR considers all forms of ill-treatment and torture to be prohibited practices that should be investigated, and perpetrators shall be prosecuted and punished for criminal acts with no statute of limitations, entailing that perpetrators of serious violations of human rights can be prosecuted even after leaving office.

3. Violations of the right to personal liberty, integrity of legal proceedings, and “arbitrary detention”⁵

Continued arbitrary detention constituted one indicator of the deterioration of rights and public freedoms in Palestine, and this was in spite of repeated denials of the existence of “arbitrarily detained on political considerations” by the security services in the West Bank and Gaza Strip; this is based on the grounds that detention is motivated by security and not by freedom of opinion and expression or political affiliation. However, the reality is that patterns of violations have accompanied and still accompany arbitrary detention cases, particularly in terms of the failure to address real charges against detainees,⁶ not enabling their families to visit them freely,⁷ and the inability of lawyers to contact them as permitted by law.

5- According to the Fact Sheet by the United Nations Group on Arbitrary Detention, detention is considered to be arbitrary in the following cases:

- a) If it is impossible to invoke any legal basis justifying the deprivation of liberty.
- b) If the deprivation of liberty results from the exercise of the rights and freedoms set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; such as the right to equality before the law, the right to freedom of opinion and thought, and the right to a peaceful assembly, the right to participate in public affairs and to hold public office, and the right to movement.
- c) If the international standards for fair trial are violated.

6- Through ICHR’s follow-up and monitoring of charges against those affiliated with Hamas Movement, the charge of inciting sectarianism described in the Penal Code of Jordan for the year 1960 and applied in the West Bank has repeatedly been made. This is in spite of the fact that the elements of this crime are incomplete in Palestinian reality, especially since its realization requires the existence of communities recognized by law and that this charge was incited for being raised deliberately.

7- The Standard Minimum Rules for the treatment of prisoners necessitates that the accused be allowed to inform his family of his / her detention immediately, and is given all reasonable facilities to communicate with his / her family and friends and receive them (Article 92 of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations Conference on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955). Also, the Principles for the Protection of All Persons under Any Form of Detention or Imprisonment confirmed the right of the detained person to visit his family, and be given adequate opportunity to communicate with the outside world, from (Principle (19) of the Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which was adopted by a resolution of the General Assembly of the United Nations in 1988).

From the time ICHR recorded the cessation of presenting civilians before military courts from the beginning of 2011 in the West Bank, it recorded (8) cases in the last quarter of 2011, specifically in the southern part of the West Bank. This comes in spite of the Palestinian Court of Cassation challenge in its decision dated 15/09/2011 and issued in criminal case No. 7/2010, concerning the interpretation of military affairs in Article (101) of the Amended Palestinian Basic Law amended 2003. It was expressed in the verdict as follows:

*“The Palestinian Basic Law has restricted the jurisdiction of the military judiciary to military affairs only, as stipulated in article 101 that “such courts (military) shall not have any jurisdiction beyond military affairs”; therefore the decision or/and the detention of the plaintiff and his continuous detention by the party complained against here is seen as an unjust condition emanating from an incompetent party- a fact that makes it invalid and should be revoked. For these reasons, the court decided to promptly release the defendant in the military court and free him from detention unless he is detained for any other charge”.*⁸

Perhaps, the most positive development is the decline in allegations of arbitrary detention received by ICHR, from (1880) violations in 2010 to (1,106) in 2011, both in the West Bank and Gaza Strip. In the West Bank, ICHR has observed (1,559) violation in 2010. In 2011, ICHR recorded a significant decline in the number of violations related to arbitrary detention in the West Bank, observing (755) violations. In the Gaza Strip, allegations of arbitrary detention monitored by ICHR has dropped from (321) violations in 2010 to (271) violations during 2011.

4. Death in detention centers

During the reporting year, ICHR recorded five deaths in detention centers in the Gaza Strip. Despite demanding the Government to conduct the necessary investigations and disseminate the findings, it did not receive the findings of any investigations.

8- From the Palestinian Court of Cassation's decision dated 15/09/2011, in the criminal case No. 7/2010.

5. Disrespect for Palestinian court decisions or delays in their implementation

During 2011, ICHR documented (131) sentences issued by the regular courts that have not been implemented in a timely manner. The failure to implement the Palestinian court decisions regardless of the decree is a clear violation of the provisions of the Palestinian Basic Law, specifically Article (106) thereof. It stipulates “judicial decisions are enforceable, and to refrain from implementing any is a crime punishable by imprisonment, and removal from office.”

6. Violations of the right to assume public office in accordance with security clearance conditions

During the reporting period, work has continued on what is known as “security clearance” conditions in the West Bank, particularly by the Palestinian Ministry of Education & Higher Education. It continued to issue decisions on the dismissal or suspension of appointments against employees within education and higher education. In 2011, ICHR received (36) complaints in this regard, compared to (156) during 2010.

7. Violations of the right to peaceful assembly

The right to peaceful assembly has been exposed to many violations in the West Bank and Gaza Strip in 2011. Through the complaints received by the Commission and the documentation of some displays of peaceful assembly by its researchers, violations recorded were as follows: ^(a) dispersing some of the marches by force by the security services; ^(b) attacking some of its participants; ^(c) detaining some of the participants in those gatherings.

8. Violations of the right to form associations

The right to form associations in the West Bank and Gaza Strip has been exposed to several violations observed by ICHR. Violations include

registration of associations through new conditions for registration not contained in law, such as security clearance conditions for association founders, and violations related to the work of associations, such as interference in their management and dissolution.

9. Violations of the right to freedom of expression and freedom of the press

Many attacks on the personal freedom of Palestinian journalists were witnessed in 2011. ICHR monitored a series of patterns of violations against journalists and the press as a whole, including the restriction of press freedoms, and interference of journalists through practices and procedures by the security services in the West Bank. Practices included: ⁽¹⁾ illegal detention and prosecution of journalists; ⁽²⁾ summoning journalists and exerting pressure on them in an effort to restrict their freedom; and ⁽³⁾ preventing the printing and distribution of some newspapers.

10. Violations of the right to freedom of movement

ICHR monitored two types of violations of the right to movement: ⁽¹⁾ failure of the PNA in the West Bank (Ministry of Interior) to issue passports to citizens in the Gaza Strip; and ⁽²⁾ the Government in the Gaza Strip restricting the travel of some citizens as well as the condition of employees from non-governmental organizations having to give prior notice to the Government before travelling abroad.

III. Legislative Policies and their Impact on Human Rights

The function of the (PLC) has been disrupted for the fourth consecutive year as a result of the continued political division and the continued arrest of PLC members by the Israeli occupation authorities. The PLC could not hold any plenary sessions in accordance with its bylaw for the year 2004, which had a negative impact on the PLC in proposing

laws and legislation affecting aspects of Palestinian citizens' lives and their rights, including their adoption and approval, which in turn would serve to strengthen the unity of the Palestinian legal system in the West Bank and Gaza Strip. Additionally, the PLC failed to perform its overseeing role in financial and administrative areas, and demonstrated its inability to hold the Government accountable and give it confidence and / or no confidence, or question it, or pursue fact-finding missions on grave violations and breaches that affected Palestinian human rights. This comprises a range of human rights, pertaining to: the right to life and physical integrity; exposure to torture and ill-treatment; arbitrary deprivation of liberty based on political affiliation; dismissal from public office; career exclusion; attacks on media freedoms; restrictions on basic rights, such as the right to form associations, and the right to freedom of movement and peaceful assembly.

As for the state of division and the inability of the PLC to hold sessions, Palestinian President Mahmoud Abbas issued nine decisions in 2011,⁹ based on article (43) of the Palestinian Basic Law.¹⁰ In light of the absence of a legal agreement or a judicial decision to resolve the dispute over the doctrine of necessity on which the President based the issuance of those decisions, ICHR finds that those decisions will be seriously discussed and reviewed in the event of the PLC's convention.

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- 9- Decisions with laws issued by the Palestinian President in 2011:
 - Decision-Law No. (1) for the year 2011 on the legitimate judiciary Issued on 06/01/2011.
 - Decision-Law No. (2) for the year 2011 on the amendment of the Law of Encouraging Investment in Palestine No. (1) of 1998 on 13/01/2011.
 - Decision-Law No. (3) for the year 2011 on the amendment of the Acquisition Law No. (2) for the year 1953, dated 01/02/2011 .
 - Decision-Law No. (4) for the year 2011 on the ratification of the appointment of the Chairman of the General Personnel Council on 09/02/2011.
 - Decision-Law No. (5) for the year 2011 on the general budget for fiscal year 2011, dated 31/03/2011.
 - Decision-Law No. (6) for the year 2011 on amendment of the Law of Charitable Associations and Civil Society Organizations No. (1) for the year 2000 on 27/04/2011.
 - Decision-Law No. (7) for the year 2011 on the amendment of the Penal Code in force in the northern governorates and the Penal Code in force in the southern provinces on 26/09/2011.
 - Decision-Law No. (8) for the year 2011 "on the income tax for the year 2011" and was published in the Official Gazette on 24/10/2011.
 - 10- Article (43) of the Amended Palestinian Basic Law of 2003 states that "The President of the National Authority shall have the right, in cases of necessity that cannot be delayed, and when the Legislative Council is not in session, to issue decrees that have the power of law. These decrees shall be presented to the Legislative Council in the first session convened after their issuance; otherwise they will cease to have the power of law. If these decrees are presented to the Legislative Council, as mentioned above, but are not approved by the latter, then they shall cease to have the power of law."

ICHR also emphasizes the need to conduct legislative and presidential elections as a source of legal legitimacy of the elected authority, as affirmed in Article (2) of the Amended Palestinian Basic Law of 2003: “The people are the source of power, which shall be exercised through the legislative, executive and judicial authorities.”

During the reporting period, PLC members from the Reform and Change Bloc in the Gaza Strip continued to hold PLC sessions and to ratify laws,¹¹ relying on what has become known as the “Power of Attorney” system.

VI. Conclusions Resulting from Political Data

The political and legal changes in the Palestinian arena left their direct impact on rights and public freedoms, and based on what has been reviewed, these can be summarized as follows:

1. The continued Israeli military occupation of Palestine and its aggressive policies in the West Bank, Gaza Strip and East Jerusalem continued to constitute a major factor in the deterioration of human rights in Palestine in 2011. Israeli policies had a profound impact on undermining the PNA’s efforts in performing its duties, carrying out its legal responsibilities in areas under its control, providing security for Palestinian citizens, and applying the rule of law. At the same time, the Occupying Power fails to cooperate with the PNA in the West Bank as a Government with sovereignty over its people. In addition, Israel nevertheless obstructs Palestine’s ongoing efforts in terms of disseminating the rule of law through continued invasions of Palestinian cities, and assassination and detention of Palestinian citizens under the guise of unconvincing “security reasons”.

11- Laws that have been approved and published in the Official Gazette in 2011 in the Gaza Strip:

- General Budget Law No. (1) of 2011;
- Palestinian Youth Law No. (2) of 2011;
- Forensic Justice Act No. (3) of 2011;
- Law No. (4) for 2011 amended of the Implementation Law No. (23) of 2005;
- Law No. (5) of 2011 amending some provisions of the Law of Zakat No. (9) of 2008;
- Law No. (6) of 2011 on the preparation of the General Development Plan;
- Law No. (7) of 2011 on the transfer and transplant of human organs.

2. The failure of efforts to achieve national reconciliation and the continued political division between Fatah and Hamas in the West Bank and Gaza Strip reflected negatively on rights and public freedoms, many of which have been exposed to numerous violations by both parties. Most importantly, this includes: arbitrary deprivation of liberty; lack of due process in arrests, searches and seizures; confiscation of public freedoms; disrespect for court rulings; presenting civilians to military courts; continued policy of security clearance as a requirement for appointment to public office; and violations in numerous other aspects of life. National reconciliation and ending the state of division must be reflected in the rights of Palestinian citizens when exercising their democratic prerogative and in choosing their local, legislative and presidential representatives, and doing so without disruption.
3. With the recording of a decline in the intensity of alleged violations during the few months that followed the reconciliation between the PNA and Hamas, ICHR fears the improvement in the situation of human rights and freedoms in Palestine remains linked to this political decision. If this or similar circumstances continue, then it might help the human rights situation. However, if the circumstances do not continue, then there is a risk of a return to violations characterized by those which took place during the years of the division.
4. The restoration of fundamental freedoms and respect for human rights, and the restoration of democratic life by conducting the local, legislative and presidential elections are prerequisites for a stable future for everyone in Palestine, especially in an environment where the demand for reform, democracy, anti-corruption and respect for human rights is increasing. ICHR deems the continued disruption in the call for legislative and presidential elections, with the delayed completion of national reconciliation, to be a violation of the principle of constitutional legality, and a continuation of the extraordinary situation exemplified in having an executive authority with broad powers, but where legislative procedures and practice are absent.

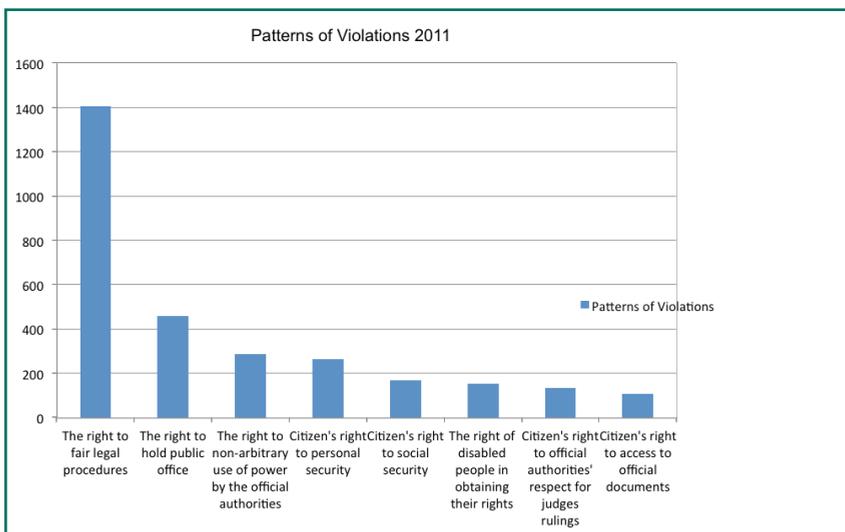
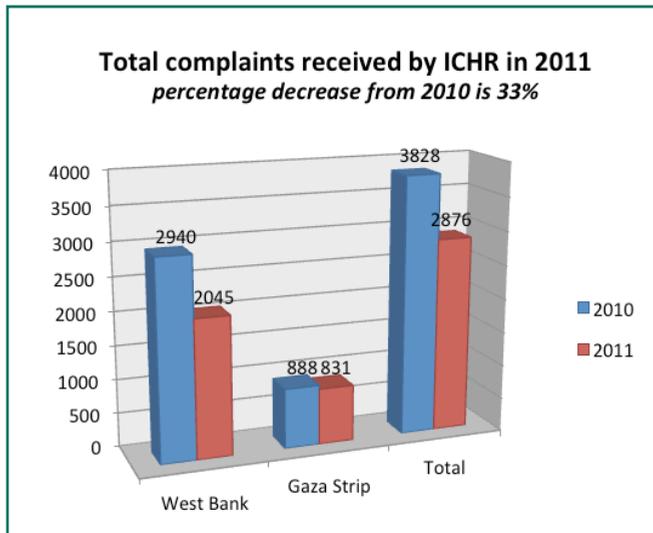
5. There is a security concern overwhelming the security services which has in some circumstances led to deviations in their work, a result of the exaggerated sense of responsibility felt by the officials for determining the national interest of the Palestinian people, rather than it falling under the remit of the elected political or legislative or judicial institutions. At the time, PNA procedures did not specify the work of the security services in terms of commitment to law, and the powers of its associates as officers of the law. The security services practices in arrest, detention, inspection, collection of information, and surveillance of detention centers are still far from the control of the civil public prosecution. As a result, the absence of control over the work of the security services has afforded it the opportunity to interpret the law in its own way.

6. The continued issuance of decisions that have the force of law based on Article (43) of the Amended Basic Law of 2003, without the presence of actual necessity, and the continued ratification of laws by the Reform and Change Bloc in Gaza may adversely affect the legislative and legal system applicable to and in Palestine. This is especially the case since the system of laws inherited from previous decades often contrast with one another. Laws that remain in force in Gaza differ from the laws in the West Bank, although the Palestinian Basic Law highlights the equality of all Palestinians before the law.

Patterns of Human Rights Violations from 2011 Complaints

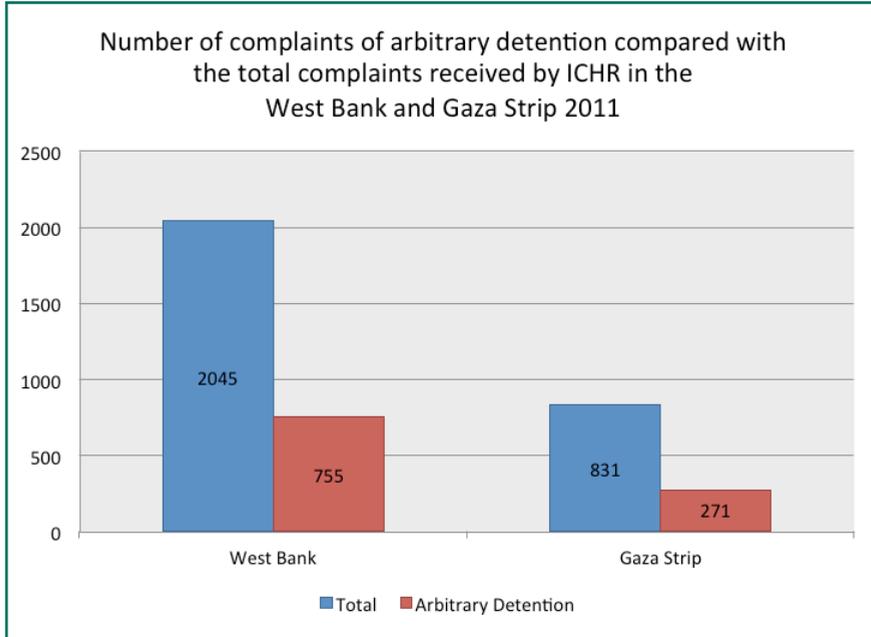
According to ICHR's statistics, it received (2,876) complaints regarding human rights violations in the West Bank and Gaza Strip. Through the complaints, ICHR found a continuation of a number of human rights violations observed during the previous years, although in decreasing numbers.

I. Total Number of Complaints Received by ICHR during 2011

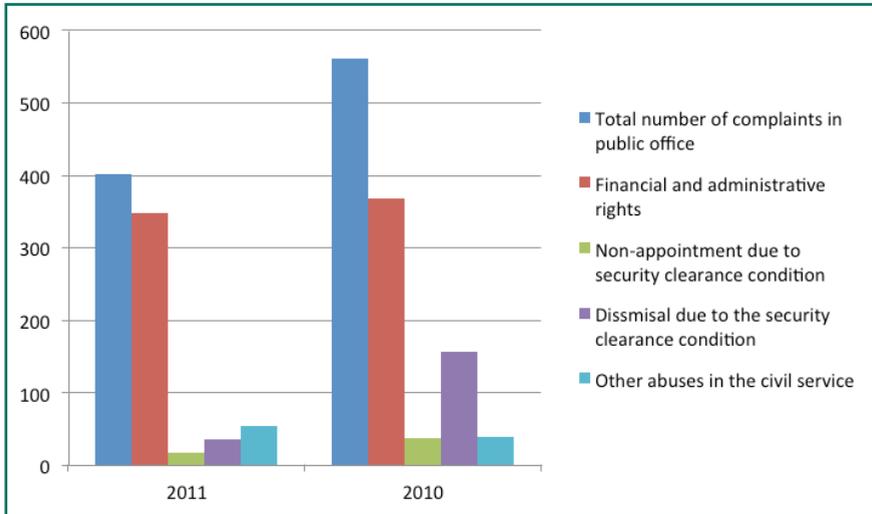


II. Complaints by Type of Violations: (*most widespread violations*)

Citizens' complaints in regard to violations of the right to fair legal proceedings (*arbitrary detention*)



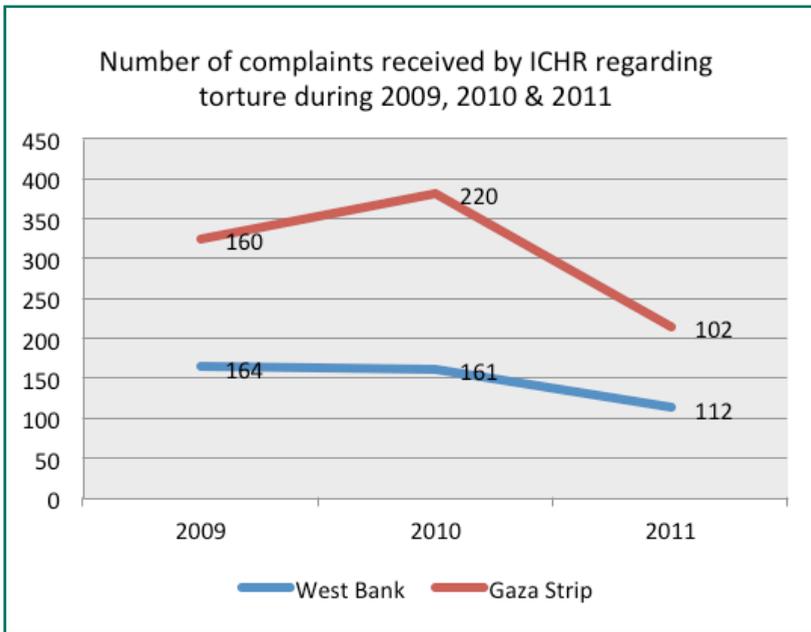
1- Citizens' Complaints about Violations of Rights Relating to Public Service



Citizens' complaints about the official authorities' arbitrary use of power

During 2011, ICHR received approximately (286) complaints about the official authorities' arbitrary use of power, compared to (300) complaints in 2010.

Citizens' complaints about ill-treatment, cruel treatment and torture during detention



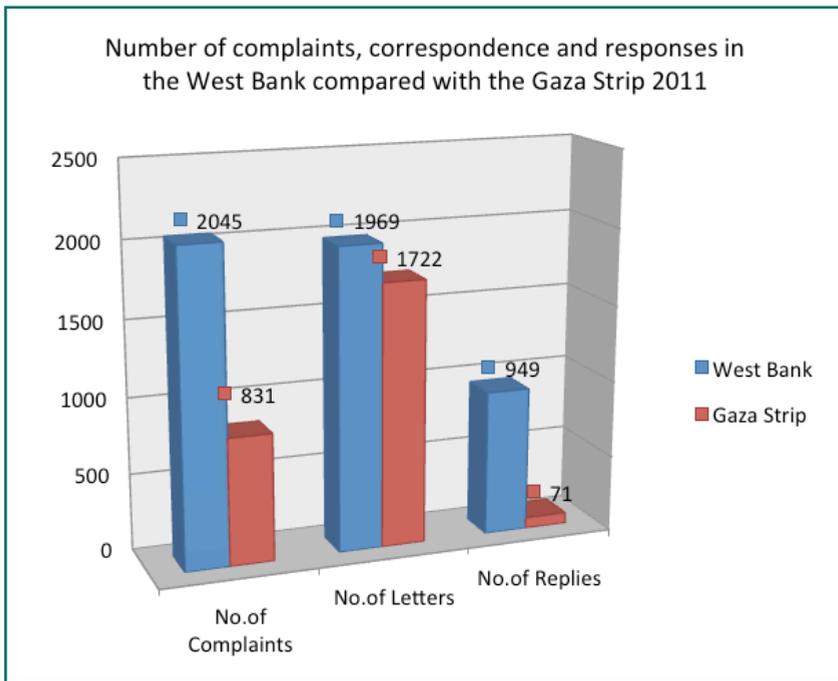
III. Public Authorities on which Complaints were Focused

Available data indicate that the number of parties against which complaints were received reached (54) complaints, distributed over (17) security parties, and (37) civil parties.

By classifying the 2011 complaints in terms of the respondent authority, it was found that there are two types of respondents: civil authorities and security authorities. The number of civil complaints during 2011 reached (1,174) in the West Bank and Gaza Strip, constituting 40% of the total number of complaints. In contrast, the number of security complaints received by ICHR during 2011 was (1,702), constituting 61% of the total number of complaints in the West Bank and Gaza Strip.

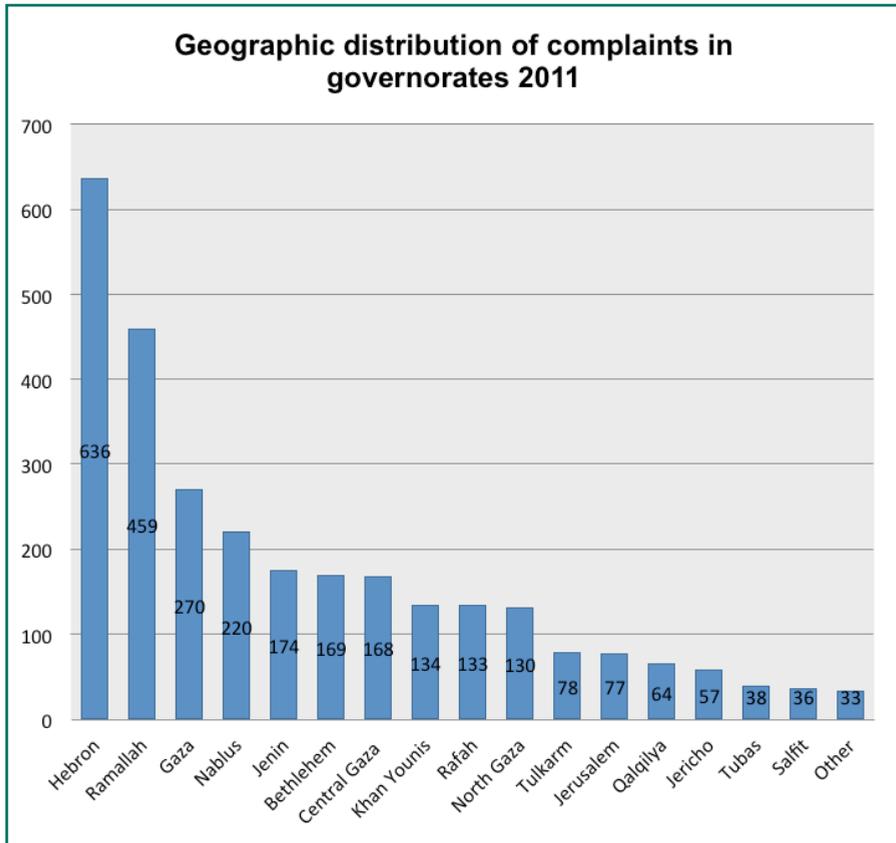
IV. Tracking Complaints by Follow-up and Reply

ICHR followed up such complaints received during 2011 through field follow-ups or correspondence with the parties who or which were objects of the complaints. In this framework, ICHR sent (3,507) letters during 2011 to the parties concerned, and this includes original letters and reminders. ICHR received (1,020) written replies to official correspondence.



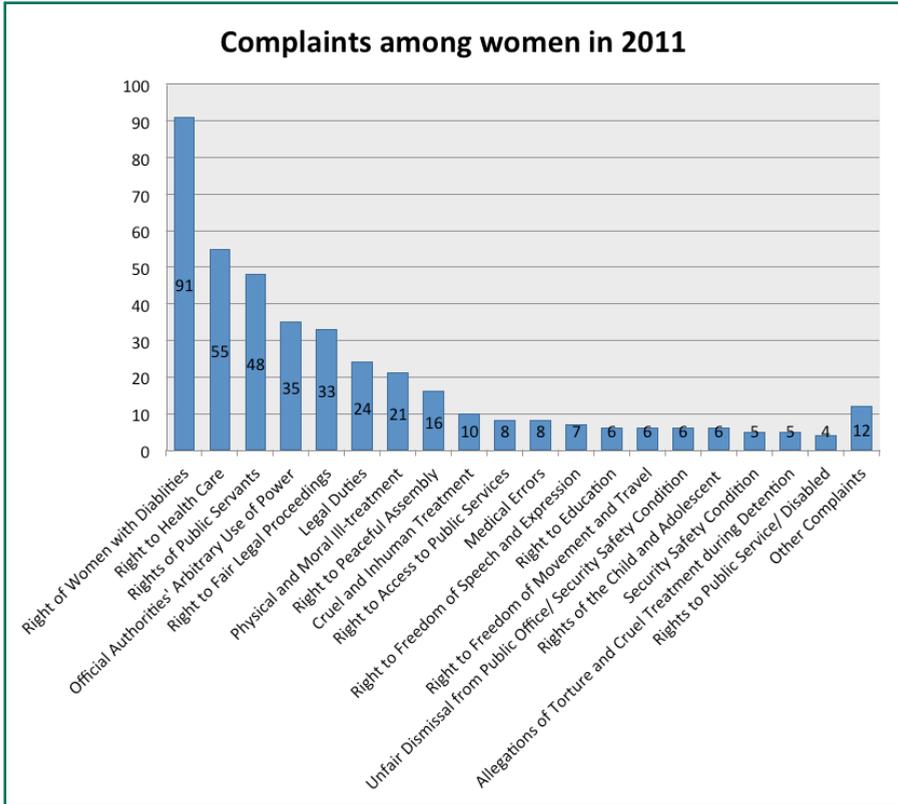
V. Division of Complaints by Complainant

1- Geographic distribution



2- Division by gender

ICHR received (279) complaints from women, constituting 9.7% of the total number of complaints received. These complaints were varied among women who claimed exposure to abuses in the West Bank and Gaza Strip.



ICHR 17th Annual Report Recommendations

After discussing the impact of Israeli violations on the performance of the PNA, which had a negative impact on its ability to safeguard human rights in the areas under its jurisdiction, ICHR forwards the following recommendations:

1. The PNA should continue to press the international community to exert constant pressure on the Israeli Government to shoulder its responsibilities under international law and cease building and developing settlements in Palestine, occupied since 1967 in the West Bank and Gaza Strip, where settlement is clearly prohibited in accordance with the Geneva Conventions.
2. The PNA should continue to urge the international community to intensively work towards ending the Israeli occupation of Palestine, this being the major cause of human rights violations in terms of violations committed, and also constituting systematic collective punishment against the residents of the Gaza Strip and the rest of Palestine. It is also a denial of the Palestinian people's right to statehood and self-determination, which is guaranteed under several international conventions, most notably the United Nations Charter. Israel also needs to be pressured to cease its frequent aggression against and raids into Palestine, and to lift the siege imposed on Palestine, especially in the Gaza Strip.
3. The PNA should coordinate with the international community and encourage its members to recall, reaffirm and, however possible, implement the relevant resolutions of the UN Security Council and General Assembly, including General Assembly Resolutions 2535, 3236 & 3375, which emphasize the need for the Palestinian people to concretely exercise their right to self-determination, based on legal grounds and objective factors.
4. The PNA should explore the possibilities to activate any possible intervention mechanisms within the UN and its organizations, and induce Israel to respect international agreements and abide

by international resolutions. They should urge the High Contracting Parties to the Fourth Geneva Convention to seek some degree of implementation of General Assembly resolution no.(A/RES/ES-10/15) dated 20/07/2004, relating to the advisory opinion of the International Court of Justice regarding the annexation and expansion wall.

5. The PNA should resolve that the international community take immediate action to compel Israel to bring a halt to their systematic repressive practices by prison administrations and security services against Palestinian prisoners. This includes the further deterioration of their inhumane living conditions inside Israeli prisons, and the need to further exert pressure on Israel in order to improve the detention conditions of Palestinian prisoners. In particular they should advocate the formation of an international commission of inquiry in order to expose the reality of such violations that continue to be committed against Palestinian and Arab prisoners in Israeli prisons and detention centers.
6. The PNA should request the High Contracting Parties to the Fourth Geneva Convention to recall and exercise their obligations provided in Article (1) of the Convention, which are to undertake and ensure respect for the Convention under any conditions. The PNA should also remind the Parties of the obligation provided for in Article (146) as well, which is to hold accountable those who seriously act in breach of the Convention.
7. The international community and international press institutions would benefit by holding Israel accountable for its repeated violation of article (19) of the Universal Declaration of Human Rights in regard to freedom of the media. In addition to exerting all efforts at the international level to ensure the exercise of pressure on Israel to stop its offenses against Palestinian civilians and property in general, there is also a need to bring a halt to attacks against journalists in particular..

8. The international community is encouraged to exert pressure on Israel to apply the relevant articles of the Fourth Geneva Convention of 1949 to Palestine and halt its practice of arbitrary administrative detention against those Palestinians held as prisoners; this is contrary to the provisions of international human rights and international humanitarian law.
9. The international community's involvement would be essential in exerting pressure on Israel as an occupying power to discontinue the presence of its forces in Palestine, and to reach an agreement regarding the settlements. In addition, the international community is well placed to request Israel's transparency regarding attacks on Palestinian civilians and their property; it is the covering up of these incidents which only incites further attacks.
10. The efforts of the international community and international human rights organizations would be vital towards ensuring the right of Palestinians to travel and exercise movement to and from all territories of Palestine which are occupied. Israel's violation of this right is lacking all legal accountability, and it is an abuse of its obligations under international law and international humanitarian law. All and any diplomatic and legal efforts must be made in order to begin to facilitate the movement of Palestinians languishing under the current policy of isolation being practiced against them.

The Status of Human Rights and Public Freedoms in Palestine in 2011

Recommendations

Chapter One

The Right to Life and Physical Safety

Palestinian Government / West Bank:

1. To abolish the death penalty from the Palestinian legal system, it is essential that:
 - a) The President of the PNA continues to refuse endorsement of death sentences imposed by the Palestinian courts, and refers all the cases of civilians sentenced to death by military courts to competent civil courts for review.
 - b) The President of the PNA uses his constitutional powers of amnesty to commute the death penalty to imprisonment in all cases exercised by Palestinian courts.
 - c) Implementation of legal procedures allowing the appeal of death sentences imposed by military courts.
2. The President of the PNA and the Ministry of the Interior should continue to issue explicit orders to the security agencies not to practice torture or ill-treatment in the detention centers and prisons. Accordingly, they should hold whoever is involved in torturing any person accountable and ensure psychological and physical rehabilitation and compensation to the victims of torture.
3. The Public Prosecution should undertake critical inquiries into alleged violations of the right to life and physical safety by military

service personnel, especially in the detention centers. This is in order to increase the likelihood that cases reaching the military judiciary are a success and those involved in such actions are unlikely to escape justice.

4. The security agencies should investigate the allegations of citizens subjected to torture and ill-treatment, and take the appropriate measures against those involved in such crimes through law enforcement bodies.
5. The Public Prosecution should exercise its monitoring role over the detention centers administered by the security agencies to ensure that detainees are not subjected to torture, ill-treatment or any harmful measures; it should also investigate any cases indicating that detainees were subjected to torture and/or ill-treatment.
6. The Ministry of the Interior should appoint a Public Inspector to guarantee that the security agencies abide by the legal procedures and do not subject detainees to torture and/or ill-treatment, and also present regular reports to the Minister of the Interior to take the measures necessary for bringing those involved in torture practices to justice.
7. Formal bodies should play an effective monitoring role over public facilities to make sure there are public safety precautions, as well as to activate the inspection system at work places based on the provisions of Palestinian Labor Law. They should also optimize monitoring at swimming pools.

Palestinian Government / Gaza Strip:

1. Until the abolishment of the death penalty within the Palestinian legal system is achieved, the Government in the Gaza Strip should halt the carrying out of death sentences imposed by the courts, and do so in compliance with the increasing international demand to remove the death penalty option from national laws.

2. The bodies engaged in the work of the Public Prosecution should investigate all murder cases in order to bring the perpetrators to justice, especially in those cases of honor killing documented by ICHR this year and in previous years. They should also investigate the cases of women killed due to citizens' misuse of firearms.
3. The departments of the Government in the Gaza Strip should order the security agencies holding citizens to refrain from using torture and ill-treatment in the detention centers and prisons, and punish the perpetrators. They should also ensure psychological and physical rehabilitation and redress for all victims of torture.
4. The bodies engaged in the work of the Public Prosecution should investigate the allegations of infringement of the right to life and physical safety by the military personnel, especially in the detention centers, to ensure the success of the cases referred to the military judiciary in this regard, and not to allow perpetrators of these violations to escape justice.
5. The bodies engaged in the work of the Police and Internal Security Agencies should investigate the allegations of torture and ill-treatment and take the appropriate measures against the perpetrators of these crimes by the law enforcement bodies.
6. The bodies engaged in the work of the Public Prosecution should exercise their monitoring role over the detention centers administered by the security agencies to ensure that detainees are not subjected to torture, ill-treatment or any harmful measures; it should also investigate any cases indicating detainees who were subjected to torture and/or ill-treatment.
7. The security agencies affiliated with the Government in the Gaza Strip should allow ICHR to make regular and unannounced visits to the detention centers administered by them and should cease the obstruction of such visits. This especially applies to the Internal Security Agency, which does not allow ICHR to visit its detention centers.

8. Formal bodies should play an effective monitoring role over public facilities to make sure there are public safety precautions, as well as to activate the inspection system at work places based on the provisions of the Palestinian Labor Law. They should also optimize monitoring at swimming pools.

In regard to the women whose rights to life and physical safety are threatened, we repeat the recommendations we have already noted in our sixteenth annual report, particularly:

- 1- The need to amend Personal Status Law No. (16) of 1976 in force in the West Bank, and the Family Rights Law issued Order No. (303) of 1954 in force in Gaza, in order to provide a proper family environment, in which family members, particularly females, are not exploited by the caretakers of the family, and authorizing women the right to equality with men in the management of their destiny and in making decisions relating to all aspects of life.
- 2- The need to complete the process of amending the Penal Code No. (16) of 1960 in effect in the West Bank, and the Penal Code No. (74) of 1936 with respect to offenses against females, specifically murder or what might affect their right to physical integrity.

Recommendations

Chapter Two The Right to Personal Liberty (Arbitrary Detention)

Palestinian Government / West Bank:

1. The Civil Prosecution should, based on Article (126) of the Palestinian Code of Criminal Procedures, inspect the reform and rehabilitation centers as well as detention centers administered by the security agencies to make sure no detainees are held outside the legal framework, and prosecute whoever violates anyone's right to personal freedom.
2. The security agencies should undertake the following: abide by the Palestinian courts' release decisions; refrain from bringing citizens before the judiciary more than one time on the same charge; and refrain from arresting released persons under the pretext of other charges following their release, thus employing a revolving door policy.

Palestinian Government / Gaza Strip:

1. End the jurisdiction of the Palestinian Government in the Gaza Strip over the High Judicial Council in Gaza to dissolve it, and restructure the regular courts in accordance with the Palestinian Basic Law and the Law of the Judicial Authority.
2. Demand the security agencies of the Palestinian Government in the Gaza Strip stop bringing civilians before the military judiciary and to abide by the effective Palestinian legislation by bringing all civilian detainees before the competent civil judiciary to ensure a fair trial and fulfillment of their right to appear before their natural judge and appeal to a higher judicial authority.

3. Handle complaints filed against the security agencies of the Government in the Gaza Strip objectively and transparently, and punish those responsible for arbitrary detention.

Recommendations

Chapter Three The Right to Litigation

Palestinian Government / West Bank:

1. Demand the Executive Authority take appropriate measures, including instructions to strengthen the independence of the judicial authority, and guarantee non-interference from security agencies.
2. Demand the Executive Authority respect and implement courts' decisions without delay.
3. Enact a law of the administrative court in a manner that guarantees two-level litigation to ensure justice.

Palestinian Government / Gaza Strip:

1. Revoke the decision to establish a High Justice Council, and to give consent for the High Judicial Council to fulfill its duties according to law.
2. Stop the prosecution of civilians before military courts and bring them instead before their natural judge in accordance with the Basic Law and international standards of human rights; the military justice authority has jurisdiction over military servicemen solely and lacks minimum guarantees for a fair trial.

Recommendations

Chapter Four

The Right to Freedom of Expression and Peaceful Assembly

ICHR lists some of the recommendations to the Governments in the West Bank and Gaza Strip, knowing that some of the recommendations were so stated in earlier reports, and called on the relevant authorities to implement them, although some still remain unchanged.

1) Press Freedoms:

Palestinian Government / West Bank and Gaza Strip:

1. The security agencies (General Intelligence and Preventive Security) should immediately release all journalists detained in the West Bank. They should also discontinue bringing journalists before military courts.
2. The security agencies of the Interior Ministry in the Gaza Strip should immediately release all the journalists detained. They should also discontinue bringing journalists before military courts.
3. Eliminate all the restrictions imposed by the security agencies in the West Bank (General Intelligence, Preventive Security and Police) regarding the freedom of journalists.
4. The security agencies in the West Bank (General Intelligence, Preventive Security and Military Intelligence Agencies) should allow publication of banned newspapers (al-Risalah, Falasteen) and let them work freely, as was the case before the political division in 2007. They should also allow television and radio stations (al-Aqsa TV and al-Aqsa Radio) which were banned from working freely in the West Bank after the division.

5. Set up independent committees of human rights organizations and the Palestinian Union of Journalists to investigate violations of journalists' rights and hold perpetrators of these violations accountable in both the West Bank and the Gaza Strip.
6. Eliminate all the restrictions imposed by the security agencies in the Gaza Strip (Internal Security and Police Agencies) regarding the freedom of journalists.
7. The security agencies in the Gaza Strip (Internal Security and Police Agencies) should allow publication of banned newspapers (al-Ayyam and al-Hayyat) and allow them to work freely as was the case before the division in 2007. They should also allow television and radio stations (Palestine TV and Palestine Radio Station) to work freely after being closed down following the political divide.
8. The security agencies in the Gaza Strip (Internal Security and Police Agencies) should allow journalists' access to the Gaza Strip with no restrictions.

2) Freedom of Expression

Palestinian Government / West Bank & Gaza Strip

1. The security agencies in the West Bank (General Intelligence and Preventive Security) should put a stop to questioning, arresting and prosecuting citizens based on their respective opinions and views.
 2. The security agencies in the Gaza Strip (Internal Security and Police Agencies) should stop summoning and detaining citizens based on their opinions and other expressions.
 3. The security agencies in the Gaza Strip (Internal Security and Police Agencies) should stop all measures depriving citizens of the right to freedom of opinion and other expressions.
- 3) The Right to Belief and Religious Rites

1. The President of the PNA should issue a decree revoking the so called “Personal Affairs Prosecution”, for its contravention of constitutional provisions, as well as the principle of Sharia’ public right because it is a contradiction with the democratic trend of Palestinian Basic Law.

4) The Right to Peaceful Assembly

1. The security agencies in the West Bank and in the Gaza Strip (General Intelligence, Preventive Security, Military Intelligence, Internal Security and Police agencies) should immediately stop detaining citizens for participating in peaceful assemblies.
2. The security agencies in the West Bank and the Gaza Strip (General Intelligence, Preventive Security, Military Intelligence, Internal Security and Police agencies) should allow the organization of peaceful assemblies.
3. Independent investigations into the incidents where participants in peaceful assemblies in the West Bank and the Gaza Strip were assaulted should be conducted.
4. Eliminate all the restrictions imposed on the right to peaceful assembly in the West Bank and the Gaza Strip.

5) Human Rights Defenders

1. The competent authorities in the West Bank should open investigations in cases where human rights defenders were subjected to assaults by the security agencies; the perpetrators of such assaults should be brought to justice.
2. The security agencies in the West Bank (General Intelligence, Preventive Security and Military Intelligence) should allow all human rights defenders and human rights organizations to visit the detainees held in the detention centers administered by them.
3. Both the Ministry of the Interior in the West Bank and the

Ministry of the Interior in the Gaza Strip should reopen civil society organizations and associations which they had shut down.

4. Human rights defenders should be allowed to visit the detainees held by the security agencies (Police and Internal Security) and administered by the Ministry of the Interior in the Gaza Strip.

Recommendations

Chapter Five

The Right to Establish Associations

Palestinian Government / West Bank:

1. The Ministry of the Interior should carry out the decisions of the High Court of Justice, revoking the decisions of appointing interim boards for a number of associations; these decisions are in contravention of the law.
2. The Ministry of the Interior should abide by the provisions of the Law of Charitable Associations and Community Organizations No (1) of 2000 and Its Executive Regulation No (9) of 2003 upon taking any relevant measures.
3. The Ministry of the Interior in the West Bank should abolish the requirement to obtain security clearance for the constituent members of the founding commission as a condition for registration of associations.
4. The Monetary Authority should order banks to allow the associations registered according to the law to open bank accounts without a special permit from the Ministry of the Interior. The Ministry of the Interior in the West Bank should abide by the legal period stipulated in the Law of Charitable Associations and Community Organizations of 2000.
5. Work should be undertaken towards the abolition of law

issued by the President of the PNA entailing that in the case of dissolution of an association, its funds should be referred to the state treasury. Rather, such dissolutions should abide with Palestinian Law No. 1 of 2000 for Charitable Associations and Community Organizations, which stipulates that such funds will be transferred to a Palestinian association similar in objectives named by the dissolved associatio

Palestinian Government / Gaza Strip:

1. The Ministry of the Interior should abide by the provisions of the Law of Charitable Associations and Community Organizations No (1) of 2000 and its Executive Regulation No (9) of 2003 upon taking any relevant measures, and should immediately refrain from dissolving associations and / or interfering in their management and internal audit.
2. The competent authorities should reopen the associations they shut down in the Gaza Strip.
3. The Ministry of the Interior in the Gaza Strip should seriously investigate robberies that targeted associations in the Gaza Strip.
4. The Ministry of the Interior should abolish decisions regarding the travel of members and employees of the civil society organizations, and allow them to travel freely.

Recommendations

Chapter Six

The Right to the Highest Standard of Health Attainable

As part of its follow-up of the right to health in general, and cases of medical negligence in particular, and where there has been no significant change in this regard in 2011, ICHR repeats what has already been recommended regarding cases of medical negligence in its sixteenth annual report, also in this report, and in particular:

1. The Ministry of Health should shoulder its responsibilities in accordance with the effective laws, especially in regard to the thorough inspection and monitoring of hospitals, clinics and medical centers to ensure their respect for the relevant laws and regulations as well as their competence and capability in terms of financial and human resources.
2. The Ministry of Health and the Palestinian Medical Association, each within the sphere of its jurisdiction, should make serious investigations into all medical neglect-related complaints. Investigation Committees should write detailed technical reports on the different technical facts concerning medical neglect incidents under investigation,, and clarify the degree of neglect, as well as the persons involved. They should also set recommendations defining the penalties which should be imposed on those determined to be esponsible for medical neglect.
3. The Ministry of Health and the Medical Association should cooperate to develop the professional and behavioral skills of the medical staff by organizing educational courses.

4. The Ministry of Health and the Medical Association should cooperate to document medical neglect cases and establish a reliable database which can be useful for making studies on such cases and for learning from them in order to take better preventive measures.
5. The Public Prosecution should double its interest in investigating medical neglect cases, especially the more serious cases. It should pay special attention to investigating the cases which result in death by collecting forensic medical evidence to identify, expose and indict those responsible.

Recommendations

Chapter Seven

The Right to Public Service

Recommendations to the PNA

1. The PNA should adhere to the provisions found within the Palestinian Basic Law with regard to equality and non-discrimination in employment, whether for reasons of association, disability or sex.
2. The current Palestinian Government should comply with the provisions of Civil Service Law No. (4) of 1998, as amended, and its own regulations in regard to appointments and dismissals from public office or stopping the payment of salaries.
3. The PNA should stop applying the security clearance requirement prior to appointment on the basis it is illegal, and only to apply the conditions currently stated in the Civil Service Law. The PNA should also review the files of citizens who have been laid off, or their salaries stopped or not appointed on the recommendation of the security services.

4. Article No. (24) Paragraph (3) of the Civil Service Law should be amended, which requires “the applicant for public office shall be free from diseases and physical and mental health disabilities that would prevent him / her from fulfilling the duties of the relevant function which he / she assume upon a medical report; a person blind in two eyes or in one eye or with a physical disability is allowed to be appointed, if any of those disabilities do not prevent him / her from fulfilling the duties of the relevant function, and with a testimony from the medical authority concerned, provided that other conditions for fitness shall be available.” This is due to its contradiction with the principle of equality and non-discrimination contained in the Basic Law, and its contradiction with Disabilities Act, which grants the right to the disabled to work, and casts the responsibility on the authorities to provide employment opportunities for them.
5. The PNA should adhere to legal provisions relating to increments, travel allowance and other financial rights and should not stop or delay or deny staff under any pretext.

Recommendations

Chapter Eight

The Right to Movement and Travel

Palestinian Government / West Bank:

1. The Ministry of the Interior in the West Bank should implement the decision issued by the President on 25/08/ 2008 ordering it to provide Gaza residents with passports; in so doing, it should revitalize communication mechanisms, even if exceptional, between the relevant authorities in order to enable the citizens of the Gaza Strip to obtain passports.
2. The security agencies, especially the General Intelligence, should refrain from denying citizens the right to acquire passports under security pretexts.

Palestinian Government / Gaza Strip:

1. The relevant authorities in the Gaza Strip should stop restricting citizens from freedom of movement and travel.
2. The relevant authorities in the Gaza Strip should stop forbidding citizens from entering or exiting the Gaza Strip for considerations related to the state of the ongoing division.
3. The relevant authorities in the Gaza Strip should enable citizens to exercise their legal rights, especially their civil and political rights guaranteed by the Palestinian Basic Law.
4. The relevant authorities in the Gaza Strip shall abide by the legal procedures, disciplines and jurisdictions to prevent any citizen from exercising his / her right to movement and travel.

Recommendations

Chapter One

Patterns of Human Rights Violations Based on ICHR's Complaints Received During 2011

1. The PNA institutions and the Palestinian Governments in the West Bank and Gaza Strip shall take complaints and any other matters presented to them by ICHR with due regard, including replying to its correspondences substantively without delay or procrastination. This recommendation was repeated during the previous three years (2008, 2009 & 2010), in varying degrees.
2. The Palestinian Government in the West Bank and the Gaza Strip, when receiving ICHR complaints of torture and ill-treatment, shall immediately investigate with all due consideration, and endeavor to address and treat this phenomenon, including the possibility of criminal follow-up of those suspected of involvement.

Recommendations

Chapter Two

Mechanisms and Procedures for Accountability in Human Rights Violations

Palestinian Government / West Bank

1. Allegations of torture should be investigated seriously by independent parties, and bring anyone proven to have involvement to the judiciary, while ensuring that the PNA compensate the victims of these violations.
2. Overseeing departments and committees in the Ministry of the Interior and security services shall be activated and granted the necessary powers to investigate and suspend the accused from work, if proved guilty of practicing torture and cruel treatment.
3. Ensure that the permitted period of detention shall not exceed twenty-four hours before presenting the accused to the prosecution in any case, according to Palestinian Penal Procedures Law.
4. The Public Prosecution shall bear the legal responsibilities in accountability procedures where the judicial police have exceeded their legal powers.

Palestinian Government / Gaza Strip:

1. ICHR and human rights organizations should be allowed permanently to conduct periodic visits to prisons and detention centers, and be enabled to closely observe the conditions of the detainees.
2. Allegations of torture should be investigated seriously by independent parties, and bring anyone proven to be involved to the competent judiciary, and ensured that the victims be compensated by the PNA for these violations.

3. Complaints arising through ICHR shall be responded to seriously and will take the necessary investigation measures for follow-up.
4. The findings of various commissions of inquiry on any serious events that took place in previous years shall be submitted to the relevant parties, and the public should be informed of the results.

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