

## I. Summary

*“If you don’t want to talk your body will talk.”*

—Interrogator in the West Bank to a suspected Hamas member

*“They took me out and opened fire on my legs.”*

—Fatah security member in custody of Hamas forces

This report documents serious human rights abuses over the past year by the competing Palestinian authorities in Gaza and the West Bank, run by Hamas and Fatah, respectively. Over the past 12 months, Palestinians in both places have suffered serious abuses at the hands of their own security forces, in addition to persistent abuses by the occupying power, Israel.

The specifics differ, but the Hamas-run authority in Gaza and the Fatah-dominated authority in the West Bank have both tightened their grips on power over the past year. As a result, Palestinians in both Gaza and the West Bank have experienced a marked deterioration in respect for human rights and the rule of law.

Since June 2007, when Hamas forcefully seized control in Gaza, it has conducted arbitrary arrests of political opponents, tortured detainees, clamped down on freedom of expression and assembly, and violated due process rights enshrined in Palestinian law. The victims have frequently been leaders, activists and supporters of Fatah, especially those with suspected ties to a security force or those who sought to undermine Hamas rule after its electoral win in January 2006.

In the West Bank, the Fatah-dominated authorities have committed many of the same abuses, with victims being the activists, leaders and supporters of Hamas and affiliated institutions. Fearful of a Hamas takeover of the West Bank, security forces have detained hundreds of people arbitrarily, tortured detainees, and closed media and organizations that are run by or sympathetic to Hamas. The West Bank security forces have operated with significant support, financial or otherwise, from the United States, the European Union and Israel.

## **VII. Recommendations**

The Palestinian authorities in the West Bank and Gaza, as well as their international donors and supporters, should take active steps to eliminate the serious human rights abuses documented in this report, such as torture, arbitrary arrests and due process violations.

### **Human Rights Watch calls on the Palestinian authorities in the West Bank to implement the following recommendations:**

#### *Regarding Torture*

- Issue clear and public instructions to all members of the security forces, and make clear that violators will be punished to the fullest extent of the law;
- Initiate prompt and impartial investigations into all credible reports of torture or deaths of detainees. Discipline or prosecute as appropriate all individuals, regardless of rank, found responsible for the torture or death of detainees. This includes individuals who carried out such abuse or ordered such abuses, and commanding officers who knew or should have known of such acts but failed to prevent those acts or punish the perpetrators;
- Conduct autopsies for every person who dies in the custody of any agency of the state, and make those reports publicly available;
- Instruct all interrogators, medical personnel, and other staff coming into contact with detainees under interrogation to wear badges bearing their name and/or identification number;
- Compensate victims of torture, ill-treatment and arbitrary detention adequately and speedily.

#### *Regarding arbitrary arrest*

- Immediately release, or charge with recognizable criminal offenses, all those currently held without charge;
- Ensure all detainees are brought before a civilian court to review the legality and necessity of their detention, with the power to order their release;

- End the practice of ordering detainees to sign political oaths or pledges to stop legitimate political activity.

#### *Regarding due process violations*

- Release all detainees who, after their arrest, were not promptly informed of the reason for their arrest or given access to a lawyer, as required by law;
- Release all detainees still in detention who were not brought before a prosecutor within 24 hours or before a judge within 72 hours, as required by law;
- Release without delay all detainees whose release has been ordered by a court.

#### *Regarding detention facilities*

- Allow unimpeded access for monitors of the Independent Commission for Human Rights (formerly the Palestinian Independent Commission for Citizens' Rights) to all places of detention;
- Facilitate access to all places of detention for Palestinian nongovernmental organizations with a mandate to monitor such facilities.

#### *Regarding impunity and accountability*

- Condemn publicly and at a high-level acts of torture, illegal detention, and other abusive practices by Palestinian security forces in the West Bank;
- Conduct prompt, thorough, and impartial investigations into credible allegations of human rights abuses, and make the findings public;
- Provide training to all security and law enforcement agents in international human rights standards and in domestic law, and hold all forces accountable for deviations from these standards. These standards include the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the U.N. Code of Conduct for Law Enforcement Officials.

### *Regarding judicial institutions*

- Cease the boycott of judicial institutions in the Gaza Strip.

## **Human Rights Watch calls on the Palestinian authorities in the Gaza Strip to implement the following recommendations:**

### *Regarding Torture*

- Issue clear and public instructions to all members of the security forces prohibiting torture, and make clear that violators will be punished to the fullest extent of the law;
- Initiate prompt and impartial investigations into all credible reports of torture or deaths of detainees since June 2007. Discipline or prosecute as appropriate all individuals, regardless of rank, found responsible for the torture or death of detainees. This includes individuals who committed or ordered such abuses as well as commanding officers who knew or should have known of such acts but failed to prevent them or punish the perpetrators;
- Conduct autopsies for every person who dies in custody of any agency of the state, and make those reports publicly available;
- Instruct all interrogators, medical personnel, and other staff coming into contact with detainees under interrogation to wear badges bearing their name and/or identification number;
- Compensate victims of torture, ill-treatment and arbitrary detention adequately and speedily.

### *Regarding arbitrary arrest*

- Immediately release or charge with recognizable criminal offenses all those currently held without charge;
- Ensure all detainees are brought before a civilian court to review the legality and necessity of their detention, with the power to order their release;
- End the practice of ordering detainees to sign political oaths or pledges to stop legitimate political activity.

### *Regarding due process violations*

- Release all detainees still in custody who, after their arrest, were not promptly informed of the reason for their arrest or given access to a lawyer, as required by law;
- Release all detainees still in custody who were not brought before a prosecutor within 24 hours and a judge within 72 hours, as required by law;
- Release all detainees still in custody where a court has ordered their release.

### *Regarding detention facilities*

- Allow unimpeded access for monitors of the Independent Commission for Human Rights (formerly the Palestinian Independent Commission for Citizens' Rights) to all places of detention;
- Facilitate access to all places of detention for Palestinian nongovernmental organizations with a mandate to monitor such facilities.

### *Regarding impunity and accountability*

- Condemn publicly and at a high-level acts of torture, illegal detention and other abusive practices when committed by Palestinian security forces in the Gaza Strip;
- Conduct prompt, thorough and impartial investigations into credible allegations of human rights abuses and make the findings public;
- Provide training to all security and law enforcement agents in international human rights standards and in domestic law and hold all forces accountable for deviations from these standards. These standards include the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the U.N. Code of Conduct for Law Enforcement Officials.

### *Regarding judicial institutions*

- Abolish the unlawfully constituted Higher Judicial Council, established in September 2007, and reinstate the Higher Justice Council that existed before;
- Ensure the separation of the judiciary from the executive in practice as well as in law.

### **Human Rights Watch calls on the Fatah and Hamas authorities and the Permanent Observer Mission of Palestine to the United Nations to:**

- Request the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to urgently conduct a fact finding mission to places of detention in Gaza and the West Bank, and publish a report from the mission, including recommendations for the prevention of torture;
- Request that the mandate of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 be amended to include any violation of human rights or international humanitarian law in those territories.

### **Human Rights Watch calls on the Human Rights Council to:**

- Support both a fact finding mission to Gaza and the West Bank by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and an amendment to the mandate of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 to include any violation of human rights or international humanitarian law in those territories.

### **Human Rights Watch calls on international donors to the West Bank security forces to:**

- Insist that security services receiving funding and training remain politically neutral;
- Promote legislative and judicial oversight of the security services. Balance force capacity with civilian oversight and control;

- Closely monitor all assistance to ensure that security forces strictly observe human rights standards;
- Cease providing aid to units that are implicated in serious violations of human rights;
- Refuse any sale or transfer of weapons to any unit or commander where there are credible allegations of human rights abuses;
- Provide human rights training, or insist that such training is provided, as an integral part of all capacity building and training projects for security forces. Such training should include a strong component designed to stop the use of torture and other cruel, inhuman, and degrading treatment for purposes of interrogation or punishment;
- Condition aid and assistance to concrete benchmarks, such as:
  - Verifiable reductions in the numbers of persons who are arbitrarily arrested or detained;
  - Verifiable elimination of torture or maltreatment in detention;
  - Verifiable reductions in due process violations reported by detainees (such as failure to inform the accused of the charges, failure to provide access to a lawyer and failure to bring defendants before prosecutors and judges within the legally mandated periods).

**Human Rights Watch calls on Members of the Quartet (US, EU, Russia and the UN) and donors to the West Bank authorities to:**

- Use the influence that comes with financial assistance and political support to urge publicly and privately that the Ramallah authorities address the human rights abuses documented in this report and implement the recommendations;
- Publicly criticize human rights violations committed by West Bank security forces;
- Promote independent human rights groups with a monitoring capacity and an independent judiciary with the capacity to function effectively.

## **Human Rights Watch calls on international donors to and supporters of Gaza security forces to:**

- Use the influence that comes with financial assistance and political support to urge publicly and privately that the Hamas addresses the human rights abuses documented in this report and implements the recommendations;
- Publicly criticize human rights violations committed by Gaza security forces;
- Promote independent human rights groups with monitoring capacity and an independent judiciary with the capacity to function effectively;
- Promote security services that remain politically neutral;
- Promote legislative and judicial oversight of the security services. Balance force capacity with civilian oversight and control;
- Closely monitor all assistance to ensure that the security forces strictly observe human rights standards;
- Refuse aid to units that are implicated in serious violations of human rights;
- Cease the sale or transfer of weapons to any unit or commander where there are credible allegations of human rights abuses;
- Provide human rights training, or insist that such training is provided, as an integral part of all capacity building and training projects for security forces. Such training should include a strong component designed to stop the use of torture and other cruel, inhuman, and degrading treatment for purposes of interrogation or punishment;
- Condition aid and assistance to concrete benchmarks, such as:
  - Verifiable reductions in the numbers of persons who are arbitrarily arrested or detained;
  - Verifiable elimination of torture or maltreatment in detention;
  - Verifiable reductions in due process violations reported by detainees (such as failure to inform the accused of the charges, failure to provide access to a lawyer and failure to bring defendants before prosecutors and judges within the legally mandated periods).



In both Gaza and the West Bank, Palestinian authorities have frequently failed to hold accountable security force members implicated in serious abuse. Neither authority is known to have prosecuted any of its own forces for the serious abuses committed during the heavy fighting in Gaza in June 2007, including summary executions, maiming and torture. Since then, too few security force members or commanders have faced justice for using excessive force, ill-treatment or torture against detainees.

In Gaza, the Hamas-run government has apparently improved its record in recent months, after reforming the security forces and judiciary under its control. Security is better and reports of human rights abuses are down, when compared to the catastrophic year of 2007, local journalists and human rights groups say. Nevertheless, local groups still record serious human rights abuses on a regular basis, including deaths in detention, which require the urgent attention of the Hamas authorities and any outside donor that provides Hamas with financial or political support.

In the West Bank, local human rights groups also report slight improvements in recent months. But serious violations persist with impunity, including torture. These violations must be addressed by President Mahmoud Abbas and Prime Minister Salam Fayyad, as well as the international donors who have given or committed millions of dollars to West Bank security forces.

Most reports of abuses received by Human Rights Watch and local human rights groups in Gaza blame the police or the Internal Security Force, which deals with political and security-related crimes. For most of the period covered in this report, Hamas Prime Minister Ismail Haniya was also minister of interior, but the key security official in Gaza was Said Siyam, an influential Hamas leader and interior minister during the Hamas-led government from March 2006 to March 2007. In late April 2008, Haniya reappointed Siyam to his former position as minister of interior.

In the West Bank, complaints of abuse are mostly directed at the Preventive Security Service (PSS) and the General Intelligence Service (GIS), both of which monitor and control the political factions and militias. The head of Preventive Security in the West

Bank is Ziyad Hab al-Rih, who formally reports to Minister of Interior Abdel Razak al-Yahya and, through the minister, to Prime Minister Fayyad. Head of the General Intelligence Service is Tawfiq Tirawi, who reports directly to President Abbas. Under Article 39 of the Palestinian Basic Law, the president is the commander-in-chief of all Palestinian forces.

Preventive Security did not have the right to make arrests or run detention facilities under Palestinian law prior to November 20, 2007, when President Abbas issued a decree giving them these powers. The decree says Preventive Security must respect the rights enshrined in “Palestinian laws and charters and international treaties” but it also limits transparency by stating that “the information, activities and documents pertaining to the work of the Preventive Security shall be considered confidential and cannot be disclosed to anyone.”

In general, abuses in Gaza by Hamas forces tend to be of shorter duration but more intense: arbitrary detentions accompanied by severe beatings and, as in two cases documented by Human Rights Watch, gunshots to the legs. In at least three cases, detainees have died, apparently from torture. In the West Bank, the security forces generally hold detainees arbitrarily for longer periods but with less severe physical violence. In two known cases, one of them documented in this report, a detainee died, apparently from torture.

In the West Bank, methods of abuse documented by Human Rights Watch that can amount to torture included: mock executions, kicks and punches, and beatings with sticks, plastic pipes and rubber hoses. The most common form of torture was forcing detainees to hold stress positions for prolonged periods, known in Arabic as *shabah*, causing intense pain and sometimes internal injury but no physical mark. Such positions include standing for hours with feet apart and hands tied behind the back, standing with one leg and one arm raised, or sitting on the edge of a chair with hands tied to the feet.

Victims, lawyers and human rights activists in the West Bank spoke to Human Rights Watch of an apparent cooperation between Fatah forces and Israeli security, who share the common aim of restricting or eliminating Hamas. Many of the men arrested

this past year by Palestinian forces in the West Bank were previously in Israeli detention for suspected Hamas ties. Israeli forces arrested or rearrested some of these men after their release from Palestinian detention.

Officials in both Gaza and the West Bank adamantly deny that their forces make arrests on a political basis, saying they only target people who used or were planning to use violence. But the vast majority of arbitrary arrests and torture cases documented by Human Rights Watch and Palestinian human rights groups are of political activists or supporters from the opposing political side, especially those suspected of having worked for or supported the adversary's security force. Human Rights Watch documented more than one dozen cases, and heard of many more, in which the authorities in Gaza or the West Bank released a detainee after forcing him to sign a document—often after torture—saying he would cut ties with the rival organization (Fatah in Gaza or Hamas in the West Bank). Many of these people were never charged with a crime, which suggests a political motivation behind the arrest.

Compounding the problem, the criminal justice systems in Gaza and the West Bank are deeply flawed. In Gaza, after President Abbas ordered judges and other officials to boycott judicial bodies in June 2007, Hamas began appointing new prosecutors and judges, although it lacked the legal authority to do so, and many have inadequate experience. Lawyers and human rights groups in Gaza have condemned what they call political interference in the judiciary, particularly the forced removal of top officials and their replacement with individuals considered sympathetic to Hamas. In the West Bank, security forces have at times refused to release detainees, despite court orders to do so. In both places, authorities frequently failed to bring detainees before a prosecutor within the 24 hours required by law. Lawyers have faced difficulty accessing their clients and authorities frequently failed to inform detainees of the reason for their arrest.

In both Gaza and the West Bank, the only local organization with a mandate to visit prisons and detention facilities regularly is the Palestinian Independent Commission for Citizens' Rights (PICCR), the human rights commission of the Palestinian Authority (PA), which in June 2008 changed its name to the Independent Commission for Human Rights (ICHR). According to the organization, the authorities

in both Gaza and the West Bank reduced its access after June 2007, although in recent months access in Gaza has improved. In both places, ICHR must pre-arrange its visits and prisoners are sometimes moved, apparently to avoid inspection.

Access to detention facilities for independent monitors would provide transparency and a degree of oversight to criminal justice systems that are opaque, and in some cases it might save lives. In February 2008, PICCR twice asked the General Intelligence Service in the West Bank for permission to visit its detention facility in Ramallah. The GIS failed to reply. On exactly the day PICCR wanted to visit, an imam and Hamas member named Majid al-Barghuti died in the facility, apparently from torture.

The International Committee of the Red Cross (ICRC) does have regular access to detention facilities in both Gaza and the West Bank, and it raises its observations on detention conditions and detainee treatment with the respective authorities. Because ICRC reports are not made public, however, the problems they have identified or raised remain unknown.

Many of the abuses documented in this report have been exacerbated by the destruction Israel inflicted on Palestinian security installations and criminal justice facilities since the second Intifada began in 2000, as well as restrictions on movement imposed by Israel on Palestinian security forces in the West Bank. In addition, the Palestinian security system is burdened by a legacy of multiple and often overlapping services, lack of independent oversight and the absence of witness protection. With little investigative experience and no forensic facilities, security forces continue to rely on a confession-based system, which encourages the physical and psychological abuse of detainees.

None of these burdens, however, justify the abusive behavior of security forces in Gaza and the West Bank. Direct orders to commit abuses, or the lack of political will to stop them, have caused additional suffering to a people already enduring ongoing violations as a result of the Israeli occupation. The widening gap between Gaza and the West Bank has paralyzed the legislative process and desperately needed legal reform.

The international community has contributed to the negative trend. Since the Hamas takeover of Gaza, foreign governments active in the region—in particular the US and EU Member States—have pursued a two-prong approach: isolate and pressure Hamas in Gaza while aiding and promoting Fatah in the West Bank. The report does not address the political decision to isolate Hamas, but it criticizes governments that have pledged US \$8 billion to the Palestinian authority in the West Bank, including millions in training and aid for its security forces, for their inadequate attention to the abusive practices of those forces. The focus of outside support is clearly on strengthening the forces loyal to Abbas as a counter-weight to Hamas, despite the abuses that these forces routinely commit. On the political front, these foreign governments regularly, and correctly, condemn Hamas for its abusive behavior, but they remain silent on equally serious abuses by forces under the control of their ally in the West Bank.

Aid to Hamas authorities in Gaza is a similar concern, although little is known about how much is given and by whom. According to US, Israeli and Fatah officials, Hamas receives aid from Syria and Iran. If these countries do support the Gaza security forces, then to avoid complicity they should condition their aid on concrete and verifiable steps to reduce the serious human rights violations documented in this report. Governments that support Hamas politically should publicly condemn the movement's abuses and press it to enact reform.

The report recommends that the authorities in both Gaza and the West Bank prioritize the protection of human rights in all their activities. Hamas and Fatah leaders should publicly commit to eliminating torture, and enforce that claim by vigorously prosecuting members of the security forces who use or order the use of torture against detainees. Individuals who are arrested and denied their due process rights should be released. Lawyers and mandated human rights organizations should be granted unimpeded access to detention facilities to visit clients and monitor conditions.

On the international level, the substantial aid and assistance committed to West Bank security forces by western and Arab governments should be conditioned on concrete steps to reduce arbitrary arrests, torture and due process abuses. No aid

should go to units implicated in human rights abuses. More aid and training is needed to encourage reform of the criminal justice system that promotes transparency, accountability and civil control. International donors to the Hamas-run security forces in Gaza should condition their aid on the same steps, with regular monitoring to ensure that Hamas works to end abuses of human rights.

In both Gaza and the West Bank, the human rights abuses documented in this report—arbitrary arrests, torture, unlawful detentions and denial of access to a lawyer— amount to violations of Palestinian law. The Palestinian Basic Law, considered the interim constitution, guarantees the right to equal treatment before the law, freedom of expression and association, and fundamental due process rights. Torture is forbidden.

All of the abuses documented in this report are also prohibited in a wide body of international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Both the Hamas and Fatah authorities claim to be the legitimate leaders of the Palestinian Authority. Not being a state, the PA cannot sign or ratify these treaties, but PA officials have repeatedly pledged to respect their standards. As a political party and armed group, Hamas has publicly committed itself on numerous occasions to respect international human rights norms.

## **Methodology**

This report is based on research conducted during two trips to Gaza and three to the West Bank between October 2007 and April 2008. During that time, Human Rights Watch conducted lengthy interviews with 19 people in the West Bank who were victims of human rights abuses, as well as witnesses to those and other abuses. The cases came from in and around the towns of Nablus, Jenin, Ramallah, Bethlehem and Hebron. In Gaza, Human Rights Watch interviewed 20 victims of human rights abuses at the hands of Hamas forces, as well as witnesses to those and other abuses. Human Rights Watch selected the victims to interview primarily from three sources: media accounts, reports of local human rights organizations and the staff of local human rights organizations who knew of cases. In both Gaza and the West

Bank, Human Rights Watch also spoke with a wide array of human rights activists, lawyers, judges, journalists, government officials and security force commanders. Their comments and observations are footnoted in the report.

Interviews were mostly conducted in Arabic and English with an interpreter, although some interviewees spoke English. The interviews in detention facilities (Gaza Central Prison in Gaza, the Preventive Security facility at Bituniya and the military intelligence facility in Jenin) were conducted in private. In both Gaza and the West Bank, many of the victims feared retaliation and did not want their full names to appear in print. In those cases, the name is either withheld or initials are used, depending on the request. Among those interviewed by Human Rights Watch, more people requested anonymity in the West Bank, perhaps because they feared arrest by Palestinian and Israeli forces. In general, Fatah in Gaza operated more openly than Hamas in the West Bank, which is primarily underground.

On May 23, 2008, Human Rights Watch submitted a list of detailed questions to the offices of Prime Minister Ismail Haniya in Gaza and President Mahmoud Abbas in the West Bank, asking them to respond for the purposes of this report. Prime Minister Haniya's office replied on June 4 and its answers are reflected at relevant points in the report. As of July 10, President Abbas's office had failed to reply. On June 20, Human Rights Watch submitted questions to the office of Lt. Gen. Keith Dayton, US Middle East Security Coordinator, about US funding and training for security forces in the West Bank. As of July 10, his office had not replied.