

ABUSIVE SYSTEM

Failures of Criminal Justice in Gaza



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Summary

This report highlights the failure of the criminal justice system in Gaza under Hamas rule, including security forces, prosecutors, and judges, to uphold the law and protect the rights of detainees and criminal defendants and hold those responsible for serious abuses accountable.

Based on interviews with former detainees, lawyers, human rights groups, and reviews of case files and court judgments the report documents how Hamas security services in Gaza routinely conduct arrests without presenting warrants, refuse to promptly inform families of detainees' whereabouts, deny detainees access to a lawyer and torture detainees in custody.

In August 2008, Abdel Karim Shrair was arrested by members of the al-Qassam brigades, Hamas's armed wing, which detained and allegedly tortured him at an unknown location for three weeks before transferring him to the custody of the police. The military prosecutor then ordered Shrair's detention and interrogation by the Internal Security service, and later charged him with collaborating with Israel, in part on the basis of information that his lawyer alleged was obtained under torture. Internal Security interrogators also tortured Shrair, his family said, and prevented them from seeing him until October. Shrair's mother said that when she was first able to see him, his legs and face were bruised, his feet were swollen, his hands and arms had rope marks and his chest had burn marks. The military courts did not adequately address Shrair's claims of torture. The courts held that the prosecutor, by subsequently ordering Shrair's detention and interrogation, had retroactively "corrected" prior gross violations including Shrair's warrantless arrest and incommunicado detention. Shrair was sentenced to death and executed by firing squad in May 2011. His mother said that Hamas authorities had prohibited the family from burying him, and that police beat her when she tried to hold his body during the interment.

Shrair's family members are among numerous witnesses who have reported that the Internal Security agency, the drugs unit of the civil police force, and police detectives all engage in the torture of detainees. The Independent Commission for Human Rights, a non-partisan Palestinian rights group that also monitors abuses in the West Bank, reported receiving 147 complaints of torture perpetrated by these forces in 2011. As a measure of

how broken the system is, three criminal defense lawyers in private practice told Human Rights Watch that they had themselves been arbitrarily arrested and tortured in detention by Hamas security forces.

The abusive practices of the security services in Gaza flout human rights norms that Hamas has pledged to uphold, and also violate Palestinian laws. These laws require police to obtain judicial arrest and search warrants, and prohibit torture and the use of evidence obtained under torture. Security officers commonly arrest civilians and present them before Gaza's military judiciary, even though its remit should be limited to military offenses.

In the seven cases documented in this report, the judiciary in Gaza, which consists of civil and military branches, consistently failed to hold to account security services that operated outside the law or to uphold the rights of detainees. In the cases Human Rights Watch examined, the military judiciary did not throw out any criminal cases against detainees because of due process violations, and ignored or failed to investigate credibly detainees' claims that they had been tortured. Hamas officials claim to have disciplined hundreds of members of the security services for abuses since Hamas took power in 2007, but Hamas has never published any details about the officials involved or the disciplinary measures taken. Members of the Internal Security agency apparently continue to enjoy absolute impunity despite consistent allegations of severe abuse.

Former detainees who alleged they were abused by security services said they despaired of finding justice; several were afraid to describe what had happened to them in custody, even on condition that their identities would be kept confidential. Some men said they had needed medical care due to torture, and sought to obtain medical records as evidence that they had been tortured, but that hospital officials refused to provide them. Human Rights Watch is aware of at least three cases in which Hamas has executed prisoners whom judicial authorities sentenced without adequately reviewing credible claims that their convictions were based on evidence obtained under torture.

In previous research on intra-Palestinian political violence and abuses against detainees, Human Rights Watch found that the main factor underlying such human rights violations was the conflict between Hamas and its rival, the Palestinian Authority, which often prompted "tit for tat" abuses in Gaza and the West Bank. The intra-Palestinian political rivalry is still the root cause of many abuses against detainees, but there have been

increasing reports of custodial abuse in Gaza against detainees accused of non-political crimes. Victims of alleged abuse whom Human Rights Watch interviewed include persons detained on suspicion of collaborating with Israel or the Palestinian Authority in the West Bank, as well as alleged perpetrators of drug offenses and fraud. Human rights lawyers in Gaza said that they have continued to receive the same kinds of allegations of abuse from victims since Hamas and Fatah announced a political reconciliation in May 2011.

Human Rights Watch impartially documents abuses by governing authorities in Gaza, Israel and the West Bank. This report does not attempt to compare abuses by Hamas with abuses by the Palestinian Authority security forces in the West Bank, where Human Rights Watch has also documented arbitrary arrest, torture and impunity. As part of a potential reconciliation agreement, the Palestinian authorities in Gaza and West Bank should both ensure that victims of torture and other cruel, inhuman and degrading treatment or punishment are compensated appropriately and that members of security forces responsible for torture are brought to justice.

Given credible evidence of widespread and gross violations of due process as well as systematic ill-treatment and torture, Hamas should take meaningful steps to reform its justice system to strengthen the rule of law and protect the rights of detainees. Hamas should immediately declare a moratorium on executions in death penalty cases. In light of numerous cases of detention where family members and lawyers are not notified of or able to promptly determine which security forces have custody, Hamas should ensure that detentions are carried out only by security forces legally authorized to do so. It should halt the prosecution and trial of civilians by the military judiciary. (The Palestinian Authority significantly reduced such military arrests and trials of civilians in the West Bank in 2011.) Hamas should explicitly guarantee that all detainees have the right to contact their families and a lawyer immediately upon arrest and that their families and lawyers can visit them in a timely manner. It should ensure all detainees are brought promptly before an independent judge after being detained.

Hamas should also ensure that members of security services are held criminally liable for abuses against detainees, and it should sanction prosecutors and judges who turn a blind eye to violations, such as by issuing retroactive arrest warrants or accepting evidence that was credibly alleged to have been obtained under torture. Hamas authorities should strengthen oversight and complaints mechanisms intended to keep security services in

check, including by allocating more resources to investigating and prosecuting security officers allegedly responsible for abuses. Hamas should facilitate the work of human rights groups in Gaza, including the Independent Commission for Human Rights, to monitor conditions of detention and examine alleged abuses.

Recommendations

To Prime Minister Ismail Haniyeh

- Immediately impose a moratorium on capital punishment.
- Publicly pledge to reform the criminal system such that only the security services that are authorized by law may conduct arrests, that they do so only with a warrant or to prevent ongoing or imminent crimes, and that civilians are not arrested on the basis of warrants issued by the military judiciary and are not charged or tried on the basis of military laws but only before civilian courts.
- Publicly pledge to end torture and impunity by security forces.
- Instruct the Interior Ministry and Ministry of Justice to initiate a public-outreach campaign to inform Gaza residents of their rights during arrest, detention and sentencing.

To the Interior Ministry

- Establish a mechanism to monitor the number of detainees in all places of detention, including facilities operated by Internal Security as well as by all branches of the regular police, the drugs police, police detectives, and tunnels police, and publish these numbers monthly.
- Publish a list of all security personnel whom Hamas authorities have punished or courts have sentenced since 2007 for violations of detainees' rights, with detailed information about the names or ranks of the persons punished, the punishment they received, and the location, date and nature of the violations, and continue to regularly publish information about security officials punished for abuses.
- Allow the Independent Commission for Human Rights to visit all places of detention, including Gaza's central prison and detention facilities operated by Internal Security.

To the Ministry of Justice, the Supreme Judicial Council, and the Supreme Council of Military Justice

- End prosecutions of civilians in military courts, including by refusing requests by security services for arrest warrants against civilians, and by military prosecutors for remands of civilians in detention.
- Ensure that allegations of torture are thoroughly examined by independent and professionally qualified personnel.

To the Joint “Social Reconciliation Committee” Established as Part of the Fatah-Hamas Reconciliation Process

- In addition to providing compensation to survivors of political violence and the families of victims, consider establishing public truth-telling fora, documenting cases, and other mechanisms to ensure that the lessons of the violence are learned by society generally.
- Ensure that victims of custodial torture by both Hamas and Fatah forces, and not only persons permanently maimed or the families of those who were killed during the political violence, are compensated and given the chance to identify the persons responsible.

Methodology

This report is based on interviews conducted in Gaza from May 14 to 31, 2011, with six former detainees, six criminal defense lawyers practicing in civilian and military courts (three of whom were also former detainees), two relatives of a man who had been sentenced to death and executed, and one former judge. The interviews were conducted individually, in private homes and offices. Human Rights Watch informed interviewees that their statements would be used in this report. We redacted the names of the former detainees and the former judge, and some other identifying information, in order to protect them from possible reprisals. Human Rights Watch sent written inquiries about the report's preliminary conclusions to the Prime Minister's office, the Ministry of Interior and the Ministry of Justice; no responses were received. Human Rights Watch also reviewed eight case files that included evidence of due process violations at the offices of criminal defense attorneys, including affidavits of complaints of due process violations or abuses in detention documented by human rights organizations based in Gaza, as well as three court verdicts and related court documents. Interviews were conducted in Arabic with the help of translators, who also reviewed Arabic documents.

I. The Justice System in Gaza

The justice system in Gaza comprises shari'a courts, which have jurisdiction over personal status issues; administrative, civil and criminal courts dealing with civilians; and military courts, with jurisdiction over members of the security services, armed groups affiliated with Palestinian political factions, and other matters that touch on public security, and which often deal unlawfully with civilian detainees.¹

The Civilian Justice System

Under the quasi-constitutional Palestinian Basic Law, the Palestinian Authority (PA) president must authorize all judicial appointments, and judges are regulated by the High Judiciary Council in the West Bank. As a result of tensions between Hamas and Fatah, which culminated in Hamas violently expelling Fatah from Gaza in 2007, Hamas created a parallel body in Gaza, the High Justice Council, which appoints judges without PA presidential approval and generally manages the judiciary in Gaza independently of the judiciary in the West Bank.² Palestinian human rights groups in Gaza have refused to represent detainees before the courts, which they consider illegitimate, but monitor court trials and report allegations of arbitrary arrest and abuse in detention to Hamas authorities.³

Gaza has three civilian courts of first instance, in Gaza City, Deir al-Balah, and Khan Yunis, with around 15 judges. Higher civilian courts in Gaza include the Court of Appeal and the Court of Cassation. In total, there are around 25 to 30 judges. A former judge, S., estimated that there are between 600 to 700 licensed lawyers in Gaza, although people who work as legal advisors for the Hamas government or the UN are barred by law from taking cases for individual clients.⁴ The judge and a defense lawyer who practices before the military courts, interviewed separately, said the judiciary provided a “law officer” for accused people who

¹ Egypt administered sharia, civilian and military courts in Gaza from 1948 to 1956, at which point Israel briefly took control of the territory, and again from 1957 to 1967, when Israel occupied the territory. Israel instituted its own military courts, based on military orders from the Israeli military's southern commander. Human Rights Watch interview with Hani Radwan, military defense lawyer, Gaza City, May 22, 2011.

² Hani Albasoos, “Case Study I: The Judicial Sector,” in *The Public Services Under Hamas in Gaza: Islamic Revolution or Crisis Management?*, ed. Are Hovdenak, Peace Research Institute Oslo: 2010, pp. 38-9.

³ Human Rights Watch interview, Independent Commission for Human Rights (ICHR) staff, Gaza City, May 2011.

⁴ Human Rights Watch interview with S., former civilian criminal court judge, Gaza City, May 25, 2011.

could not afford to hire a lawyer, and the Bar Association also helps in some cases.⁵ There are around 25 lawyers who are members of the military defense bar in Gaza.⁶ It is difficult to determine whether the number of defense lawyers is adequate to the number of people detained on criminal charges, because Hamas does not make public the numbers of people in detention.

The former judge, S., who said he was politically independent but also a critic of Hamas, highlighted the politicization of the judiciary as an ongoing problem. When the Palestinian Authority controlled Gaza's judiciary prior to the Hamas takeover in 2007, he said, there were no pro-Hamas prosecutors, and he recalled only one judge from that period, a woman, with possible Hamas sympathies, since her husband was a Hamas member. Other observers have reported that when the PA created the judicial system in 1994, it was completely dominated by the Fatah political faction, and that judicial appointments were criticized as nepotistic and based on political affiliation.⁷ The problem continued after Hamas took over Gaza, S. said, when conflicts of authority between the judiciary, which was following orders from Ramallah in order to receive their salaries, and Hamas, leading Hamas to replace the entire Gaza judiciary in November 2007.⁸

They came and told everyone in the court, "Either you work under the order of the prime minister [Ismail Haniyeh of Hamas] or you leave." We tried to say, "We're an independent body, even the president [Mahmud Abbas of the Palestinian Authority] has no right to fire us," but this was politics. The problem is that everyone is a member of one political side. The police, the prosecutors, and the judges are all from Hamas. This inevitably creates problems.⁹

⁵ For a discussion of the Gaza Bar Association's split from the West Bank Bar Association, see Nathan Brown, "Gaza Five Years On: Hamas Settles In," Carnegie Middle East Center, June 2012, available at <http://carnegie-mec.org/publications/?fa=48470#> (accessed August 2, 2012).

⁶ Human Rights Watch interview with Hani Radwan, military defense lawyer, Gaza City, May 22, 2011.

⁷ Albasoos, "Case Study I: The Judicial Sector," p. 29; see also Hani Albasoos, *The Rule of Hamas in Gaza: Facing the Challenge of Isolation*, "Chapter Seven: The Judicial Sector," 2009.

⁸ See also Albasoos, 2009, op. cit. Hamas appointed Ismail Jaber as a new Attorney General on August 29, 2007, after his predecessor, Ahmad al-Maghanni refused to acknowledge Hamas' authority and was briefly detained by Hamas before leaving for the West Bank.

⁹ The Palestinian Authority president confirms the appointment of judges. The Higher Judiciary Council, an independent body, regulated the composition of the judiciary: it administered examinations to applicants for judgeships, censored judges, and so on.

Lawyers who are critical of Hamas, or who support Fatah, continue to practice before the courts, but have themselves been the victims of threats and violations of due process and even torture (see “Case Studies,” below). Flora al-Masri, a lawyer, told Human Rights Watch that in 2008, a judicial policeman in the Khan Yunis courthouse threatened to “break my legs” while she was representing a client, because of her perceived sympathy for Fatah; she alleged that in response to her complaints against the policeman, a judge said, ‘I won’t allow a Fatah woman to destroy what we have built’.”¹⁰

Another problem has been the lack of justice for families and victims of internal Palestinian violence, which has killed hundreds of people since the 2007 Hamas takeover, including during a spike in violence in July 2008 and again during and after the major Israeli military offensive in Gaza, “Operation Cast Lead,” in December 2008 and January 2009.¹¹ Political reconciliation between Hamas and Fatah could help resolve some of these issues, so long as reconciliation agreements do not grant amnesties to officials responsible for serious abuses on either side. A third issue is that the Hamas judiciary has convicted suspected Fatah members and sympathizers on the basis of unfair trials and carried out executions. S. told Human Rights Watch: “Arrests without warrants, unfair verdicts, bad judges, and so on, can all be fixed after reconciliation. But wrongful executions cannot.”¹²

Due Process Violations during Arrest and Detention

The procedural obligations of the arresting authority and prosecution in Gaza are based on Criminal Procedure Law No. 3 of 2001.¹³ According to this law, only the civil police may conduct arrests, and they must obtain arrest and search warrants from the general prosecutor, except in order to stop ongoing or imminent crimes (articles 19, 29). Hamas interior minister Fathi Hammad has reportedly affirmed that “the security agencies operate in accordance with the law as defined in the provisional Palestinian constitution [Basic Law] [...]”¹⁴

¹⁰ Human Rights Watch interview with Flora al-Masri, Gaza City, May 19, 2011.

¹¹ See Human Rights Watch, *Internal Fight* (2008), and *Under Cover of War* (2009).

¹² Human Rights Watch interview with S., former civilian criminal court judge, Gaza City, May 25, 2011.

¹³ Palestinian Authority Penal Procedure Law No. 3 of 2001, English translation available at <http://www.courts.gov.ps/pdf/Law%203%202001%20Penal%20Procedures.pdf>, accessed July 8, 2011.

¹⁴ Sayigh, *Hamas Policing in Gaza*, p. 106.

However, Hamas Internal Security forces commonly conduct arrests and searches, often do so without warrants, and frequently arrest civilians on the basis of warrants issued by the military judiciary, according to reports by the Palestinian Independent Commission for Human Rights, the Palestinian Center for Human Rights, the Al Mezan Center for Human Rights, and lawyers in private practice.

As described below (see “Case Studies”), the consequences of warrantless arrests do not only affect people suspected of crimes. Police commonly arrest family members of suspects whom they seek to arrest as a form of pressure. The former judge told Human Rights Watch: “A few months ago, the police wanted to arrest my neighbor. They didn’t find him in the house, so they arrested his brothers and took their car, and told their father, ‘Turn in your son and we’ll let your other sons out and give you back your car.’ They were arrested without being charged with any crime, for the alleged action of someone else.”¹⁵

Rights activists and lawyers described arrests and detentions by security forces that were not clearly authorized to do so under Palestinian law, and said that such arrests had led to cases where detainees were unable to contact their lawyers or could not be located during the initial period of detention. One lawyer summarized the issue:

The law says the general prosecutor must issue arrest warrants, but the [Hamas] authorities claim the law is vague and that various forces may conduct arrests. They use the supposed vagueness of the law as an excuse. In reality, the police, the drugs department of the police, the police detectives, and Internal Security all arrest people. The result is that someone who’s arrested could be detained by any of the security forces, so his lawyer might not know where to look for him. And when someone is arrested, it could be by security from another area. Just the other day, police from Nuseirat came and arrested someone from Gaza City.¹⁶

Some of the criminal laws applied by civilian courts also raise due process concerns. Civil courts apply an Ottoman penal law from 1929 and Criminal Code Ordinance No. 74 of 1936, from the period of the British Mandate. The latter includes crimes that are so vague that they could violate the right to a defense, and that also infringe other rights, such as

¹⁵ Human Rights Watch interview with S., former civilian criminal court judge, Gaza City, May 25, 2011.

¹⁶ Human Rights Watch interview with N., Gaza City, May 18, 2011.

freedom of expression; for instance, the Code criminalizes “seditious intentions” to excite disaffection against the authorities (article 49).¹⁷

Military Jurisdiction over Civilians

The Palestinian Basic Law, revised in 2003, requires that “military courts shall be established by special laws” and restricted from exercising any “jurisdiction beyond military affairs” (article 101).¹⁸ The Palestinian Supreme Court, which sits in Ramallah, in the West Bank, cited this article of the Basic Law in 2008 when it invalidated arrest warrants issued against civilians by the Palestinian Authority’s military judicial commission, which it called “an extortion of power [that] undermines the plaintiff’s personal freedom.”¹⁹ In 2011, the Palestinian Authority significantly reduced the number of arrest warrants issued by the military judiciary against civilians.²⁰

However, in Gaza, the Hamas Internal Security agency, which obtains arrest warrants from the military judiciary, regularly arrests civilians who are then often tried before military courts. According to Gaza residents, Internal Security has offices Rafah, Khan Yunis, Deir al Balah, and two offices in Gaza City.

The military judiciary in Gaza is structured according to Military Justice Law No. 4, which the Palestinian parliament, which was controlled by Hamas at the time, passed on February 21, 2008, although it has not been ratified by Palestinian Authority President Mahmoud Abbas or applied by the PA military judiciary in the West Bank.²¹ Article 63 of the law states that it

¹⁷ Other provisions of the 1936 Ordinance also violate human rights norms. Article 152(2), for instance, criminalizes sexual acts between men.

¹⁸ 2003 Amended Palestinian Basic Law, English translation available at <http://www.courts.gov.ps/template.aspx?id=64>, accessed July 8, 2011.

¹⁹ Palestinian High Court of Justice, Case No. 156 / 2008, decision issued on July 14, 2008.

²⁰ See Al Haq, “Palestinian General Intelligence: Civilians will be no longer tried in military courts,” January 17, 2011, <http://www.alhaq.org/advocacy/topics/palestinian-violations/388-palestinian-general-intelligence-civilians-will-be-no-longer-tried-in-military-courts>, accessed June 18, 2012. A spokesperson for ICHR in the West Bank nonetheless said that as of June 2012, the group was aware of 11 civilians who had been arrested in late 2011 and were still being detained on the basis of warrants issued by the military judiciary. Human Rights Watch telephone conversation with ICHR spokesperson, Ramallah, June 3, 2012.

²¹ The law established a supreme military court, which reviews cases involving the death penalty or life sentences with hard labor; military tribunals to deal with cases involving officers with the rank of major or above in the security services; permanent military courts, which have jurisdiction over security forces and civilians charged under military laws for crimes such as collaborating with the enemy; central military courts to deal with offenses by members of security services; and field courts. The law is available (in Arabic) on the website of the Hamas military judiciary at <http://www.tmj.gov.ps/images/qanonalqadaa.doc>, accessed June 14, 2012. Yezig Sayigh, an expert on the Palestinian

applies to people who commit “military offenses that are referred [to the military judiciary] by the competent Minister of Military Justice,” including “crimes that have civilian parties.” On the basis of that article, in 2008 then Minister of Interior Said Siyam transferred jurisdiction in cases of collaboration with hostile forces to the military courts.²² Internal Security forces arrest both civilians and members of armed groups under the law.

The law provides that the military prosecutor may order the detention of an accused person for up to 15 days after the beginning of detention, and that a central military court judge may extend the detention for up to a total of 45 days (article 76). However, “if the investigation has not been completed” a suspect can be detained without trial for up to six months by the order of the permanent military court. The accused should be presented before a military court within one month of being notified by the military prosecutor that the accused is being detained and investigated (article 81). According to the Independent Commission for Human Rights, an official Palestinian rights ombudsman, the military judiciary interprets the law as authorizing the military prosecutor to issue arrest warrants and to extend periods of detention.²³

The law states that military courts will appoint a lawyer for an accused person who is not represented. The supreme military court functions as an appeals court, but it will not accept an appeal unless the lower military court erred in its interpretation of the law, or there was a “fundamental flaw in the proceedings resulting in prejudice to the right of the accused” (article 99). Members of the security forces convicted and sentenced to death will be executed by firing squad, “but the execution of a person not member of the security forces will be carried out” according to other applicable laws (article 104).

Military prosecutors and courts in Gaza (as well as in the West Bank) also apply the Palestine Liberation Organization (PLO) Revolutionary Penal Code of 1979 and Revolutionary Penal Procedure Law of 1979. The PLO created the laws while in exile as a

security sector, notes that although the Palestinian parliament was inquorate when it passed the law, the law “has not been seriously challenged, as it brings together two draft laws that were originally submitted by the Fatah-led PA to the Palestinian Legislative Council for consideration in 2005: the Law of Establishment of Military Courts and Prosecution and the Law of Penal Procedures.” Sayigh, *“We Serve the Public”: Hamas Policing in Gaza*, Brandeis University: 2011, p. 85.

²² Sayigh, *Hamas Policing in Gaza*, p. 113 (“Siyam’s decision was contained in decree M91/2008, based on article 63/5 of the 2008 Military Justice Law”), citing Sami Na’im al-Ashram, “Statutory Justice and Military Justice: Similarities and Differences,” Military Judiciary Staff website, June 10, 2010.

²³ Human Rights Watch interview with staff lawyer, Independent Commission for Human Rights, Gaza, May 19, 2011.

means of governing its armed factions in Lebanon, Syria, Tunisia and elsewhere. In 1995, after the formation of the PA government in the West Bank and Gaza, PA president Yasser Arafat authorized the continued application of Palestinian laws in force in the territories; some Palestinian lawyers contest whether the PLO decrees are properly covered by Arafat's declaration.²⁴ On their own terms, the PLO's 1979 penal laws apply to crimes against "the revolution's security."²⁵ The Palestinian Legislative Council, or parliament, has never approved the Revolutionary Penal Code's use.²⁶ The Palestinian Authority applied these laws in Gaza from February 1995 until Hamas took over Gaza in 2007. The Hamas authorities made some revisions but generally maintained the areas of jurisdiction of the military courts.²⁷

The Revolutionary Penal Code applies to soldiers, officers, and volunteer members of "the resistance factions" (article 8), and also to "any Palestinian or other person" who commits

²⁴ Decree # 1 of 1995, article 1 ("laws and regulations and orders issued before 5 June 1967 shall remain valid in Palestinian-controlled Territory [the West Bank and the Gaza Strip] until they are unified"). Palestinian lawyers argue, however, that the Revolutionary Penal Code had never previously been valid in the occupied Palestinian territories, but only in other countries where the PLO operated, such that the Code's "application [in the OPTs] should be seen as a violation of the presidential decree." See e.g., Ghandi Rabie', *The Detention of Civilians by Palestinian Security Agencies With A Stamp of Approval by the Military Judicial Commission*, Independent Commission for Human Rights (ICHR), December 2008, pp. 9-10.

²⁵ The Palestinian Independent Commission for Human Rights, the official rights ombudsman, argues that in 1995 the PLO agreed with Israel to establish the Palestinian Authority, and the PA in turn has established security services; these services therefore cannot, in the ICHR's view, "be regarded as apparatuses of the revolution" or derive their powers from the PLO's 1979 laws. Arguably, the same analysis applies to the security services established by Hamas in Gaza since 2007, which as such should not use the Revolutionary laws of 1979 to extend their jurisdiction over civilians in Gaza, whose rights have been established by the Palestinian Basic Law. ICHR, *Detention of Civilians*, pp. 14-15. Palestinian officials disputed the ICHR interpretation in 2008.

²⁶ The PLC has not convened since 2008, and has been rendered ineffective by Israel's arrests of its members, some 27 of whom are currently in detention, and by the political division between Fatah and Hamas. PA President Mahmud Abbas has claimed authority to act under article 43 of the Basic Law (2003), which provides: "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." In 2011, for instance, President Abbas issued at least eight "decree-laws" on this basis, including two relating to the judiciary and penal codes. At the same time, the Hamas authorities have also claimed the power to issue laws. In 2011, among other laws, Hamas published the 'Forensic Justice Act (No.3)' and the 'Palestinian Youth Law (No. 2)'. ICHR, 17th Annual Report, p. 17.

²⁷ Human Rights Watch interview with Hani Radwan, military defense lawyer, Gaza City, May 22, 2011. According to Radwan, when the Palestinian Authority (PA) began to administer parts of Gaza in the mid-1990s, military courts there exercised jurisdiction over the members of Palestinian security services (i.e. the police and the internal security agency) and armed groups (such as the Al-Aqsa Martyrs Brigades, the armed wing of Fatah), and cases of public importance in administrative and financial areas such as counterfeiting currency or embezzlement of public funds. "Public security courts," a branch of the military judiciary, handled cases involving spying for or otherwise collaborating with hostile governments or groups. Hamas merged the "public security courts" into the regular military courts; economic and the administrative issues were referred directly to the civilian courts.

a crime “against the security and safety and interests of the revolution troops” (article 9).²⁸ The Penal Code applies the death penalty for dozens of different offenses, including collaborating with the enemy. Death sentences are automatically appealed from the permanent military courts to the military court of appeals.²⁹

Detention without Charge, Denial of Access to Family Members and Lawyers

The civil Palestinian Penal Law from 2001 states that police may detain a suspect for 24 hours before presenting him to the general prosecutor’s office; the prosecutor may detain a suspect for 48 additional hours before presenting him before a civil judge at a court of first instance. The prosecutor may request the judge to order an additional 15 days of “investigative detention,” which may be renewed; a judge from a higher-level court can then order an additional 45 days’ detention, for a total of up to six months. A defense lawyer in private practice in Gaza summarized other problems in the law’s application:

After arrest, the police can detain you for 24 hours. One problem is that during that time, you can’t meet with a lawyer. Another problem is that the police tend to arrest people if there’s a complaint against them, so in practice we sometimes find there’s a race to the police between people who have arguments to trigger an arrest even though there was no crime.³⁰

The military judiciary applies similar procedures after arrest and during “investigative detention,” according to the PLO Revolutionary Penal Procedure Law (No. 79) of 1979. The military prosecutor can request a military judge to detain people without charge for renewable, 15-day periods, for a total of 45 days, if the detainee’s release would pose a danger to the public, he might destroy or damage the evidence if he were freed, or he is a flight risk. Detainees may be jailed without charge for up to six months in cases of “crimes against the security of the revolution” with the approval of head of the military judiciary (article 88).³¹

²⁸ The Palestine Liberation Organization Revolutionary Penal Code of 1979.

²⁹ The military court system in Gaza is structured according to the Code of Military Justice No. 4 of 2008.

³⁰ Human Rights Watch interview with N., lawyer in private practice in Gaza City, May 18, 2012.

³¹ For discussion, see Independent Commission for Human Rights, p. 15.

Other provisions of the military legislation in force in Gaza also violate due process rights. While the Palestinian Basic Law reflects international human rights standards in its requirement that persons be informed of the reason for their arrest or detention and be allowed to contact a lawyer “without delay” (article 12), the PLO Penal Procedure Law does not guarantee a detainee’s right to prompt and confidential access to legal counsel. It states, further, that the military prosecutor may order that the accused be denied contact with his family, lawyers, and anyone else “for a period not exceeding ten days,” which is renewable (article 50). The general prosecutor may, for example, ask the security forces whether or not a prison visit might lead to the destruction of evidence, or there is a risk that the detainee could pass information to collaborators.³²

Human Rights Watch documented the case of Paul Martin, a British journalist who was arrested on suspicion of being involved with a Palestinian man accused of collaborating with Israel, and whom a military prosecutor prevented from meeting with a lawyer for 25 days.³³ Palestinian lawyers said that Hamas prosecutors actually treated Martin, a high-profile detainee, better than is typical for Palestinian detainees, whose right to see a lawyer is often denied for longer periods.

A staff lawyer at the Independent Commission for Human Rights described the problems of detention:

The Internal Security agency will inform the families of the detention, sometimes soon after the arrest, sometimes not until they transfer the detainee from their own detention centers to the central prison [in Alkatiba, west of Gaza City]. The law stipulates that the detainee must have opportunity to meet lawyers. But when Internal Security detains him, there’s no way for the lawyer to come see him. He only gets the chance when Internal Security transfers him from their detention centers to al-Suraya. The main Internal Security detention center is their al-Ansar compound, but there are also regional Internal Security offices where people can be detained before getting sent to al-Ansar. He might be

³² Id.

³³ Human Rights Watch, “Hamas: Journalist’s Detention Violated Due Process,” March 11, 2010, <http://www.hrw.org/news/2010/03/11/hamas-journalists-detention-violated-due-process>.

transferred swiftly, or be stuck there for a long time with no procedures. When he is transferred to the civil prison, he is still under military jurisdiction. What usually happens is that before a detainee is presented to the court, the security services go to the military prosecutor to fix things up retroactively, to put the detainee's file in order. This sort of thing was going on when the PA was in charge. So Hamas inherited the system, but they haven't fixed it.³⁴

A lawyer in private practice told Human Rights Watch:

With my clients arrested by Internal Security, it's been a long time since I have bothered to argue their cases according to what the law says. Really, I can do nothing for them. Most of the Internal Security arrests – they prepare the detainee to confess to the thing that he will eventually be charged with.³⁵

Arbitrary Arrest

Under the PLO Revolutionary Penal Procedure Code, the military prosecutor may issue an arrest warrant only against a suspect if there is specific evidence of wrongdoing.³⁶ In practice, human rights groups in Gaza have documented hundreds of cases in which security forces other than the civil police, including armed groups and Internal Security officials have made arbitrary arrests without warrants. In 2011, the Independent Commission for Human Rights received 271 complaints of arbitrary detentions in Gaza, as opposed to 831 in 2010, and 755 in the West Bank, as opposed to 2,045 in 2010.³⁷ The ICHR's report for 2009 recorded 958 complaints of arbitrary arrest in Gaza and around 1,000 in the West Bank.³⁸

A defense lawyer working in Gaza told Human Rights Watch:

³⁴ Human Rights Watch interview with staff lawyer, ICHR, Gaza, May 19, 2011.

³⁵ Human Rights Watch interview with N., Gaza, May 18, 2011.

³⁶ The Internal Security agency may then detain and question the suspect for 48 hours, after which they must present him to the military prosecutor, who may question him for another 24 hours before either releasing him or presenting him before a military judge with a request for him to be charged or remanded (article 79).

³⁷ ICHR, 17th Annual Report (2011), Executive Summary, p. 14.

³⁸ ICHR, 15th Annual Report (2009), Executive Summary, p. 38.

They often arrest people on a Friday, which is a holiday for the prosecutors, so they can detain him for longer than the 24 hours, since he won't get to see a prosecutor until Sunday. In more severe cases, Internal Security could keep him for 15 or 20 days before they send him to the police. At that point the police will keep him for 24 hours, then send him to general prosecutor, and so on, and treat him according to the [proper] procedures. It's true that if he changes his story and retracts his confession, the prosecutor might release him, but in that case the odds are that they'll just arrest him again.³⁹

Human Rights Watch has documented similar cases. In a case discussed in this report, military prosecutors issued an arrest warrant retroactively after armed groups detained and tortured a man for a month before handing him over to the prosecutor's office. The military appeals court in Gaza later found him guilty of treason and he was executed.

Human Rights Watch asked human rights lawyers if they knew of any examples of cases in which the judiciary had ordered detainees to be released or had dropped the charges against them because they were arrested without warrants. The lawyers we spoke with could recall only one such case. The Independent Commission documented a case in 2011 in which a division of the Hamas police with jurisdiction over matters related to the tunnels under the border with Egypt arrested and allegedly tortured a man suspected of providing sensitive information about the tunnels to Egyptian security authorities.⁴⁰ A court ordered his release because the "tunnels police" had detained him without authorization. According to the commission, Hamas has established a separate policing authority with jurisdiction over tunnel-related issues, which operates its own detention facilities, and can also detain people under its authority at regular police stations.

Torture

In 2011, the Independent Commission for Human Rights received 112 complaints of torture against the security services in the West Bank and 102 complaints in Gaza Strip, including against the civil police, the drugs police, police detectives, and the Internal Security agency.⁴¹ The ICHR recorded five cases of deaths in detention in Gaza in 2011 and

³⁹ Human Rights Watch interview with N., defense lawyer in private practice, Gaza City, May 18, 2011.

⁴⁰ Human Rights Watch interview, ICHR staff, Gaza City, May 2011.

⁴¹ ICHR, 17th Annual Report (2011), April 18, 2012, Executive Summary, p. 12.

requested the authorities to investigate, but “did not receive the findings of any investigations.”⁴²

The actual number of cases of torture may be higher, because the commission is not able to visit detainees in prisons or detention centers, and thus primarily relies on former detainees to file affidavits stating their complaints of torture; some detainees are presumably dissuaded from doing so by concerns for their own security, by the record of impunity for abuse, or other reasons. Hamas’s Interior Ministry has barred the commission from visiting detainees in the Internal Security detention center at al-Ansar since 2009; it has barred the commission from visiting prisoners in the civil al-Soraya prison since 2011.

Torture complaints often involve beatings with sticks or electrical cables, tying a detainee’s arms behind his back and then trying them to an elevated object such as a ceiling support or window, such that the detainee’s weight dislocates his shoulders, and being forced to sit or stand in uncomfortable positions for extended periods. In some cases, security forces have subjected detainees to mock executions.

The Palestinian Basic Law prohibits “any duress or torture” and renders “null and void” any statement obtained thereby (article 13), and states that “any violation of any personal freedom... shall be considered a crime” not subject to any statute of limitations, and guarantees “a fair remedy” to persons harmed (article 32). The PLO Revolutionary Penal Code provides that anyone who “subjects another person to forms of force not allowed by the law in order to extract confession about a crime or information on a crime shall be sentenced to imprisonment” for a minimum of three months, or up to five years’ hard labor “if the torture leads to death” (article 28o).

Under the Revolutionary Penal Procedure Code, the military Attorney General “may request” a medical autopsy if a detainee is killed or dies “due to unknown causes conducive to suspicion” (article 36). The Palestinian Penal Procedure Law No. 3 of 2001 states that once the security forces have transferred an accused person to be interrogated by the prosecutor, the prosecutor is obliged to conduct “a physical examination and establish the visible injuries he sees and the reasons for their occurrence” before proceeding with the “interrogation” (article 99), and to order “medical and psychological examinations of the

⁴² Id, p. 14.

accused by the competent authorities, either *sua sponte* when he deems them necessary or at the request of the accused or his counsel” (article 100).

Ineffective Oversight, Fear of Complaining

In theory, Palestinians whose rights have been violated by security forces may file complaints in several ways. The Ministry of Interior website allows users to file complaints to the Monitoring and Complaints Unit. Former interior minister Said Siyam had appointed Hamas member Hassan al-Seifi to the position of Inspector General with a brief to curb violations by security forces; the Inspector General, along with the attorney general, reportedly had oversight over the Internal Security services as well as other security forces.⁴³ In November 2009, Interior Minister Fathi Hammad reportedly created a human rights unit attached to the office of the Inspector General, with offices in each of Gaza’s five governorates.⁴⁴ Victims of abuse by the civil police and other security forces may file complaints online with a special police bureau (*diwan mazalem*) created in April 2010.⁴⁵ The military judiciary website allows users to file complaints online.⁴⁶

Some Palestinians feel unable or unwilling to complain about civil police abuses on the basis of their political affiliation. One man who said he was a supporter of Fatah told Human Rights Watch: “I wouldn’t dare [complain]. People might complain if they’re Hamas members, because they won’t be harmed again for making a complaint. I don’t know anyone personally who made a complaint about the police, but I’ve heard of a couple of cases. But I’ve never heard of anyone important in security services being punished.”⁴⁷

In cases where a detainee who is being interrogated by the prosecutor has been visibly injured, including if he claims to have been tortured by security forces, the prosecutor is obliged to establish the facts, whether by questioning the accused or by referring him to

⁴³ Sayigh, *Hamas Policing in Gaza*, pp.42, 58 (citing testimony by Internal Security agency Director-General Abu-Sharkh to the legal committee of the Palestinian Legislative Council in June 2009.)

⁴⁴ See Sayigh, *Hamas Policing in Gaza*, p. 84, citing *Filasteen Online*, “Hammad Decrees Activation of Human Rights Unit in the Ministry of Interior,” November 12, 2009.

⁴⁵ See Hamas Ministry of Interior website, “Send a complaint / inquiry,” <http://www.moi.gov.ps/Page.aspx?page=complaints>, accessed August 8, 2012; see also Sayigh p. 85.

⁴⁶ See Supreme Council of the Military Justice website, “Complaints of Citizens,” http://www.tmj.gov.ps/index.php?option=com_contact&view=contact&id=1&Itemid=23, accessed August 3, 2012.

⁴⁷ Human Rights Watch interview with N., Gaza City, May 18, 2011.

competent medical and psychological authorities for examination.⁴⁸ The judicial authorities have the authority, during a trial, to order an investigation into an accused person's claim that he had been tortured, and to establish an ad hoc fact-finding committee. There is no law or regulation describing the scope of the committee's authority, required qualifications for membership, procedures, the weight the courts should attach to its findings, or any ability to appeal against its conclusions. In addition, the Inspector General of the Hamas Ministry of Interior has the authority to investigate allegations of abuses against detainees. The independence of the office of the Inspector General could be limited by its location within the Interior Ministry and the fact that it reports to the interior minister, since the Interior Ministry also oversees the operations of the police and internal security forces alleged to have committed the abuses.

Human Rights Watch has documented several cases in which hospital officials have allegedly refused to provide medical records that could be used as evidence of custodial abuse. For instance, in May 2011, a Gaza resident said: "One of my friends was arrested [by Internal Security] and wasn't allowed to see anyone for 10 days. They forced him to drink chlorine, and beat him a lot. We took him to the [name redacted] hospital to get a report but the hospital officials said there was nothing wrong with him. He couldn't even walk. We had to use a wheelchair. He's a lawyer, who knows his rights, but that didn't help him."⁴⁹

In cases where an investigation shows that a detainee was tortured and confessed under torture, and that confession is the only evidence of guilt, the detainee should be released, according to Radwan, the military court defense lawyer. However, "if the prosecutor has evidence against him from a different source, that evidence can be used," Radwan said.

Human Rights Watch asked human rights groups in Gaza whether they were aware of any cases where judges had released detainees or thrown out cases against them on the basis that they had confessed under torture; none were aware of any such cases.

Hamas officials have insisted that security officials have been sanctioned for violations, and made statements that torture is unnecessary to extract confessions.⁵⁰ Some security

⁴⁸ See Palestinian Criminal Procedure Law No. 3 of 2011, articles 99 and 100.

⁴⁹ Human Rights Watch interview with M., Gaza City, May 21, 2011. M.'s friend had been released a few days previously.

⁵⁰ Sayigh quotes a "utilitarian" argument against torture in an article in the Hamas *Police Magazine* by Major (Advocate) Sameh al-Sultan (police "have many other ways of finding evidence that don't require violence"), and cites another article by

forces have received trainings in international humanitarian law from the ICRC, and Hamas authorities reportedly transferred responsibility for police support from the Izz al-Din al-Qassam Brigades in 2007, after the group was criticized for using excessive force to capture a fugitive being protected by a powerful clan.⁵¹

However, the authorities have never released the names of the security officials or details about the discipline imposed on them. Prime Minister Haniyeh stated in 2008 that his government had sanctioned nine police officers and 29 other policemen for injuring and killing pro-Fatah demonstrators at a November 2007 memorial for Yasser Arafat.⁵² However, according to Yezid Sayigh, a scholar focusing on the Palestinian security sector, “promises to local human rights organizations to publish or share the committee report were not kept, and the names of the indicted officers and the penalties they received were not divulged, preventing proper monitoring of the manner in which the investigation had been handled and concluded.”⁵³ Commentators have noted wide discrepancies in the number of security service personnel whom Hamas officials have claimed were sanctioned for unspecified violations in 2009 and 2010.⁵⁴

The former interior ministry Inspector General, al-Seifi, was responsible for investigating detectives in the Tuffah police station who allegedly tortured to death a man suspected of smuggling drugs in March 2009.⁵⁵ Prime Minister Ismail Haniyeh reportedly approved al-Seifi’s recommendation to fire 11 officers for the death but the government has not publicly identified them or stated what was done.⁵⁶ Al-Seifi was promoted to a position in the

al-Seifi stating that the government “need[s] these [human rights] organizations to show us our mistakes and help us solve them,” as long as they offer “constructive criticism in accordance with specific and objective standards and criteria.” Sayigh, *Hamas Policing in Gaza*, pp. 32, 41.

⁵¹ See Sayigh, *Hamas Policing in Gaza*, p. 30, footnote 198.

⁵² “Results of Investigation into Events of Arafat Rally: Haniyeh Lays Responsibility on The Police and Fatah,” *Filastin al-Muslima* 26, no. 7 (July 2008), p. 15, cited by Sayigh, *Hamas Policing in Gaza*, p. 30.

⁵³ Sayigh, *Hamas Policing in Gaza*, p. 31.

⁵⁴ In July 2010, Interior Minister Fathi Hamad stated that 1,200 security sector personnel were dismissed, suspended, or fined since the start of 2009 (“During 2009: Hamad: We punished 1,200 associated with the Interior,” *Filastin*, July 26, 2010 <http://http://www.felesteen.ps/details/9014/A9-.htm>, accessed June 18, 2012). In November 2010, Hamad said that “more than 900” security personnel had been disciplined for violations over two years. (Jihan al-Husseini, “Fathi Hamad Speaks to *al-Hayat*: al-Qa’edah Has No Presence in Gaza,” cited by Sayigh, *Hamas Policing in Gaza*.)

⁵⁵ Human Rights Watch interviews with Hassan al-Seifi and Khalil Abu Shamala, Gaza City, May 2010.

⁵⁶ Jamil Nasser ‘Assaf, 19, died in hospital due to injuries caused by police on March 24, 2009.; see ICHR, “Monthly Report on Human Rights Violations,” March 2009, p. 2. The ICHR reported that another man, Zayed Jaradat, had apparently died under torture in a police detention facility on March 16, but the government was not known to have taken any disciplinary action. The Palestinian Center for Human Rights reported on both cases in detail. PCHR, *Report on Torture Practices in PNA Prisons and Detention Centers*, August 2010.

ministry for religious affairs in 2011; it is not known whether or not his successor, Sami No'fal, has pressed for any disciplinary actions or criminal investigations against security forces that allegedly tortured detainees.

The Independent Commission staff lawyer described a case to Human Rights Watch in which a detainee was detained and allegedly tortured by police inside the Jabalya police station, just prior to January 1, 2010, which Fatah celebrates as its anniversary.⁵⁷ Upon being released, he obtained a medical report as evidence that he was tortured in detention. The commission submitted a complaint about the torture to the Inspector General, and was later informed by Hamas authorities that they had punished the people responsible, but Hamas never made available their names or the measures taken against them.

Radwan said he knew of two other cases where Hamas had disciplined or punished members of the security services for violating the rights of detainees.

An Internal Security official made an administrative error while arresting one of my clients, because there must be two witnesses that the police carried out the arrest, but the witnesses in this case [were] the other security officials. So they disciplined the Internal Security official. I heard of another case where an Internal Security officer was punished for putting a suspect in solitary confinement but claiming that the suspect was detained with other people.

Hamas authorities did not respond to Human Rights Watch's request for specific information on such cases.

⁵⁷ Human Rights Watch interview, Independent Commission for Human Rights, Gaza City, May 19, 2011.

II. Case Studies

Lawyers whom Human Rights Watch interviewed about the judicial system in Gaza consistently described practices of arbitrary detention without a warrant and said that detainees were often denied access to a lawyer and to family members and in some cases tortured.

Case Files

Human Rights Watch viewed eight affidavits and case files indicating serious violations of detainees' due process rights at the offices of Al Mezan, a human rights organization in Gaza.⁵⁸

One case, from January 2010, involved arbitrary detention: Hamas police in Rafah arrested three people without a warrant and detained them for seven days without charge; their lawyer went to the police station but said that the police falsely told him, "These names aren't here." The men were supporters of Fatah, and were apparently detained as a form of politically-motivated harassment.

Two other cases related to unjustified violence during arrest and detention. In one case, from January 2011, a man said police beat him while he was watching them arrest his neighbor; he was not arrested, but provided a medical record from Kamal Odwan hospital to corroborate his claim that police broke his right leg when he insisted on asking for them to justify the arrest of his neighbor. In a second case, in September 2010, members of a family described how men who claimed they were members of the Internal Security service but whom witnesses identified as police detectives wearing civilian clothes entered a house in Rafah at night, did not present a warrant, and broke the hand of the sister of the man they were seeking to arrest, who was not at home. Hamas had previously released the man from prison during the Eid al-Fitr holiday on September 9, 2010.

Two staff lawyers with Al Mezan said they had notified the Inspector General in the Interior Ministry in Gaza of each of the complaints, but had not received any responses.⁵⁹ In two

⁵⁸ The Al Mezan staff asked not to be identified by name, and for Human Rights Watch to conceal the identities of the persons involved in the cases. Human Rights Watch has altered some details and omitted others in the following summary.

other cases, Al Mezan reported some improvement in the authorities' treatment of individuals after it filed complaints. In February 2011, a group of five men in their mid-40s and early 50s, all of whom are members of Hamas' rival, Fatah, complained that since 2007, Internal Security officials had summoned them three times weekly to report to an office in Jabalya, and obliged them to remain each time from 8 a.m. to 3 p.m. After Al Mezan reported the complaint to the Internal Security agency, two of the five men no longer received summons although the other three did. In the second case, in January 2011, a man and his cousin were summoned five times in the course of the month by Internal Security to a police station in Shaja'iya, where they were questioned and in some cases detained overnight, due to what they said was a "financial disagreement" with a third party; the case falls outside the authority of any of the security services. Al Mezan reported the case to the Inspector General, which did not reply, but the summons stopped.

Human Rights Watch observed two other case files at another lawyer's office in Gaza City that indicated gross errors by the general prosecutor and the judiciary leading to serious due process violations against detainees.⁶⁰

In one of the cases, Human Rights Watch observed the general prosecutor's written request for the extension of detention against the lawyer's client for 15 days. According to the request, the client was arrested on April 13, 2011 by the police in S., along with a specified number of other people who were allegedly trying to forge money. The request form includes a judge's approval of the extension of detention, dated April 25. As described above, according to the law, the detainee should have been presented to the judge within a maximum of 72 hours after being detained by police; in fact the process took 12 days, leaving 9 days unaccounted for in his detention. The detainee's lawyer told Human Rights Watch that he was not able to see his client until after April 25. The alleged forgery happened a year previously; the only evidence against his client was the confession of one of the other alleged forgers. The authorities released the group of alleged forgers on May 17, 2011 after they had each paid 2,000 shekels (US \$520) in bail.

In a second case, the general prosecutor's office requested that a man alleged to have stolen 11 cows from another man who owed him money be remanded in detention for 15

⁵⁹ Human Rights Watch interview with staff lawyers, Al Mezan, Gaza City, May 22, 2011.

⁶⁰ Human Rights Watch observed the files in Gaza City on May 21, 2011. The lawyer asked not to be identified.

days. According to the prosecutor's request, police arrested the man on January 15, 2010. However, the judge's approval of the extension was signed and dated on February 21, 2010.

The lawyer described other cases of alleged abuse against two of his clients and a colleague; Human Rights Watch did not observe the case files and was unable to interview the alleged victims. One of the cases involved a colleague of the lawyer's, who lived in northern Gaza City and was summoned by Internal Security to a police station in 2010; the lawyer asked that the location and date not be disclosed. "I went with him when he was summoned," he said. "They were waiting for him in front of the police station. They took him and put him in a white van. All the windows were black. Inside, he said someone blindfolded him and another person tied his hands behind his back." According to the lawyer, his colleague later said that he was taken to an apartment and "beaten a little." The lawyer added: "They didn't ask him or accuse him of any crime, he said they were just asking for information about his neighbors and other lawyers he worked with."

Lawyers

N.

N., a lawyer in private practice in Gaza, has represented clients who alleged they were seriously abused and said he has faced abuses himself.⁶¹ N. affirmed to Human Rights Watch that he is a Fatah supporter. His description of the abuses was consistent with information obtained from other sources.

Returning home one evening in the spring of 2010, N. said, he found a summons on his door ordering him to report to Internal Security at 8 a.m. the next morning. He went and handed in his identification, and an official told him to enter a room and wait there. There were six or seven people in the room, N. said, and he was told not to look at them.

They made me sit in a chair that was facing the wall, where they had put up a picture of [Hamas founder] Ahmad Yassin. A security official was sitting behind me at a desk, but I couldn't see him. Whenever I yawned or moved my head, the security man said, "Don't move." After an hour and a half, they let me leave the room and took me to a smaller room with just two

⁶¹ Human Rights Watch interview with N., lawyer in private practice, Gaza City, May 18, 2011.

other people in it. I didn't know why I was there, I was frightened. I was kept there for a few more hours. Finally they took me into a hallway, where I was questioned by someone sitting at a desk. The main point of questioning was about a break-in that had occurred at my office about six months previously, in December 2009. I had sent the office boy to the police at that time to file a complaint, but the police refused to receive it. The interrogator was saying that because I was a Fatah supporter and money had been stolen from my office, Ramallah might have given me some money to help me recover after the theft. I was scared because, according to Hamas, if you're collaborating with the PA it's like collaborating with Israel, and they could jail you for five or six years for receiving money.

After an hour of questioning, they took me to another room, with a desk and six chairs, and the interrogator asked me questions for another hour, then left. Half an hour later, a big guy came in and shouted, "Who are you!" and he removed a chair from the room. He did this five times, then I was left alone for a few hours. It took the whole day; they gave me nothing to eat, no cigarettes, no tea or coffee or water. Finally, they let me go. They kept my ID and gave me a time when I had to return.

The second time, they only kept me for three hours. I was summoned a third time, but there was an evacuation because of a threat that Israel would bomb. They summoned me back a fourth time. After that, I have a friend in Internal Security who brought me my ID and told me not to mention it to anyone.

M.

Another lawyer, M., told Human Rights Watch that Hamas police arrested him without a warrant outside his family's home in Gaza in late 2007, when he was studying for his university law exams.⁶² When he asked the police who were surrounding the house what they wanted, one of the policemen immediately threw him on the ground and beat him with a gun butt, told him to get into a jeep and blindfolded him.

⁶² Human Rights Watch interview with M., lawyer in private practice, Gaza City, May 19, 2011.

M. said that when his blindfold was removed, he found himself on the roof of a building in the Middle Area of Gaza.

That night was long. It was a place called Abu Middeyn. They had lined up around 22 people on the roof, and detained other people in the rooms of the building. The security men were carrying rubber water hoses while others had sticks wrapped in iron chains. They said we were all Fatah supporters. They told us to bend down and put our knees on the ground and our elbows too and our foreheads. They started to ask us questions, it was more than one investigator, as we were kneeling and bent down. The guy beside me said “I’m just a fisherman, I have nothing to do with any political faction.” My turn came. While I was in that position, the officer asked my name, what I did for a living, and insulted me. One of us asked to pray and they responded that we weren’t Muslims. I said we were, and they beat me very badly for that.

Then they took me down to a cell in the building and tied my arms with rope to the ceiling until only my toes touched the ground. They stripped me down to my underwear and beat me on the kidneys for about an hour. Finally they took me to another room and began questioning me. It was dark and they shone a flashlight directly in my eyes. There were four officers questioning me. One of them said, “We caught you with explosives and mines in your house, you wanted to kill members of Hamas.” I denied it. So they forced me to stand on one leg. Every time I put my leg down they beat me. One of them used a belt to beat me and another was using his gun butt. They kept on cursing me and calling my mother bad words. They did this for three hours, then they threw me in a tiny cell, one meter on each side. I hoped they had forgotten about me.

The following day two men interrogated M. for three hours about an alleged Fatah bomb plot: “When they didn’t like my answers, one of the two would slap me in the face.” M. said he was detained for another two days in his cell, the small size of which made it difficult to sleep. “They only gave me two glasses of water during those days. On the third day, they questioned me again, but they only shone the flashlight in my face this time, they didn’t

beat me.” When M. refused to sign a confession to the alleged plot, however, “they threatened to cut off my finger.”

M. said that one of his relatives, A., a founding member of Hamas, had learned that he was being detained. The security officials were in the process of transferring M. from the building where he had been held to another Internal Security facility in Deir al Balah when his relative, A., arrived at the building and “told them to leave me alone. They were practically ready to start shooting each other.” M. said the officials eventually transferred him anyway, but that A. followed them to Deir al Balah “and convinced them to let me go. So in the end I didn’t have to sign a confession, but just a paper saying that I wouldn’t take part in any Fatah activities in future.”

M. said that he was hospitalized for nine days after his release. Two days after he was released from hospital, Internal Security arrested him and detained him for four days in an unknown location. Two weeks after that, Internal Security summoned him for questioning, but did not detain him overnight. “They summoned me again three more times.

A relative of mine told me to move to Gaza City and they would leave me alone. It worked. When I left, no one called me. But eight months after all this, I went back to visit my family, just for a few days, and they summoned me again. I barely visit my parents anymore.”

Y.

Another lawyer, Y., told Human Rights Watch that at 6:30 a.m. on a certain date in April 2011, around 12 civil police and police detectives came to his home, identified themselves, and without showing a warrant said that he had to go with them immediately.⁶³ “They took me to their office. An investigator said I was faking commercial contracts. They took me to my office and searched it, without a warrant, and confiscated some of my papers.” Y. was released, he said, but police and police detectives then arrested him at his Gaza City office at 3 p.m. the following day. “They took my office stamps and my passport, and the rest of my clients’ files, even the old ones. When I asked again to see a warrant, they said, ‘It will be here in two minutes, but you have to come with us now’.”

⁶³ Human Rights Watch interview with Y., lawyer in private practice, Gaza City, May 18, 2011.

Y. recalled that he was driven in a jeep from his office to a police station in Abu 'Araban, in the Middle Area of Gaza. "During the drive they cursed and beat me, then they took me to the investigation room. Four men beat me for 10 minutes and called me an unbeliever, then tied me to a bed. Someone tied knots in a rubber hose and beat me on my feet with it for an hour." Although Y. said he had been released from detention almost two weeks before we interviewed him, Human Rights Watch observed a large bruise on his inner leg and calf muscle; one of his toes was blackened and appeared broken.

According to Y., the interrogator accused him of having fraudulently earned a large amount of money from false contracts.

I told him that this was wrong, but they tied me up and started beating me with a small stick. One of them said, 'Someone like you deserves something better,' and brought a bigger stick with metal tied around it. I was lying on my back, watching as he beat me. Towards the end they asked me to sit on a chair and brought water in two buckets and forced me to lift my legs up and down like I was riding a bicycle in the water. My legs were so bruised that I wept. They'd beat me with a rubber hose again whenever I slowed down. This lasted for 30 minutes. Then they put me on the bed again, four people sat on me and forced me to drink a small cup of bleach. A white liquid came out of my mouth.

Y. believes he lost consciousness sometime after 10 p.m. "I heard one of them saying, 'It's almost 10:30, we need to have dinner.' And I heard the sound of the call to prayer." Y. woke up later that night in Shuhada al-Aqsa hospital in Deir al Balah, where he said that a doctor "with a short beard and glasses" treated him abusively and hospital staff refused to provide any documentation of his hospital visit. "The doctor said, 'You're acting like a patient but you're not one,' and smacked me. He said, 'Either you walk or I will put needles into your leg.' But I couldn't walk. They put me into an ambulance and drove me back to the drugs department of the police station in Abu Garaban. The police refused to use the wheelchair or the ambulance gurney and forced me to walk into the jail."

At around 2 a.m., one of the other prisoners bribed a guard to allow him to use a mobile phone, and Y. was able to call his father. At 7:30 a.m., Y. said, police detectives took him

from the cell. “One of them said, ‘the morning shift has started,’ and they began slapping me, asking me the same questions, telling me I was lying, and so on. After around an hour, I heard the voices of my family, and three relatives including my brother came into the room, gave me some clothes and food, and left. The interrogators threw out the food. They brought me two cups of 7-Up.” Officials kicked his swollen legs, and tied his hands behind his back and then tied them to a window until his body was partly suspended, until around 10 p.m. that day, Y. said. He was then taken to a small, filthy cell to sleep. At 3 a.m. he was beaten to awake and pray the dawn prayer, then taken to a medical center connected to the police station. “They smeared Vaseline on my legs. I stayed there until 10 a.m. and then was taken back to the small cell.”

At 8 a.m. the following day, three days after he was first detained, police detectives took Y. to the civilian prosecutor’s office in Deir al-Balah. “I denied that I had written any illegal contracts. The prosecutor was decent, and I asked to talk to him privately. I said, ‘I have been beaten more than any donkey in Palestine,’ and he asked to see one of the detectives who’d been investigating my case, a man called Abu Yakoub, and told him to deal with me respectfully and not to torture me. When I got back to the police building, they slapped me in the face, but after half an hour I was taken from the detectives’ jail to the civilian jail in the same building. I stayed there for 48 hours under the prosecutor’s orders. At around 3 a.m., a detective woke me up and made me stand outdoors next to an electric lamp post, with no shoes and just in my underwear. He spit on me and insulted me but didn’t beat me.”

Y’s lawyer, N., told Human Rights Watch that he saw Y. for the first time in a court hearing 10 days after he was detained, and said that bruises were visible over much of his body and face. Y.’s trial was pending, but N. was optimistic he would not be charged, due to the lack of evidence against him.

Former Palestinian Authority Employees

F.

Human Rights Watch interviewed F., a former employee of the Palestinian Authority in his mid-40s, on May 19, seven days after he was released from several months in detention by Internal Security.⁶⁴ At 11 a.m. on March 1, 2011, F. said, a man in plain clothes approached

⁶⁴ Human Rights Watch interview with F., Gaza City, May 19, 2011.

him as he was in the Unknown Soldier Square in Gaza City and confiscated his bag. Police detectives then took him to a police station and called Internal Security to pick him up. He was taken to the Internal Security compound near al-Ansar. On March 2, F. said, Internal Security officials ordered his family to deliver his personal computer, but did not inform them where he was being detained.

F. said that Internal Security officials interrogated him for the first 45 days of his detention.

They claimed that I had dealings with the PA and with Israel. I didn't deny dealing with the PA, but I denied their claim that I was talking with them about resistance activities [by Palestinian armed groups in Gaza] and the tunnels [beneath the border with Egypt, which Hamas used to evade the blockade Israel and Egypt had imposed on Gaza]. And I never talked to Israel about anything.

Every single day I was exposed to abuse. They put me in stress positions, they prevented me from sleeping, one time for four days, forced me to stand up for long periods, beat me with a rubber water hose and with clubs. When they were torturing me, they said they had been tortured by the Preventive Security when Fatah was in charge. I said, 'What does that have to do with me? I wasn't with Preventive Security.' It was like a reprisal. They were interrogating me about who was the head of the information unit of the PA, and I didn't know. They wanted to know about my involvement with the PA and [spying on] resistance actions, but I wasn't involved.

F. said he was allowed to contact his family once 10 days after his arrest, and a second time 25 days later. He first saw a lawyer after 45 days of detention, when he was presented to a military court. F. said his trial lasted for three hearings. "My lawyer didn't raise the torture claim in court. She said that she was trying to work on the judges' emotions by talking about how I had a family. At the third hearing, they said, 'You will be freed if you pay bail of \$1,000.' I was expecting to be jailed for a long time."

J.

J., a 24-year-old member of the Fatah youth council, Shabiba, worked in the Palestinian Authority Preventive Security service before Hamas took over Gaza in June 2007.⁶⁵ Since then Hamas security services have repeatedly detained, questioned, beaten, and otherwise abused him.

I can't remember how many times they've summoned me. It comes in waves, they call me all the time for a few months, then they forget about me for a while, then it begins again. There have been literally dozens of times. I was forbidden every time to call my family. I never got the chance to talk to a lawyer.

According to J., Hamas authorities never charged him with any crime or gave him the chance to call a lawyer; he was never presented to a judge. "But at least I never had to sign a confession. If I had been guilty of anything serious they would have tortured me until I confessed and signed a paper and I'd be in jail."

He was first summoned to the Deir al-Balah offices of the Internal Security agency in August 2007. J. said officials there put him in a cell "that was too small to lie down in" for four hours, then hooded and interrogated him while slapping him and cursing his family. "I was afraid because I had heard about people being shot in the legs in June [2007]." The two investigators accused him of working for U.S. General Keith Dayton, who was in charge of training the PA security services. "'You're taking your salary from the Americans, you're a dog.' They looked through my *jawwal* [mobile phone] for names."

J. said that Hamas Internal Security forces beat him in detention in late 2008, shortly before Israeli forces launched the December 2008 military assault they called "Operation Cast Lead."

At around 3:30 p.m., I was in the main square of Nuseirat when three jeeps surrounded me. They pushed me into a car and blindfolded me, and drove me away. They dragged me into a building and removed the blindfold, and

⁶⁵ Human Rights Watch interview with J., Nuseirat, May 19.

put me in a small cell that was painted black, around one meter square, with a high ceiling, with a small hole in the wall. It smelled very bad. There was a toilet, and rats and cockroaches. I stayed there for about three hours. Finally they took me to the investigation room, told me to face the wall and to raise both arms over my head, and that my arms must not touch the wall. Every time my hand accidentally touched the wall someone I couldn't see beat me either with his hand or a stick. Once I shouted out, 'I'm Fatah and I'm proud,' and he beat me like an animal. He slapped and cursed me all the time, and asked me who I worked for, how much money I was given, and had I killed any Hamas members.

In the summer of 2009, J. said, Internal Security forces detained and questioned him again in Gaza's Middle Area.

After the questioning they put me in a hole, around 70 centimeters wide by 3 meters deep. It was summertime, it was very hot. A man put a piece of metal on the top of the hole and told me, 'I'm going to cook you alive.' I thought he was going to put live coals on top to burn me and I panicked, until I realized he was just scaring me. They finally put down a rope and told me to climb up. They tied my hands and legs to a chain-link fence with plastic handcuffs. I couldn't stand by myself, I was so exhausted. I felt like there was no liquid left in my whole body. After that they asked me the same questions again. The interrogator was playing with my cell phone, looking at my sister's picture, and I couldn't even tell him not to. They warned me not to do any activities for Fatah. They didn't give me a written requirement to come back, but told me to come back the next day, kept my ID, and let me go. I came back at 8 a.m. the next day. They kept me there for six hours with no water and let me go.

Another time I went and the guard made me stand on a can of chickpeas on one leg, for hours, for hours in the sun, and the guard told me, 'I am looking forward to when you fall off,' and playing with his club.

J. said that in 2009 he had also been arbitrarily arrested and beaten in detention by civil police on suspicion of drugs possession.

I was walking with a friend in Abu Dalal market when someone threw both of us in a civilian car, an Audi. We were taken to Nuseirat police station. They searched me and asked me if I had Tramadol. I said no, and they beat me with their hands, sticks, the butts of their guns, and kicked me, for 30 minutes. They finished with me and started on my friend. They put me in a hole in the ground, and asked my friend, 'What do you have on you,' and found Tramadol on him and he said he got it from me. So they took me out of the hole after half an hour and beat me for an hour to get me to confess. So then they told my friend, 'You're lying, he'd have confessed by now,' and then he admitted he didn't get it from me, so the police gave me a glass of water and said they were sorry. The whole thing took about eight hours. The next day I found my whole body was blue.

In early 2009, Internal Security entered my house, without a warrant, and took my papers and computer, which they never returned.

Between November 2010 and February 2011, J. said, Internal Security officials summoned him "at least 20 times" to their offices in Deir al Balah. "The first time the investigator cursed me but didn't beat me. He asked me what my relationship was with Ramallah and how much they were paying me. The other times, I just had to go and wait, from 8 a.m. until the afternoon, in a cell, and they didn't even question me." J. described a cell with a window in the door that could be opened from the outside. "People would open the window several times every hour and shout at me, some of them spit on me. I could hear them doing the same thing in the other cells."

Human Rights Watch separately interviewed J.'s friend, A., 25, who said he had witnessed J. being arrested on several occasions and confirmed that he had bruises when released from detention. A. also formerly worked in the Preventive Security service of the Palestinian Authority.

M.

M., 24, worked in the General Intelligence Service of the Palestinian Authority before Hamas took control of Gaza in June 2007.⁶⁶ According to M., in August 2007, Internal Security officials summoned him to their Deir al-Balah offices. “They asked me questions about what I was doing, who was paying me from Ramallah, and who’s working with me.” M. said the officials forced him to “stand on one leg for hours while looking at the wall in the investigation room. Sometimes they’d tell me to raise both hands for half an hour, and then say put them out to the sides.” In 2008, Internal Security summoned M. again and placed him in a very small cell for several hours.

It was like a cupboard or a refrigerator. I couldn’t bend or sit, I could only stand. Then the guard dragged me out, so hard that I thought he had broken my arm. He took me to the investigation room and told me to sit on a very small chair for six hours while they were questioning me, calling me a US dog, asking me where my weapons were, that sort of thing. At the end, they started to curse my mom, and I forgot myself and told them to stop it. The interrogator immediately stood up and called a huge guard, who beat me for an hour. I wish it had been anyone else but him. Then they threw me in a cell.

M. said a friend of his who worked in the Interior Ministry then convinced the authorities to stop summoning him.

Execution after Torture and Unfair Trial

Human Rights Watch investigated the arrest, torture, and conviction of Abdel Karim Shrair. The Hamas Interior Ministry executed Shrair, born in 1974, on May 4, 2011, after a military appeals court had confirmed his death sentence by a lower military court for providing information to Israel that led to the assassination of Hamas members. Documents from Shrair’s case file establish that he was arbitrarily arrested and detained without being presented to the proper authorities for a prolonged period; the court judgment that convicted and sentenced him to death failed to address credible complaints that his confession, which was the primary evidence used against him, was obtained by subjecting him to torture in detention.

⁶⁶ Human Rights Watch interview with M., Nuseirat, May 19, 2011.

Shrair's mother, Safia Ahmad Shrair, told Human Rights Watch that her son had been a member of the Palestinian Authority's civil police force, as well as a fighter with the Fatah-affiliated al-Aqsa Brigades, an armed group.⁶⁷

Hamas authorities accused Shrair of providing Israel with information that led to an attack on the house of Yassin Nassar, in 2003, that killed Nassar's son Mohammed, and the attempted killing of Islamic Jihad leader Hazem Rahim, in September 2004. According to Shrair's family, the real motives for Shrair's detention and conviction were personal; they claimed he had compromising information indicating that several members of the Qassam Brigades, the armed wing of Hamas, had extramarital sexual relationships.

Shrair was arrested by Qassam Brigades forces on July 17, 2008, according to a document issued by the Interior Ministry.⁶⁸ His mother told Human Rights Watch that several people wearing masks arrested him at the family home in Zeytoun while he was sitting there with her, his wife and child. Safia said the family was unable to learn where he was being detained. Shrair's family and his lawyers say that he was tortured in an unknown location during the following weeks. On July 25, 2008, his mother complained to the police that her son had been kidnapped.⁶⁹

No warrant was issued for his arrest, or for the extension of his detention. The Qassam Brigades transferred Shrair to the custody of Internal Security on August 8. The first record of Shrair's arrest and custody is from August 9, when the military prosecutor requested a military judge to extend his detention for 15 days in order to question him, according to a document from the prosecutor's office. The document states the alleged reason for his arrest: Shrair was accused of collaborating with Israeli agents beginning in early 2002, prior to Israel's withdrawal of its settlers and ground troops from Gaza in 2005.⁷⁰ Shrair allegedly conveyed information that resulted in the killing of Nassar and the attack on Hazem Rahim.⁷¹

⁶⁷ Human Rights Watch interview with Safia Ahmad Shrair, Zeytoun, May 24, 2011.

⁶⁸ The document was stamped and dated October 7, 2008; Shrair's family told Human Rights Watch that they had requested the Interior Ministry to issue it.

⁶⁹ According to a document stamped and dated by the police detective unit in Shaja'iya, and signed by Officer Mahmoud Belbissi.

⁷⁰ Human Rights Watch viewed the document, which Bassem Shrair had in his possession.

⁷¹ According to the prosecution document, Shrair's contact was allegedly an Israeli who managed the factory where he worked. At a meeting, Shrair allegedly identified the photographs of some Palestinian fighters, received a mobile phone, and 9,000 shekels (US \$2,330). Shrair allegedly later purchased a computer and contacted the Israeli side using coded internet

The lawyer who represented Shrair before the first instance military court, B., was first able to see him on that same date, August 8, in the Internal Security section at the al-Soraya prison.⁷²

According to court records, Shrair was questioned by the military prosecutor on August 18, August 28 and September 2, 2008; his lawyers and family claim that Internal Security officials abused him in custody throughout this period. The military prosecutor questioned him in the Internal Security compound in al-Ansar.

Shrair's mother said prison officials refused to allow her to see him until late October 2008, when he was transferred from al-Soraya to the al-Mashtal prison. "They took me in a security jeep to al-Mashtal. The first time, his legs were blue, and his feet were swollen. There were burn marks on his chest, and his hands and arms had rope marks. His face was bruised. One of the guards said he fell from his bed. When he started to get up from the chair, there was blood on the chair." She was able to visit him a second time in late November or early December, when he was transferred back to al-Soraya prison, she said. "I sat with him and saw his face was swollen. He could barely move." Israeli forces bombed the al-Soraya facility in December 2008, his mother said, and he escaped and returned to his home; she said the family informed Hamas about his whereabouts. In late January 2009, after the end of Israel's military operation, an Internal Security official named Abd al-Qadr Judah, who later testified for the military prosecution, arrested Shrair. Shrair was then detained in various locations including a police station in Shajaiya and the al-Ansar prison facility. "After that we were able to meet him every Monday, beginning in February 2009," his mother said.⁷³

The military prosecutor charged Shrair with collaboration and being an accomplice to murder, on December 4, 2008.⁷⁴ He was tried by a first instance military court.

messages to convey information. Shrair's family said that he had only a grade 6 education and that it was inconceivable that he could have communicated using coded internet messages. His lawyer, B., said that Shrair "could only write his name. He was never promoted in the Palestinian Authority police, which he joined in 2003, because he wasn't educated." Human Rights Watch is unable to determine the validity of these claims by the prosecution or the defense.

⁷² Human Rights Watch interview with B., lawyer in private practice, Zeytoun, May 26, 2011.

⁷³ Human Rights Watch interview with Safia Ahmad Shrair, Zeytoun, May 24, 2011.

⁷⁴ The military prosecutor charged Shrair with collaboration under articles 131(a), 134, 140(b) and 148, and being an accomplice to murder under articles 378(a) and 88(a) of the PLO Revolutionary Penal Code of 1979.

On July 2 and 29, 2009, when prosecution witnesses testified against him, Shrair and his lawyer had to leave the courtroom, according to his lawyer.⁷⁵

Shrair's lawyer, B., said that he argued in court that Shrair had been arbitrarily arrested without a warrant and by an unauthorized agency other than the civil police, detained longer than the period allowed before being presented to the prosecutor's office, and that "all the information obtained from Shrair was taken under coercion."⁷⁶ In the court hearings, the lawyer said, Shrair "was still visibly bruised. I showed the judge that he was bruised, that he had scars, that he was incontinent, and the judge said 'OK, OK.' That's all he said."

On October 29, 2009, the first instance military court, with three judges presiding, found Shrair guilty and sentenced him to death. The verdict states that Shrair was arrested on August 9, 2008. In the verdict, the court refused to quash the case against him on the basis of the violations of his rights that he had suffered, ruling that his arrest without a warrant, being denied access to a lawyer, or unlawful detention procedures had been retroactively "corrected" when Shrair was ultimately taken to the police, who then presented him to the military prosecutor.⁷⁷ The verdict stated that the prosecutor was correct "to continue working on the case," and that "according to the law, what must be cancelled are the improper procedures and not the entire procedure."⁷⁸ The court accepted a statement from an Internal Security official that Shrair cooperated with the investigation voluntarily and that no pressure had been used against him.⁷⁹

The death sentence triggered an automatic appeal. G., who was Shrair's lawyer during his military appeals court trial, shared his case files with Human Rights Watch.⁸⁰ According to G., he was temporarily barred from meeting his client. "I spoke personally to the general

⁷⁵ The court allowed Shrair's ex-wife to testify against him, in violation of the PLO Revolutionary Penal Code of 1979. The court cited her testimony is cited in the verdict.

⁷⁶ During hearings in July, 2009, the defense presented witnesses and evidence that Shrair was not involved in monitoring Hazem Rahim's car, that members of the Qassam Brigades had already killed the collaborator responsible for Hazem Rahim's death on October 23, 2004 (Rahim was killed in July 2004), and that the explosion that killed Yassin Nassar's son was not due to an Israeli attack but to an accidental explosion of weapons being prepared there. Human Rights Watch cannot make any determination as to the validity of these claims or arguments by the defense or prosecution.

⁷⁷ Human Rights Watch observation of military court of first instance verdict, May 25, 2011.

⁷⁸ Human Rights Watch observation of military court of first instance verdict, May 25, 2011.

⁷⁹ Human Rights Watch observation of military court of first instance verdict, May 25, 2011.

⁸⁰ Human Rights Watch observation of military appeals court verdict, May 28, 2011.

prosecutor, and he said we can't allow you to see him because it's related to security," he said.⁸¹

The appeals trial lasted from May 2009 to April 19, 2011, and included 30 hearings; the prosecution presented six witnesses, the defense presented ten. G. reiterated evidence that elements of Shrair's confession were demonstrably false and self-contradictory.⁸²

The appeals court upheld Shrair's conviction and death sentence in a verdict handed down on April 19, 2011. The verdict does not mention Shrair's claims to have been tortured in detention.

Shrair was executed by firing squad at 4:30 a.m. on May 4, 2011.

His family said they were able to speak to him until 2 a.m. in prison on the day he was executed, and that the execution came as a surprise. After they learned the next morning that he had been executed, Shrair's mother said,

I went to al-Shifa hospital. I tried to see my son. You have to prepare the body. They prevented me from seeing his body. And someone else prepared the body, I don't know who, and then they put it in the ambulance. At 7 a.m. they called Bashir, his brother, [who confirmed the identity of the body] and told him that the family could go at 7:30 a.m. to witness the burial. We weren't allowed to bury him. When we reached the graveyard, they said we could only kiss his cheeks, and the minute I hugged his body the police beat me with sticks. They beat me and his brothers. We couldn't bury him.⁸³

Human Rights Watch observed Safia Shrair's prescription from Al Quds hospital for some pain-killers and cream, and x-rays of her hand, head and pelvis for injuries that she said she sustained on this occasion.

⁸¹ Human Rights Watch interview with G., lawyer in private practice, Gaza City, May 28, 2011.

⁸² In one example, the prosecution claimed Shrair had received payment from an Israeli intelligence official in January 2006, but on that same date, Shrair's passport was stamped "Denied Entry. Allenby Border Crossing" by Israeli border control officers. The final verdict does not mention this evidence, or several other self-contradictory statements in Shrair's confessions that G. said he argued in court were evidence that the confession was coerced.

⁸³ Human Rights Watch interview with Safia Ahmad Shrair, Zeytoun, May 24, 2011.

Later on the morning of his execution, Hamas and Fatah leaders announced the beginning of a planned political reconciliation at a press conference in Cairo.

III. Legal Standards

As a de facto governing authority, Hamas cannot be party to international human rights treaties, but it has publicly indicated it would respect international standards. In a speech in Gaza on June 21, 2006, Prime Minister Ismail Haniyeh said Hamas was determined “to promote the rule of law, the respect for the judiciary, the separation of powers, the respect for human rights, the equality among citizens; to fight all forms of discrimination; to protect public liberties, including the freedom of the press and opinion.”⁸⁴ In the program of the National Unity Government, presented on March 17, 2007, Hamas stated its “respect for international law and international humanitarian law insofar as they conform with our character, customs, and original traditions.”⁸⁵ The Hamas interior ministry created a human rights unit to receive complaints of abuses by security forces in 2009, and has conducted human rights trainings for security forces, such as a police training course conducted in Khan Yunis in April 2012.⁸⁶ Hamas governs, de facto, a specific territory and therefore should govern in accordance with international human rights standards.⁸⁷

The International Covenant on Civil and Political Rights (ICCPR) states that anyone facing criminal charges has the right “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”

The ICCPR also prohibits detention that is arbitrary and not conducted in accordance with the law—for example, arrests conducted without a warrant issued by the proper

⁸⁴ Speech of Prime Minister Ismail Haniya at the conference “The New Government and the Agenda for Human Rights,” Gaza City, June 21, 2006 (as cited by “Human Rights Situation in Palestine and other Occupied Arab Territories,” Human Rights Council, A/HRC/8/17, June 6, 2008, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/8session/A.HRC.8.17.doc>).

⁸⁵ “National Unity Government Program,” presented by Prime Minister Haniya to the Palestinian Legislative Council, March 17, 2007 (as cited by “Human Rights Situation in Palestine and other Occupied Arab Territories,” Human Rights Council).

⁸⁶ Yezig Sayegh, “We Serve the People”: Hamas Policing in Gaza, 2011 (“Minister of Interior Hammad instituted a human rights unit within the MoINS in November 2009, and by the end of that year there were local human rights units attached to the branch offices of the MoINS Inspector-General in each of Gaza’s five governorates,” citing “Hammad Decrees Activation of Human Rights Unit in the Ministry of Interior,” Filasteen Online, November 12, 2009); see, e.g., Hamas Ministry of Interior, “Opening session entitled ‘The consecration of human rights,’” April 16, 2012, <http://www.moi.gov.ps/en/news/32597/Opening-session-entitled-The-consecration-of-respect-for-human-rights>.

⁸⁷ “Mission to Lebanon and Israel,” Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the Secretary-General on human rights of internally displaced persons, Walter Kälin; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, UN doc A/HRC/2/7, para. 19.

authorities—and requires the authorities to ensure that anyone detained is brought promptly before a judge or equivalent independent authority to review his or her detention.

International standards, including the United Nations Basic Principles on the Role of Lawyers, require giving defendants prompt access to a lawyer, no later than 48 hours after arrest. The Basic Principles state that detainees shall have “adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

The UN Standard Minimum Rules for the Treatment of Prisoners (1955) requires that the accused be allowed to inform his family of his detention immediately, and given reasonable facilities to communicate with his family (article 92). The UN Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) affirms the right of the detainee to receive family visits and communicate with the outside world (principle 19).

International law prohibits torture in all circumstances without exception. A growing number of states and international bodies have implemented or called for an end to capital punishment.

Acknowledgments

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Annex

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July 30, 2012

Prime Minister Ismail Haniya
Prime Minister's Office
Gaza

Via Fax: +970-8282-2159, +970-8284-5040, +970-8286-8971

Dear Prime Minister Haniyeh,

I am writing to request information regarding allegations of abuses committed by your government's security officials in Gaza. Human Rights Watch has conducted research into such allegations and is preparing a report that sets out our conclusions and concerns. We would appreciate responses from your office to the questions below by August 31, in order to be able to reflect your government's perspective in our report.

We are aware of statements by officials in Gaza that your government has disciplined members of the security services for abuses against detainees. We are not aware that your government has published information either about the cases of abuse or the personnel who were found responsible. We would therefore appreciate:

1. Specific information about cases of abuse that have been investigated by your government or the judiciary or other official bodies, including, in each instance, details about the abuse involved, the date it occurred, the name and rank of the security official found responsible, the disciplinary measure or judicial sentence that resulted, and the date that the disciplinary measure or criminal sentence was imposed.

2. Specific information about cases where, due to violations by security services of the due process rights of the accused person, the military or civilian judiciary has ordered the accused person's release from detention, or quashed the charges against the accused, or ordered the investigation of the security officials allegedly responsible for the violations of due process rights.
3. We documented allegations that in some cases, members of the military and civilian judiciary have failed to ensure respect for the rights of detainees, for example by retroactively issuing arrest warrants, failing to order investigations of claims of abuse in detention, or by failing to exclude from evidence "confessions" obtained under torture. We would appreciate information regarding any disciplinary measures taken against members of the military or civilian judiciary, including prosecutors and judges, who failed to respect the rights of detainees under the law.
4. We understand that the Inspector General of the Interior Ministry is responsible for investigating alleged abuses by security service personnel. We would appreciate information about any laws, regulations, or orders that define the Inspector General's role and authority, particularly information relevant to the question of the Inspector General's independence, and specific information about cases where the Inspector General has recommended disciplinary action or criminal prosecution of security officials, and the result in those cases.
5. According to our research, authorities have refused to allow the Independent Commission for Human Rights to visit detention facilities. On what basis does your government refuse to allow the Independent Commission for Human Rights access to Gaza's central prison or to detention facilities operated by the Internal Security service? In the absence of monitoring of prisons and detention facilities by the Independent Commission, how does your government ensure that prisoners and detainees have adequate and effective means to complain of abuses and receive protection and redress?
6. We understand that the Interior Ministry executed Abd al-Karim Shrair, born in 1974, on May 4, 2011, after he was sentenced to death by military courts. According to our information, Shrair complained of having been arrested without a warrant and

being tortured in detention. We would appreciate specific information about any investigations that judicial or governmental authorities launched into Shrair's allegations of arbitrary arrest and torture, and any disciplinary measures or criminal charges that were imposed against security or other officials that resulted.

7. We are currently researching reports that the Interior Ministry executed Na'el Jamal Qandil Doghmosh on July 17, 2012 after he was sentenced to death by a civilian court. According to the reports, Doghmosh "confessed" under torture by police investigators after he was arrested on May 9, 2010. We would appreciate specific information about any investigations that judicial or governmental authorities launched into Doghmosh's allegations of torture, and any disciplinary measures or criminal charges that were imposed against security or other officials that resulted.

Please feel free to contact me at the numbers below. We look forward to your response.

Sincerely,



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Abusive System

Failures of Criminal Justice in Gaza

Abusive System: Failures of Criminal Justice in Gaza highlights serious human rights violations by Hamas security services in the Gaza Strip and the failure of the criminal justice system to protect detainees from arbitrary arrest and torture or to punish those responsible for severe abuses.

The report is based on interviews with victims and relatives of victims of abuses as well as lawyers and judges, and reviews of case files and court verdicts that included evidence of rights violations. The report documents that Hamas's Internal Security service and civil police have frequently subjected Palestinians to arbitrary arrest, incommunicado detention, and torture. Prosecutors and judges have ignored detainees' due process rights in such cases.

With few exceptions, security services have enjoyed impunity from Hamas authorities and the courts for such abuses. The report's case studies show that victims of serious abuses include not only members of Hamas's political rival, Fatah, but also persons suspected of common crimes and detained by civil police.

In the light of evidence that the Hamas authorities have executed men whom courts had convicted in part on the basis of confessions secured through torture, *Abusive System* calls on Hamas to immediately impose a moratorium on the death penalty. Hamas should urgently reform the criminal justice system to end warrantless arrests, ensure that detainees have prompt access to lawyers, end prosecutions of civilians in military courts, and hold accountable security officials who commit violations.