

**THE GAZA STRIP AND JERICHO**  
**HUMAN RIGHTS**  
**UNDER PALESTINIAN PARTIAL SELF-RULE**

**CONTENTS**

SUMMARY .....	2
MAP.....	2
RECOMMENDATIONS .....	8
To the Palestinian Authority.....	8
To the Israeli Authorities.....	8
To the Israeli and Palestinian Authorities .....	9
To Militants on All Sides .....	9
To the International Community .....	9
INTRODUCTION .....	10
THE INTERNATIONAL LAW FRAMEWORK.....	11
THE LEGAL OBLIGATIONS OF THE PALESTINIAN AUTHORITY .....	13
THE PALESTINIAN AUTHORITY'S VIOLATION OF RIGHTS IN THE SELF-RULE AREAS .....	14
The Need to Institutionalize Safeguards for Human Rights .....	14
Arbitrary Arrests .....	16
Mistreatment in Detention.....	19
The Treatment of Suspected Collaborators .....	22
Restrictions on Expression, Assembly, and Association .....	25
THE LEGAL OBLIGATIONS OF THE ISRAELI AUTHORITIES .....	30
ISRAEL'S VIOLATION OF RIGHTS IN THE SELF-RULE AREAS.....	37
Restrictions on Freedom of Movement .....	38
Imprisonment of Residents of the Self-Rule Areas .....	48

## SUMMARY

The perilous state of human rights in the Palestinian self-rule areas is among the key factors—along with continuing political violence, Jewish settlement activity, and economic development—that will determine the long-term success of any peace process in the region. Both the Israeli and Palestinian authorities share blame for human rights violations in the Gaza Strip and Jericho since the start of the autonomy agreement. These violations have discouraged the Palestinian public and clouded the prospects for peace. The international community, which has played a more active role in the occupied territories since the start of the current peace process, should place a greater emphasis on promoting respect for human rights by the respective authorities.

Seven months after assuming responsibility for internal security and other spheres in Gaza and Jericho, the Palestinian Authority (PA)<sup>1</sup> has yet to anchor its conduct in the rule of law. Despite a number of positive steps toward respecting human rights, the PA has often acted in an arbitrary and repressive fashion, carrying out large numbers of political arrests, censoring the press, and failing to conduct credible investigations into suspected abuses. The bloody clashes between security forces and civilians on November 18 in Gaza City demonstrated an alarming lack of preparedness, if not a lack of will, on the part of the security forces to use nonlethal force in handling unruly demonstrations.

At the same time, Israel's continuing control over the lives of Palestinians in the self-rule areas should not be underestimated. After twenty-seven years of occupation, Israel's humanitarian obligations did not simply evaporate when Israel redeployed its troops and transferred limited responsibilities to an interim Palestinian body. Israeli soldiers based in the Gaza Strip continue to clash with the Palestinians, including, on occasion, during incursions in the self-rule areas. The Gaza Strip is heavily dependent on Israel in many ways: its residents rely on having access to jobs inside Israel and institutions located in Jerusalem and the West Bank. Israel's blanket travel restrictions on Palestinians have had devastating effects on their economic well-being and ability to conduct everyday life. Instead of generally insuring freedom of movement except in individual cases where it provides compelling security reasons for denying it, Israel has imposed restrictions in an indiscriminate fashion that amounts to a form of collective punishment. Workers have lost jobs, university students have been forced to miss semesters, and the lives of thousands of persons with legitimate business in Jerusalem, the West Bank and abroad have been disrupted.

The PA faces daunting challenges in governing a population restive after twenty-seven years of military occupation. It is underfunded, and its powers are limited by the Israeli-PLO agreements. The two territories over which it exercises authority are separated by the State of Israel, which does not allow easy access between the two. The Palestinian security forces lack experience, training, and equipment for carrying out ordinary police functions. But these handicaps cannot fully explain or excuse the emerging patterns of human rights violations, nor justify the failure to take certain actions to protect rights.

There are several modest steps the PA can take at present to demonstrate a will to respect basic rights. It should make public the full body of laws in effect in the self-rule areas. Any laws that violate basic principles of human rights,

---

<sup>1</sup> The PA, chaired by PLO Chairman Yasir Arafat, is the interim self-governing authority for Palestinians in the occupied territories, pending elections for a Palestinian Council. It is sometimes referred to as the Palestine National Authority (PNA). The "Palestinian Authority" is the designation used in the *Agreement on the Gaza Strip and the Jericho Area* (hereinafter the Gaza-Jericho Agreement).

such as a ban on unauthorized political meetings, should be repealed. The PA should publicly commit itself to respecting laws intended to safeguard civil rights. For example, the Palestinian law that calls for detainees to be brought before a judge within forty-eight hours of arrest should be immediately and consistently applied. And the PA should go beyond lip service in its commitment to investigate and punish officials or security force members who are implicated in abuse.

The PA has come under enormous pressure from Israel, the United States and others to halt attacks against Israelis carried out by persons under their jurisdiction. Such attacks have occurred repeatedly since the start of Palestinian self-rule, with groups and factions opposed to the current peace process claiming responsibility. The largest opposition group, the Islamist Hamas movement, has claimed responsibility for most of the fatal attacks that have been carried out inside Israel, many of which targeted civilians and cost tens of lives since Palestinian self-rule began. Human Rights Watch condemns violent attacks by militant groups on civilians of any nationality and recognizes the duty of governments, including the PA, to prevent and punish such attacks.<sup>2</sup> However, the PA must fulfill this obligation through means that are consistent with basic human rights, rather than resorting to such means as indiscriminate roundups of suspected opposition supporters.

The political-legal arrangements created so far by the peace process are *sui generis*. The PA, on the one hand, has assumed control over much of the Gaza Strip and over greater Jericho but lacks essential elements of sovereignty. Israel, meanwhile, no longer exercises full nor exclusive control over these areas, yet its impact on daily life remains significant. Both parties bear responsibility for protecting the human rights of the residents of the Palestinian self-rule areas. Israel's legal responsibilities as occupying power have not ended, even if its contact with this population has decreased. The 1907 Fourth Hague Convention Respecting the Laws and Customs of War on Land and its annexed Regulations (hereinafter the Hague Regulations), as well as the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 (IV Geneva Convention), continue to bind Israel's conduct toward the residents of all of the occupied territories.

The PA is not at present a state government, and therefore cannot formally accede to human rights treaties. Nevertheless, it is bound in its treatment of civilians by humanitarian norms and customary human rights law. The IV Geneva Convention affirms that the protections it provides to populations under occupation cannot be compromised by any agreement, short of a definitive political solution, that is reached between the occupying power and other authorities. Furthermore, we can legitimately expect the PA to comply with the commendable pledges made by senior PLO and PA officials to uphold international human rights standards, and to incorporate human rights law into the

---

<sup>2</sup>See, for example, Human Rights Watch/Middle East's statement, dated October 19, 1994, condemning the bombing of a bus in downtown Tel Aviv, and letter, dated April 14, 1994, to Hamas representative Muhammad Nazzal condemning bombings in the Israeli towns of Afula and Hadera. The three incidents killed a total of thirty-four persons.

Palestinian legal system.

Finally, the importance of elections for the Palestinians cannot be overestimated. For too long, Palestinians have been denied the right to freely elect representatives to govern them. Six months after the deadline for elections agreed to in the Declaration of Principles on Interim Self-Government Arrangements (hereinafter the Declaration of Principles), the PA continues to be comprised of an unelected chairman and his appointees. The continued postponement of elections, or an attempt to proceed with polling that is not widely accepted as free and fair, endangers the prospects for democratic rule in the occupied territories and for a durable peace.

The Declaration of Principles recognized the need for prompt elections, but left the details—including suffrage, timing and modalities, the size and powers of the elected body, and the nature of international monitoring—to be worked out between Israel and the PLO (Article III). The two parties have yet to reach an agreement on these issues. If elections are to serve the legitimizing function that is essential to any durable peace, Palestinians must be able to choose a representative body with meaningful powers, in voting that is free, fair, and open to a broad spectrum of political groups. The campaign period must allow for wide-ranging debate in a climate in which the rights of free expression, assembly and association are protected.

Both Israel and the PLO should accept these basic principles on elections and work toward their implementation. During the campaign, authorities must allow candidates to move about freely. Campaign literature and nonviolent political gatherings and rallies must be tolerated. Radio and television under PA control must provide fair access to a wide range of political tendencies.

### **Human Rights Violations by the Palestinian Authority**

It is premature to speak of systematic practices by the PA. However, there have been several disturbing trends, alongside some encouraging developments. The latter include the program of visits to persons in detention that is being conducted by the International Committee of the Red Cross (ICRC), pursuant to a PLO-ICRC agreement signed in July. In addition, political life in the self-rule areas is characterized by open debate and criticism of the authorities, as well as gatherings organized by independent and opposition organizations, in spite of some restrictions imposed on free expression and assembly. With one notable exception, Palestinian security forces have handled a number of large and often agitated opposition demonstrations without resorting to violent means.

Despite the constraints and difficulties it faces, the PA clearly wields power sufficient to protect or to abuse the rights of persons within its jurisdiction. It operates a judiciary, a prison system, and a security force numbering over 9,000. This force has arrested and held in custody and without charge hundreds of persons, and on November 18, shot dead at least thirteen demonstrators and bystanders and wounded more than one hundred. Authorities have suspended or confiscated newspapers without even attempting to provide a plausible explanation for these actions. Such violations of basic rights have undermined the legitimacy of the PA in the eyes of many Palestinians.

The areas of greatest concern with regard to the conduct of the PA include:

- **A failure to anchor the conduct of security forces and government authorities in the rule of law, to clarify which laws are in effect, and to demonstrate that suspected abuses will be investigated and punished;**
- **A lack of determination or preparedness, or both, on the part of security forces to use non-lethal means of riot control when handling unruly demonstrations, as shown in the fatal clashes of November 18;**
- **Arbitrary roundups of persons because of their political affiliations rather than because of suspected involvement in criminal offenses;**
- **Beatings and mistreatment of some detainees under interrogation, particularly those accused of collaborating with the Israeli authorities;**

- **Violations of press freedom intended to restrict critical reporting, and restrictions on the right of association through decrees requiring advance permission for political gatherings.**

**Failure to anchor conduct in the rule of law.** In a time of great confusion over what laws are applicable, the PA urgently needs to make explicit the legal framework in which it takes actions. Disappointingly, arrests are routinely carried out by forces who do not explain to suspects the reasons they are being taken into custody. Administrative decisions, such as the banning of *an-Nahar* daily, and the curb on unauthorized political meetings, were announced without explicit reference to any applicable legal statute.

The self-rule areas are not legal vacuums. They possess developed legal codes that predate the Israeli occupation. In Jericho, as in the rest of the West Bank, the criminal and civil laws are derived in large part from Jordanian law. In the Gaza Strip, laws dating to the British Mandate and sometimes referred to as "Palestinian laws," such as the 1936 penal code, remain in force. However, there is confusion over the status of other legislation, including the more than one thousand military orders decreed by the Israeli military government during the occupation, and the penal legislation promulgated by the PLO in exile (*Majmou'at at-Tashri'aat al-Jaza'iya li Munathammat at-Tahrir al-Filastiniya*), which has not been formally incorporated into local law. Several Palestinians in detention in the self-rule areas have been placed under the jurisdiction of military prosecutors, even though they are civilians.

The PA should undertake a campaign to inform the public of all applicable laws and regulations, so that they may know their legal rights, responsibilities, and mechanisms for redress. Palestinian human rights organizations have repeatedly urged authorities to do so, to little avail. To date, there is no official gazette or other formal vehicle for issuing decrees, promulgations, or directives.

**Arbitrary arrests.** Since August, several hundred Gazans have been rounded up during sweeps conducted by the Palestinian security forces, usually in the aftermath of attacks on Israelis by militants. An examination of who was arrested and the questions asked by their interrogators indicates that most of those seized were not themselves suspected of illegal activities, but, rather, were being taken into custody on the basis of their suspected political affiliations and in the hope that they would provide information about others. While the security forces are entitled to summon persons for questioning if certain safeguards against arbitrariness are met, their preference for widescale and warrant-less detentions without charge—even if most detainees are released within two weeks—threatens the rule of law.

**Beatings and mistreatment of detainees under interrogation.** While those rounded up in the sweeps of opposition movements generally have not been physically mistreated, there have been numerous reports that other detainees, particularly those suspected of collaborating with the Israeli authorities, were beaten. One suspected collaborator was tortured to death in July, and a second died under still-unclear circumstances as this report went to press in January. International law prohibits subjecting a prisoner under any circumstance to torture or to other cruel, inhuman or degrading treatment or punishment.

**Violations of Press Freedom.** A number of repressive actions have violated the pledges made by various Palestinian officials to respect press freedom. These include blocking the delivery of newspapers from Jerusalem to Gaza for one week, apparently because of coverage of PA-Hamas tensions. One of the newspapers that was blocked, *an-Nahar* daily, had been previously forced by the PA to close for five weeks until it embraced a more pro-Arafat line. Authorities have also pressured at least one prominent Palestinian journalist, Taher Shriteh, to submit opposition statements to them before he reports on their contents, and not to report certain developments. Shriteh was also detained three times without charge during one month.

In September, the Chief of Police in the Gaza Strip banned unauthorized meetings in major meeting halls and prohibited bus companies from "transporting political groups for any purpose without advance written permission." Despite these moves to restrict freedom of expression and assembly, independent and party-affiliated newspapers have continued to circulate in the self-rule areas and most opposition rallies have run their course with minimal interference from the police.

## **Israel's Violations of the Human Rights of the Population of the Self-Rule Areas**

**Arbitrary restrictions on travel:** Israel continues to control all travel into and out of the Gaza Strip. Its restrictive policy on entry into Israel, passage between Gaza and the West Bank and travel abroad constitute violations of the right of Palestinians to freedom of movement. The restrictions are implemented in an indiscriminate way that amounts to collective punishment, penalizing the general population for the acts of isolated individuals. Applicants for the required travel permits often wait for weeks before a reply is received, and refusals are given without any explanation provided.

In the excessively broad manner that Israel has imposed them, restrictions on movement violate Israel's obligation under international humanitarian law to ensure the welfare of people under its continuing occupation. While these obligations require Israel to ensure that the basic needs of the population are met, recent measures that abruptly reduced the number of Palestinians permitted to work inside Israel, without alternatives or an end to the occupation, violate these obligations — particularly in light of Israel's past role in stifling indigenous economic development in the territories (see footnote 89). Restrictions on movement between the geographically segmented areas of the occupied territories also violate Israel's obligation under humanitarian law to allow Gazans to participate in the life of their community, by denying them reasonably free access to family, friends, and institutions in the West Bank, including Jerusalem.

Israel, like all countries, has the right to restrict entry at its borders. It is also allowed by humanitarian law to impose limited restrictions on the movement of the population under its occupation. However, it is obliged to weigh this prerogative against the internationally recognized right to travel, as well as the legitimate needs of the population that can be satisfied only if persons are able to travel from and to the Gaza Strip.

**Continued imprisonment and detention of persons from the self-rule areas for political offenses:** Despite having released between 5,000 and 6,000 prisoners since October 1993, and having turned over primary responsibility for internal security to Palestinian security forces, Israel continues to hold in custody over one thousand residents of the self-rule areas, among the more than 5,000 Palestinians currently in prison. These include some—the exact number is not available—who are being held for nonviolent political activities that are now being conducted openly in the self-rule areas and are protected by international human rights law. They have not been charged or accused of direct involvement in planning or committing acts of violence or other recognizably criminal offenses.

Israel continues to violate Article 76 of the IV Geneva Convention by holding prisoners from the occupied territories inside Israel itself. This contravention of international law, when coupled with Israeli restrictions on the entry of Palestinians into Israeli territory, limits the access of prisoners to visits by their family and lawyers.

**Suspected act of political assassination.** On November 2, Hani Abed, a leading activist in the Islamist Jihad (Islamic Holy War) organization was killed by an explosive device attached to his automobile. Israeli officials neither claimed nor denied responsibility for the assassination, while dropping hints that Israel's security forces were willing and able to carry out such operations.<sup>3</sup> The Israeli press cited security sources claiming that Abed had been planning attacks on Israelis when he was killed.<sup>4</sup> (The Islamic Jihad group has claimed responsibility for several fatal attacks on Israeli soldiers and civilians.) Such a response is reminiscent of Israel's handling of previous political assassinations

---

<sup>3</sup> On the day of the assassination, Prime Minister Rabin said, "With one hand we are shaking the hand of the Hashemite Kingdom of Jordan in peace, but with the other hand we are pulling the trigger in order to hurt the murderers of the Party of God, Hamas and Islamic Holy War." A spokesman for the Prime Minister denied that those remarks were intended as a specific reference to the Abed killing. But officials neither denied nor confirmed reports that Rabin had ordered "hit squads" to assassinate Islamist leaders in retaliation for the bombing of the bus in Tel Aviv or other violent attacks on Israelis. (Clyde Haberman, "Gazans Eject P.L.O. Leader from Funeral," *The New York Times*, November 4, 1994.)

<sup>4</sup> Clyde Haberman, "Israelis Say Slain Arab Was Planning New Attack," *The New York Times*, November 5, 1994.

elsewhere in the Middle East that were plausibly attributed to its agents.<sup>5</sup> If Israel was responsible for Abed's assassination,<sup>6</sup> it should admit responsibility and present its case that Abed fit the definition of a combattant, and was therefore a legitimate military target. In the absence of any such argument or claim of responsibility, Human Rights Watch can only condemn the explosion that killed Hani Abed as a flagrant and deplorable violation of the right to life.

### **Israeli-PA Joint Responsibilities over Rights**

The Declaration of Principles and the Gaza-Jericho Agreement created a number of spheres in which Israel and the PA share responsibility over the rights of Palestinians. The two sides have agreed to negotiate the modalities of elections; cooperate in the application process followed by Palestinians wishing to reside in the territories, enter Israel or travel to the West Bank; and arrange for the transfer to the PA of legal liability for certain claims filed by Palestinians against the Israeli authorities (Article XXII of the Gaza-Jericho Agreement).

The handling of requests to travel illustrates how the new arrangements can diminish accountability. Whereas the application process was once entirely in Israeli hands, it no longer has a single address. When applications have gone unanswered or were unreasonably delayed, each authority has blamed the other, leaving the applicant with no clear recourse and increasingly frustrated.

---

<sup>5</sup> One example is the 1988 assassination of the PLO's Khalil al-Wazir (also known as Abu Jihad). See Ian Black and Benny Morris, *Israel's Secret Wars: A History of Israel's Intelligence Services* (New York: Grove Weidenfeld, 1991), pp. 469-472.

<sup>6</sup> See al-Haq, press release, November 4, 1994. Al-Haq's preliminary investigation concluded that there was "strong circumstantial evidence that points to the involvement of Israeli security agencies in the assassination." See also, Barton Gellman, "Gaza Slaying: A Warning from Israel?" *Washington Post*, November 15, 1994.

## RECOMMENDATIONS

### *Human Rights Watch urges the Palestinian Authority to:*

- Make public a clear and widely available statement of all laws and regulations that are in effect in the self-rule areas, including open-fire orders for the security forces, and rules governing the treatment and rights of persons in custody;
- Ensure that arrest and detention procedures conform to international human rights standards, by requiring police promptly to inform suspects of the reasons for their arrest and their rights while in custody, and to bring them promptly before a judge or release them;
- Ensure that all security forces are held to regulations on the use of force that conform to international norms that allow lethal gunfire only to prevent an imminent threat to life, and then only as a last resort;
- Disseminate information about the procedures followed by official investigations into alleged abuses committed by agents of the PA; and about how to submit complaints of human rights violations; ensure that investigations are impartially and promptly conducted, and that the findings and legal consequences are made public;
- Allow delegations from independent local and international human rights organizations to visit regularly all places of detention, in order to monitor conditions and treatment of detainees;
- Address the basic human rights of persons being held on suspicion of collaborating with Israel, some of whom have been held since May or June without charge or trial, by disclosing: the legal basis on which the PA is detaining such persons; how long they may be legally held without charge or trial, and the legal procedures for prolonging their detention; and
- Declare that Palestinian military courts shall have no jurisdiction over civilians, and drop all proceedings pending against civilians before military courts.

### *Human Rights Watch urges the Israeli authorities to:*

- Allow Palestinians to exercise their right to freedom of movement, especially to travel abroad and between the Gaza Strip and the West Bank. In accordance with the IV Geneva Convention, freedom of movement should be denied only when absolutely necessary (see discussion beginning on page 38), in which case individualized reasons for such a denial should be stated and the applicant given a meaningful opportunity to appeal. Israel should give special consideration to requests by Gazans to reach institutions that lack any counterpart in the Gaza Strip, including foreign consulates, specialized hospitals, universities and major religious shrines;
- Allow Palestinians to hold jobs inside Israel, or provide relief for the thousands of workers and their dependents who have lost their jobs as the result of government-imposed closures on the territories. During the occupation, Israel's policies stifled indigenous economic growth while transforming the Palestinian economy into a satellite of Israel's. This legacy imposes on Israel an obligation to provide workers who are prevented from reaching jobs in Israel, and who can find no other viable means of support, with access to some form of relief. When permission to work inside Israel is denied, a legitimate and individualized justification should be furnished and the applicant should have a meaningful opportunity to appeal the refusal.
- Ensure that all security forces who come into contact with Palestinians, whether from the self-rule areas or from elsewhere in the occupied territories, are held to regulations on the use of force that conform to the internationally accepted norms of necessity and proportionality, which allow lethal

gunfire only to prevent life-threatening situations and only as a last resort;

- Release all Palestinian prisoners being held for their exercise of freedom of expression or association, unless they are explicitly charged with weapons-related offenses, with participating in the planning or execution of acts of violence, or with other recognizably criminal offenses. If so charged, they are entitled to a fair trial in which their due-process rights are safeguarded; and
- Transfer to the occupied territories all remaining prisoners from these areas who are being held inside Israel, in order to comply with Article 76 of the IV Geneva Convention.

*Human Rights Watch urges both the Israeli and Palestinian Authorities to:*

- Agree to modalities for Palestinian elections that insure that they are free, fair and broadly participatory. No organization or movement should be disqualified from participating solely because of its political views. Both voters and candidates must be allowed during the campaign period to exercise freely their rights to peaceful expression and association. Candidates of all tendencies must be allowed to move about freely and distribute literature throughout the territories during the campaign. Radio and television stations under PA auspices should maintain neutrality in covering the various political tendencies, and not become a mouthpiece for the PA or for any faction; and
- Ensure that any application or permit procedures that involve both authorities is efficient and transparent. If a request to travel is denied, the authorities should inform the applicant which side has refused the application, the reasons for refusal, and the procedure for appeal.

#### *Recommendations to Militants on All Sides*

Human Rights Watch urges all political movements and militant groups to halt and repudiate all acts of violence that violate norms of international law, especially those that target civilians of any nationality, or that involve the wounding or killing of any person in custody. Such attacks can never be justified by abuses committed by another party or by any other circumstances.

#### *Recommendations to the International Community*

Since the signing of the Declaration of Principles in September 1993, scores of governments and multilateral institutions have pledged to contribute to ensuring the success of the Israeli-PLO peace process. Many have increased their assistance programs in the West Bank and Gaza Strip, and are helping to lay the groundwork for the critically important Palestinian elections.

The prospects for building a durable peace in the region are jeopardized by the troubling human rights situation in the self-rule areas, among other factors. Third-party players can play a constructive role by using their assistance programs and their contacts with the Israeli and Palestinian authorities to push for specific human rights improvements.

This includes using the leverage that comes with their engagement in the region to criticize publicly and even-handedly abuses by the responsible authorities. It is shortsighted to maintain a silence toward ongoing human rights violations on the grounds that all issues are now a matter of negotiation between Israel and the PLO, or that human rights must be sacrificed in favor of other priorities, such as the need to stem political violence. Not only are violations of international law unacceptable on principle, they threaten to undermine the public confidence needed for a lasting peace.

Third-party players should stress, both publicly and in contacts with Israeli authorities, that Israel's humanitarian obligations toward the residents of these areas did not end with the transfer of limited responsibilities to the PA. Especially in the realms of restricting freedom of movement and in its power to arrest and detain, Israel continues to exert significant control over the lives of residents of the self-rule areas, as well as those living in the rest of the occupied territories. Third parties should urge Israel to end arbitrary detentions and indiscriminate curbs on the

right to travel. They should also underscore the economic hardship caused by restrictions on access to jobs inside Israel, and Israel's obligations, as the long-term occupying power, toward alleviating that hardship.

Vis-à-vis the PA and the Palestinian community, the U.S., the European Union and other parties are already engaged in various assistance programs designed to promote respect for human rights among public servants and the general public, improve the prospects for free and fair elections, and strengthen the institutions of civil society. The international community should strongly support those Palestinian human rights organizations that are attempting to monitor and fight abuses by the Israeli and the Palestinian authorities. And when the PA or its agents commit serious violations or fail to take steps to prevent their recurrence, the international community should express its concerns and disapproval publicly.

This report identifies a number of areas in which the PA has performed disappointingly, where foreign assistance—if coupled with a genuine commitment on the part of the PA—could help to institutionalize the rule of law and respect for human rights. These areas include public education on the laws and regulations that are in effect; and the establishment of transparent and impartial mechanisms for receiving and investigating complaints of human rights abuse. Modest grants in these two areas could help the PA to convey the message that it is committed to establishing the rule of law and curbing abuses. Foreign assistance programs should include mechanisms for monitoring progress by the authorities toward attaining specific human rights objectives such as these.

The international community should also bring pressure on groups opposed to the current peace process, such as Hamas, to respect humanitarian norms. This includes using whatever contacts they have with these groups to demand that they unconditionally halt and repudiate all violence directed at civilians or at persons taken into custody.

## INTRODUCTION

In mid-May 1994, Israel turned over partial responsibility for administering the Gaza Strip and the Jericho area to a Palestinian Authority (PA), and redeployed its troops out of Palestinian population centers in the Gaza Strip and out of Jericho entirely. These measures were taken in accordance with the agreement signed by the government of Israel and the Palestine Liberation Organization (PLO) in Cairo on May 4.<sup>7</sup> Implementation of the Gaza-Jericho Agreement represented the first of several phases envisioned in the Declaration of Principles<sup>8</sup> signed by Israeli Prime Minister Yitzhak Rabin and PLO Chairman Yasir Arafat on September 13, 1993, in Washington.<sup>9</sup>

This report is based on trips by Human Rights Watch to the occupied territories in June, September and October, and on information provided by local human rights organizations. It examines some of the key rights issues that have arisen during the first half year of Palestinian partial self-rule in Gaza and Jericho. It documents violations of human rights committed both by Israel and by the PA. It expresses concern about the widespread confusion, felt by Palestinians and the international community alike, over what substantive and procedural laws are being applied, and concern about the need to institutionalize protections for human rights in the self-rule areas.

---

<sup>7</sup> The English-language version of the agreement, with annexes and maps, was reprinted by the U.N. General Assembly and Security Council, as U.N. document A/49/180 S/1994/727, June 20, 1994.

<sup>8</sup> *Declaration of Principles on Interim Self-Government Arrangements* (the Declaration of Principles) contains seventeen articles and four annexes. The Agreed Minutes to the Declaration provide a basis for interpreting its contents. The text of the Declaration, its annexes, and the Agreed Minutes can be found in al-Haq, *A Human Rights Assessment of the Declaration of Principles on Interim Self-Government Arrangements for Palestinians* (Ramallah: al-Haq, 1993).

<sup>9</sup> Subsequent stages specified in the Declaration of Principles include the transfer of authority to the PA over several spheres of civilian life ("early empowerment"), and Israeli troop withdrawal from Palestinian population centers, followed by popular elections for an interim governing "Council". On August 29, Israel and the PLO signed an agreement in principle on transferring authority throughout all of the occupied territories (excluding East Jerusalem) over education, culture, health, tourism, social welfare and taxation. Education was turned over on August 24; tourism and social welfare were turned over on November 15; and taxation and health were transferred on December 1.

Palestinian elections have yet to take place, although the Declaration of Principles had set July 13, 1994 as the deadline for them to be held. The Declaration provided that the election date and modalities would be agreed upon by both parties. Ongoing negotiations have yet to produce an agreement on elections.

Most of this report is devoted to conditions in the Gaza Strip rather than in Jericho. Gaza has more than fifty times the population of Jericho and is politically far more volatile. The Gaza Strip's 365 square kilometers are home to some 800,000 Palestinians, compared to the Jericho Area's roughly fifty square kilometers and 15,000 residents. Conditions in Gaza are complicated further by the 4,000 to 5,000 Jewish settlers that the Agreement allows to remain in place, and by the continuing large presence of Israeli troops in the Strip. Inside the Jericho Area, there are no Jewish settlements, and the presence of Israeli troops is limited under the Agreement to participation in joint patrols. (Jericho, however, faces unique administrative problems due to the fact that under occupation it was not a self-contained administrative district.)

This report will not address human rights issues in the areas of the occupied territories that remain under direct Israeli rule, i.e., the West Bank excluding Jericho. Many of these issues have been examined in recent publications by Human Rights Watch/Middle East (hereinafter Human Rights Watch).<sup>10</sup>

Human Rights Watch's mandate centers on monitoring and promoting respect for the rights enshrined in the internationally recognized instruments of civil and political rights and of humanitarian law. It takes no position on the issue of self-determination or the legality of Israel's occupation of the West Bank and Gaza Strip. Nor does Human Rights Watch monitor compliance with the Israeli-PLO agreements per se, or take positions on the appropriate interim or final political outcome of their negotiations, except insofar as these arrangements affect the basic civil and political rights of the populations involved.

#### **THE INTERNATIONAL LAW FRAMEWORK: SELF-RULE ARRANGEMENTS DO NOT END OCCUPIER'S LEGAL OBLIGATIONS**

The complicated interim arrangements being implemented in the Gaza Strip and the West Bank are indeed *sui generis* from a legal point of view.<sup>11</sup> They have understandably caused much confusion regarding the political and legal status of the affected territories.

---

<sup>10</sup> See, e.g., Human Rights Watch, *World Report 1995* (New York: Human Rights Watch, 1994), pp. 281-285, Human Rights Watch/Middle East, *Torture and Ill-Treatment: Israel's Interrogation of Palestinians from the West Bank and Gaza Strip* (New York: Human Rights Watch, 1994), Middle East Watch, *A License to Kill: Israeli Undercover Operations against "Wanted" and Masked Palestinians* (New York: Human Rights Watch, 1993), Middle East Watch, "Isolation of Jerusalem, Restrictions on Movement Causing Severe Hardship in Occupied Territories," *A Human Rights Watch Short Report*, vol. 5, no. 1, April 21, 1993, and Middle East Watch, *Prison Conditions in Israel and the Occupied Territories* (New York: Human Rights Watch, 1991).

<sup>11</sup> Eyal Benvenisti, a senior lecturer at Hebrew University in Jerusalem, writes in his paper, "The Present Status of the Palestinian Authority": "[T]he regime in the Gaza Strip and the Jericho Area represents a novel form of autonomy. So far, two types of autonomies existed. Internally based autonomies, such as South Tirol in Italy, have been established within existing states through the laws of that state. Internationally based autonomies have so far been established by international agreements with the active participation of the League of Nations or the United Nations, like in the case of Memel, or the aborted attempts in 1947 to establish international administration in both Trieste and Jerusalem, in which sovereignty was deemed to be vested in these institutions. In contrast, the autonomy in the Gaza Strip and Jericho Area is based on the Agreement, which eludes the question of sovereignty by artificially maintaining the framework of the Israeli military occupation."

Following the redeployment of Israeli troops in mid-May and the arrival of Palestinian security forces, some observers referred to Israel's military occupation as having "ended" in these areas. For example, the Agreement "would end twenty-seven years of Israeli occupation in Gaza," *The New York Times* reported on May 3, 1994. "Occupation Ends As Israeli Troops Evacuate Jericho," the *Times* announced in a front-page headline eleven days later. Others exaggerated the self-sufficiency of Gaza-Jericho, as if it had sprung forth as a fully formed state after twenty-seven years of occupation. For example, an Israeli military judge, chastising Gazan defendants accused of sneaking into Israel in search of work, exclaimed before announcing their sentences, "My friends, you wanted to run your own affairs, so go run your affairs. Go find jobs [in Gaza]!"<sup>12</sup>

Such confusion derives from the ambiguous conditions on the ground. For one thing, the PA is not a government resurrected from the pre-occupation era; it is a creation of the Israeli-PLO agreements. It nevertheless possesses a measure of international stature and legitimacy by virtue of the fact that it is headed, pending elections, by the chairman of the PLO, an organization that enjoys diplomatic relations with scores of countries and that has been recognized by the U.N. General Assembly as "the representative of the Palestinian people."<sup>13</sup> In Palestinian population centers, Palestinian security forces have replaced Israeli troops, the most visible indication of the occupation. Yet Israeli troops remain elsewhere in the Gaza Strip and the Israeli military government continues to retain powers not explicitly handed over to the PA.<sup>14</sup>

The unusual characteristics of the Israeli-Palestinian agreements, and the dramatic changes they have produced do not, in our view, alter the overall legal framework applicable to Israel's relations with Palestinians in the Gaza Strip and Jericho, or elsewhere in the West Bank. The occupation is not over. The agreements are, by their own definition, interim ones, with a final agreement to be reached within five years, according to the Declaration of Principles. During this interim period, Israel remains an occupying power, bound by the provisions of the Hague Regulations as well as the IV Geneva Convention.<sup>15</sup>

The continuing applicability of humanitarian law carries implications for Israel's conduct that are broader than may be evident at first. As argued beginning on page 36, Israel, as the occupying power, is obliged to respect humanitarian law not only in its direct contact with Palestinians from the self-rule zones — for example, whenever it detains or tries a person. The Hague Regulations also impose a more general obligation to attend to the welfare, economic and otherwise, of the protected population as a whole. In pursuing its legitimate security objectives, the occupying power must constantly weigh this humanitarian obligation, and choose the least obtrusive means available. Israel violates its humanitarian obligations when, for example, its blanket restrictions on travel prevent large numbers of Gazans from enrolling in West Bank universities or from reaching vital institutions in Jerusalem, with no meaningful appeals process available to them.

Indiscriminate closures of the Gaza Strip or West Bank also violate the humanitarian law ban on collective punishment, just as they did before the implementation of the self-rule agreement. Violent acts committed by one or

---

<sup>12</sup> Amira Hass, "Until the Right Batch Arrives," *Haaretz*, September 13, 1994.

<sup>13</sup> For example, General Assembly resolution 48/158 (adopted on January 26, 1994), which endorses the peace process, refers to the PLO as "the representative of the Palestinian people."

<sup>14</sup> Article VII(5) of the Declaration of Principles declares, "After the inauguration of the [elected] Council, the Civil Administration will be dissolved, and the Israeli military government will be withdrawn." Yet, the Agreed Minutes to that paragraph states, "The withdrawal of the military government will not prevent Israel from exercising the powers and responsibilities not transferred to the [Palestinian] Council."

<sup>15</sup> The Hague Regulations are considered part of customary international law. The government of Israel recognizes its applicability to the Gaza Strip and the West Bank. A 1993 publication of the Israel Defense Forces (IDF) states: "The rules of the Hague Regulations and the Customary International Law of Belligerent Occupation in general are ... enforceable in Israeli Courts, and, in fact, the Courts have enforced those rules and held the Military Government to the standards therein determined. In so doing, the Court has deemed — in the absence of a formal disclaimer by the government — that the Territories are subject to the Customary International Law of Belligerent Occupation (i.e., as occupied territory), for the purpose of resolving disputes set before it." (Col. David Yahav, ed., *Israel, the "Intifada" and the Rule of Law* (Israel: Ministry of Defense Publications, 1993), p. 22.)

more individuals have resulted repeatedly in tens of thousands of Gazans, who ordinarily have access to jobs or facilities they depend upon outside the Strip, being barred for prolonged periods from entering or traversing Israel.

The Gaza-Jericho Agreement affirms that both sides have responsibilities toward respecting human rights. Article XIV states, "Israel and the Palestinian Authority shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally accepted norms and principles of human rights and the rule of law." Further commitments are made in annexes to the Agreement. For example, with regard to suspects transferred from Israeli to Palestinian custody or vice versa, both sides agree to "take all necessary measures to ensure that the treatment of individuals transferred under this Article complies with ... internationally accepted norms of human rights regarding criminal investigations" (Annex III, Article II, parag. 7.h). With regard to regulations on the use of force, "the security and public order personnel of both sides shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally accepted norms of human rights and the rule of law and shall be guided by the need to protect the public, respect human dignity and avoid harassment" (Annex I, Article VIII, parag. 1).

## LEGAL OBLIGATIONS OF THE PALESTINIAN AUTHORITY

By insisting on the continued broad applicability of humanitarian law to the self-rule areas, Human Rights Watch is concerned above all that the rights of its residents continue to be protected and not diminished by interim political agreements. This stance is not intended as a political judgment on the powers or standing of the PA or on its relations with the Israeli authorities.<sup>16</sup>

In Human Rights Watch's view, the PA must abide by both humanitarian and customary human rights norms.<sup>17</sup> These norms are applicable even though the Palestinian entity is not a state and is therefore ineligible to become a party to international treaties. In the realm of internal security, the PA exercises state-like powers. It operates a large police force, a judiciary, and a penal system. The humanitarian and customary human rights norms applicable to the PA include, among others:

- the right of detainees to humane treatment, and the prohibition of their torture or ill-treatment (Article 7 of the International Covenant on Civil and Political Rights (the ICCPR) and Article 32 of the IV Geneva Convention);
- non-discrimination before the law (Article 14(1) of the ICCPR and Article 27 of the IV Geneva Convention); and
- the right of accused persons to certain basic due process guarantees (Article 14 of the ICCPR and Article 72 of the IV Geneva Convention);<sup>18</sup>

---

<sup>16</sup> As Professor Theodor Meron has written in a related context, "As a humanitarian convention par excellence, the Fourth Geneva Convention is concerned primarily with people, rather than territory; with rights, rather than with legal questions pertaining to legal status." ("West Bank and Gaza: Human Rights and Humanitarian Law in the Period of Transition," *Israel Yearbook of Human Rights* 9 (1979), p. 109.)

<sup>17</sup> Customary law consists of norms that are widely adhered to by governments out of a sense of obligation. Customary norms bind states even if they are not party to a treaty or convention that encompasses the norm.

<sup>18</sup> The due-process safeguards that arguably have attained customary law status include the right to be tried by a competent, independent, and impartial tribunal established by law; to presumption of innocence; not to be obliged to incriminate oneself by testimony or confession; to be present at one's trial; to have an opportunity to defend oneself in person or with legal counsel of one's own choosing; to examine witnesses; to have a conviction and sentence reviewed by a higher tribunal according to law. Prof. Theodor Meron argues for the customary status of these safeguards in his *Human Rights and Humanitarian Norms as Customary Law* (Oxford: Clarendon Press, 1989), pp. 96-97.

Furthermore, Palestinians and the international community can legitimately expect the PA to comply with the numerous pledges and undertakings made by PLO and PA Chairman Arafat and other senior Palestinian officials, before and since the signing of the Declaration of Principles, to uphold international human rights standards, and to incorporate human rights law into the Palestinian legal system. For example, the PLO formally expressed its desire in 1989 to be bound by the four Geneva Conventions of 1949 and its two additional protocols.<sup>19</sup> Although this effort to accede formally was blocked by the U.S. and other Western governments, the initiative signalled a commitment by the PLO to be bound by the humanitarian standards set forth in the IV Geneva Convention.

On October 2, 1993, Chairman Arafat told a delegation from Amnesty International that the PLO was committed to respect all internationally recognized human rights standards and to incorporate them into Palestinian legislation. He also acknowledged the fundamental role of local and international human rights organizations in protecting and promoting human rights.<sup>20</sup> And in remarks typical of many statements that Chairman Arafat has made since September 1993, he said in a radio address broadcast December 31, 1993:

We want the Palestine that is being revised anew to be ... democratic, and a model that makes available the opportunity for the continuation of the civilized role and religious and cultural heritage that Palestine had throughout history; an oasis in which our people will enjoy freedom, democracy, political pluralism, security and safety, the independence of the judiciary, the preservation of public freedoms, stability, prosperity, human rights and equality between men and women.<sup>21</sup>

Such undertakings give Palestinians good reason to expect the PA to ensure broad respect for the rule of law and the rights to freedom of movement, association, and expression.

## **THE PALESTINIAN AUTHORITY'S VIOLATION OF RIGHTS IN THE SELF-RULE AREAS**

### **The Need to Institutionalize Safeguards for Human Rights**

During the first half year of limited self-rule, the PA has committed a number of disturbing human rights violations. It has also undertaken a number of encouraging measures. While it is premature to speak of any pattern of systematic abuses, the PA has not demonstrated a commitment to installing a rule of law. It is responsible for a series of arbitrary and repressive measures while at the same time failing to make clear what laws and regulations are in effect and to show any commitment to investigating and punishing human rights violations.

---

<sup>19</sup> The PLO did so by filing instruments of accession with the Swiss Federal Council, the depository of the Geneva Conventions. The PLO's ambassador to the U.N. expressed to the Swiss government "the will of the State of Palestine to be bound by the said Conventions and Protocols by acceding thereto, and to affirm the application and observance of their provisions in all circumstances..." (Letter from Ambassador Nabil Ramlawi to the Swiss Federal Council, June 14, 1989, reprinted in *The Palestine Yearbook of International Law* V (1989), pp. 319-321. See also Paul Lewis, "P.L.O. Seeks to Sign Four U.N. Treaties on War," *The New York Times*, August 9, 1989.)

<sup>20</sup> Amnesty International, press release, MDE 15/WU, October 5, 1993.

<sup>21</sup> Algiers Voice of Palestine, December 31, 1993, as reported in the Foreign Broadcast Information Service (hereinafter FBIS), January 3, 1994.

The autonomous Gaza Strip and Jericho Area are not legal vacuums. They possess developed legal codes. In the West Bank, including Jericho, Jordanian criminal and civil laws remained in effect throughout the Israeli occupation; just as, in the Gaza Strip, Palestinian laws enacted before Israeli rule are still applied. In both areas, Palestinian-run civil and criminal courts tried cases during the occupation and continue to do so today.<sup>22</sup>

There is, however, widespread confusion about the status of other bodies of legislation, including the more than one thousand Israeli military orders decreed during the occupation<sup>23</sup> and the penal code that the PLO applied within its own ranks when in exile (*Majmou'at at-Tashri'aat al-Jazaa'iya li Munathammat at-Tahrir al-Filastiniya*). There is also confusion about regulations governing official conduct in such spheres as opening fire, the rights of persons in detention, and the procedures for receiving and investigating human rights complaints against the authorities.

The constraints under which the PA authorities operate can scarcely be overstated. It assumed responsibilities as a wholly new entity, rather than as a pre-existing government whose authority had been suppressed temporarily. Its powers are limited by the agreement signed with Israel. It has been financially strapped since its inception. Its security forces are poorly paid and housed, and lack sufficient training and equipment to carry out their law-enforcement duties. Yet the PA, with its judiciary, prison system and large security force,<sup>24</sup> clearly wields power sufficient to protect or to abuse the rights of persons within its jurisdiction.

The abuses for which the PA is responsible so far have eroded public confidence that a rule of law will be established in the self-rule areas. The problem is aggravated by the failure of the PA to disclose the legal basis for repressive measures it has taken, such as arrests, searches, and acts of censorship. It has also neglected to educate the public about all applicable laws and regulations, in order that residents may know their legal rights, responsibilities, and mechanisms for redress. No official gazette or other formal vehicle exists for announcing decrees, promulgations, or directives.

*The Legal System in the Gaza Strip and Jericho.* The civil and criminal laws and judicial system in the West Bank, including Jericho, closely resemble those of Jordan, which annexed the West Bank in 1950. Gaza's legal system differs somewhat. It was developed during the British Mandate (1922-1948), and allowed a large measure of autonomy under Egyptian occupation (1949 to 1967). Today, much legislation from the period preceding Israel's occupation, such as the 1936 "Palestinian" penal code (*qanoun al-'Uqubaat al-Filastiniya*), remains in effect. In both the West Bank and Gaza Strip, religious courts have jurisdiction over family and personal status law.

The Gaza High Court hears appeals of decisions by Gaza's lower courts. In Jericho, the appeals process is still unclear. Prior to implementation of self-rule, appeals of decisions taken by the Jericho court were heard in the Ramallah Court of Appeals, but that court remains under Israeli rule. An apparent decision to give to the Gaza High Court jurisdiction over appeals from Jericho has not become operative.

In the self-rule areas, the PA has installed a military justice system that functions alongside the civil courts. The

---

<sup>22</sup> See International Commission of Jurists, *The Civilian Judicial System in the West Bank and Gaza: Present and Future* (Geneva: ICJ, 1994), pp. 38-52; and Joel Brinkley, "West Bank Arabs Keep a Court System Intact," *The New York Times*, December 18, 1989.

<sup>23</sup> PA Chairman Yasir Arafat, in a decree dated May 20 and appearing in Palestinian newspapers four days later, announced the reinstatement of "all the regulations, laws and orders" that were in effect before the Israeli occupation. His decree was widely interpreted as an attempt to annul Israeli military orders. It was criticized as a violation of Article VII of the Gaza-Jericho Agreement, which states that laws and military orders already in force shall remain in force unless changed under the procedures of the Agreement. An English translation of Chairman Arafat's decree appears in FBIS, May 25, 1994.

<sup>24</sup> The PA was authorized by the Declaration of Principles to establish "a strong police force" (Article IX). The Declaration permitted that force to number up to 9,000 members in all its branches (Annex I, Article 3). The forces are officially comprised of six branches, including two intelligence agencies, called the General Intelligence (*al-Mukhabaraat*) and Preventive Security (*al-Amn al-Wiqaa'i*), the National Security Forces, the Civil Police, the Civil Defense Guard and the Presidential Guard. Israeli authorities have alleged that the actual number of security force members vastly exceeds 9,000. Terje Larsen, the U.N.'s special coordinator for the autonomous territories, said on January 16 that the security forces were actually 15,000 strong.

legislation followed by these military courts is the penal code developed by the PLO in exile. The referral of several civilian defendants to military courts by Palestinian prosecutors has stirred confusion about whether and when civilians may be tried before these courts. During the first month of self-rule a civilian in the Gaza Strip was charged under the PLO penal code for assaulting a policeman who had stopped his vehicle. The case was reportedly later transferred to civil prosecutors. But PA Justice Minister Freih Abu Medein would not rule out the option of referring civilians to military courts. "According to our law, civilians can be tried in military courts for certain sensitive charges, such as spying," he told Human Rights Watch in a June 23 interview. In both Gaza and Jericho, several cases have been referred to the military prosecutor, some involving civilians. One of the defendants in Jericho is a civilian charged with striking and insulting a policeman, according to human rights lawyer Ahmed Sayyad. The defendant, who is currently free on bail, is being charged under the PLO penal code even though a statute covering the same offense can be found in the civil penal code, Sayyad said.

Human Rights Watch has a number of concerns over the PA's establishment of military courts. First, the PLO code has not been formally incorporated into local law and therefore cannot be considered as valid legislation. Second, in a society intent on strengthening civil institutions and the rule of law, civilians should not be brought before military courts.<sup>25</sup> Human Rights Watch urges the PA to declare that military courts shall have no jurisdiction over civilians, and to drop all proceedings against civilians pending before military courts.

### **Arbitrary Arrests**

The PA has carried out several roundups of members of political opposition movements, in response to attacks on Israelis that have been claimed by, or attributed to, those movements. Among the hundreds of men picked up during such sweeps between August and November, few if any have been formally charged.

The PA has not moved to outlaw any opposition movement or faction, or to criminalize membership in them. Nevertheless, in the roundups following attacks on Israeli targets, nearly all of the persons arrested appear to have been targeted for their suspected political affiliations rather than because they were accused of direct involvement in the attacks. This is evident from the conduct of these arrest operations and the content of the interrogation sessions that followed. The majority of persons arrested were taken into custody at their homes, often in the middle of the night, rather than near the scene of the attack. After their release, many told Palestinian human rights groups that the interrogators concentrated on collecting information on their suspected organizational affiliations, rather than on their own links to any criminal offenses.

The most recent large-scale sweep began on the evening of November 11, when police started rounding up suspected supporters of the Islamic Jihad organization. Several hours earlier, a member of that organization had carried out a suicide attack against a military post on the main road between Gaza and Khan Yunis. Three Israeli soldiers were killed and several Israelis and Palestinians were wounded. Within three days, the Palestinian authorities had reportedly arrested more than 140 persons. Nearly all of those arrested were released without charge within two weeks.

---

<sup>25</sup> The international law of human rights discourages submitting civilians to military justice. The Human Rights Committee that was established under the International Covenant on Civil and Political Rights stated that trying civilians in military or special courts "could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice. While the Covenant does not prohibit such categories of courts, nonetheless, the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14 [the fair trial article of the ICCPR]." (U.N. Document A/39/40, Annex VI, page 144, parag. 4.)

In case after case involving arrests of members of the political opposition or of suspected collaborators with the Israeli authorities, arresting officers did not show suspects an arrest warrant or inform them of their rights or the reasons for their arrest, or tell families where the suspect was being taken. Yousef Haddad of the Gaza office of the human rights group Solidarity International for Human Rights (SIHR) and As'ad Yunis of the Palestine Human Rights Information Center (PHRIC) told Human Rights Watch on October 20 that of some forty Gazans they interviewed who had been arrested by the Palestinian security forces, not one had been informed of his rights upon arrest. Describing the arrest by armed plainclothesmen on June 25 of Farid Jarbou, who later died in detention under torture (see below), the human rights group al-Haq observed, "The process resembled a forced kidnapping more than a lawful arrest."<sup>26</sup> In many cases, relatives went from one police station to another in the Gaza Strip in an effort to locate family members who had been arrested.

There is no pattern of physical mistreatment of the men arrested during the round-ups of suspected oppositionists. There is, however a systematic failure to bring them before judges within forty-eight hours, as required by the criminal procedure law in effect in Gaza, and to provide them with prompt access to legal counsel. Most have merely sat in detention for days or weeks with no semblance of due process. This treatment goes well beyond the reasonable exercise of the prerogative of authorities to summon persons for questioning in connection with criminal investigations.

The arbitrariness of the sweeps carried out against suspected opposition members has prompted criticism even from the PA's justice minister, Freih Abu Medein. Responding to one such sweep in early September, he told the press:

Mass arrests are political arrests, and they are against the law. To make an arrest, you must have evidence and go to a specific address and detain a specific person. You can't just sweep through a mosque and pick up those you find....

As Justice Minister, I must see that the president [Arafat] and the police observe the law. Bringing people in for investigation is permitted, but I am telling the president this is not the way.<sup>27</sup>

The most extensive such roundup was the arrest of more than two hundred suspected Hamas members and supporters, beginning October 13, after Hamas militants had kidnapped an Israeli soldier. SIHR noted a deterioration in the conduct of the security forces during this operation:

In contrast to previous round-ups, the arrests this time were marked by violence and harshness. Numerous residents complained about the behavior of the Palestinian security forces, who resorted to violence in an unjustifiable manner in a number of cases, such as breaking down doors ... and firing rifles into the air, etc. In many cases, the Palestinian security forces failed to present written arrest or search warrants from the appropriate authorities.<sup>28</sup>

One month later, according to SIHR, all but six of those arrested in the round-up had been released without charge. The six still in detention had not been charged or permitted to see lawyers.

In the two prior roundups of suspected Hamas supporters, few if any of those detained said they had been seriously mistreated, according to Palestinian rights groups. Their interrogators questioned them about the armed attack and the organization they were identified with, but did not use force or other physical methods of pressure to extract information. Most were held in Gaza Central Prison, where they were questioned and then released without charge within days.

More than forty suspected members of the Islamic Jihad group had been rounded up in early September, following that organization's claim of responsibility for killing an Israeli soldier and wounding another in a September 4

---

<sup>26</sup> Al-Haq, press release, no. 73, July 9, 1994. See also Gaza Center for Rights and Law, press release, July 9, 1994.

<sup>27</sup> Michael Parks, "Arafat Meets Hamas, Frees Some Militants," *Los Angeles Times*, September 9, 1994.

<sup>28</sup> SIHR, press release, October 13, 1994.

attack in the Gush Katif settlement district. Members of the Democratic Front for the Liberation of Palestine (DFLP), a PLO faction that opposes the current peace initiative, have been twice rounded up. About seventeen members were arrested in early September and more than fifty were arrested in a round-up beginning October 2, following an armed attack on Israeli soldiers inside the Gaza Strip, for which the DFLP had claimed responsibility.

From the first group of DFLP suspects, all but four were released within a few days; the remaining four were facing prosecution on weapons charges, Tareq Abu Rajab, a senior official of the General Intelligence forces, told Human Rights Watch on September 21. However, they too were later released without charge, Nihad Abu Ghosh, a DFLP spokesman in Gaza, told us on November 15. Abu Ghosh said that the longest-held DFLP members had remained in custody for between three and four weeks. Interrogators questioned the detainees intensively about their political affiliations and about the structure of the DFLP, but none was seriously mistreated by his interrogators, Abu Ghosh said. None was permitted to see a lawyer, however.

Human Rights Watch interviewed three Gazans who had been arrested during the first few weeks of the self-rule period. Their accounts of procedural arbitrariness and of the failure to inform suspects of their rights were consistent with some of the testimonies collected by local rights groups after the more recent arrests.

Hani Abed, an activist in the Islamic Jihad in Gaza City, was the first member of the political opposition to be placed in detention by the self-rule authorities. He was arrested on May 24 on false pretenses, when men in civilian clothing came to his home and informed him that an acquaintance was arriving from abroad and wished to see him. He agreed to accompany them, only to be brought to the Beach detention facility and then to Gaza Central Prison, where he was held for sixteen days. Abed told Human Rights Watch on June 20 that he was questioned during his detention about the May 20 fatal attack on two Israeli soldiers that had been claimed by Islamic Jihad. Abed said that Tareq Abu Rajab, the senior General Intelligence official, told him that he had been arrested for his own protection, since the PA had obtained information that Israeli authorities wanted him arrested or killed. Abed was released without charge. During his detention, Abed was never brought before a judge, although he was visited by a lawyer and a human rights worker.

The pretext that Abed's arrest was "protective" gained credence on November 2, when Abed was killed by a car bomb. Palestinians of all political persuasions accused Israel of responsibility for the attack, and Israeli authorities neither confirmed nor denied responsibility (see page 7). Notwithstanding the unusual circumstances of his case, the arbitrariness of Abed's treatment during his arrest and time in custody foreshadowed the similar treatment that many other suspected members of the opposition would subsequently experience.

Also arrested on false pretenses was Yasir Mtir, according to his testimony to Human Rights Watch. On May 30 Mtir had begun training to join the police force. On June 6, at 10:30 p.m., Mtir recalled, five men he recognized from the course came to his house and said that one of the officers conducting the course wished to see him. "I thought their visit was work-related," he said. "They brought me to the police station in Rimal [a neighborhood in Gaza City]. I was not told why I was being held. Then I was brought to *as-Saraya* [Gaza Central Prison] and put in a room. They ended up holding me for eight days."

Mtir said his family learned of his detention only by chance, because an acquaintance who works at the prison saw him there and notified them. In prison, interrogators asked Mtir whether he belonged to Hamas, and whether he knew particular activists. Mtir said he was a pious Muslim but denied being a member of Hamas. Although released without charge, Mtir was promptly dismissed from the police training course.

Ramadhan Shehadeh, a thirty-one year old taxi driver from Jabalya refugee camp, was arrested on June 21 by two men in army clothing who had boarded his taxi as passengers. Shehadeh told Human Rights Watch:

They came up to my car and asked me to take them to Erez [checkpoint]. When I started driving, they said, We're not going to Erez; we're putting you under arrest. I asked why. They answered, In jail you'll see why. They told me to drive to Sheja'iya police station [in Gaza City]. When we got there they took my car keys and ID, and put me in a room.

Shehadeh's mistreatment at the police station is described below.

### **Mistreatment in detention**

The treatment of persons in detention is one of the most sensitive issues bearing on the image of the PA. This is understandable in light of the torture and abuse that thousands of Palestinians have experienced in the interrogation centers of Israel's army and General Security Service.<sup>29</sup>

The Palestinian authorities have routinely violated the basic procedural rights of most suspects in detention, according to the testimony of ex-detainees and lawyers in the Gaza Strip. Few suspects are brought before judges within forty-eight hours of being taken into custody, as provided by local procedural law. Access to lawyers tends to be granted on an erratic basis, depending on the nature of the case, the persistence and sway of the lawyer and the discretion of the detaining authorities. Perhaps most common of complaints, next of kin are rarely informed by authorities where a suspect has been taken.

But, as mentioned, few cases of harsh physical mistreatment have occurred among the hundreds of arrests of suspected opposition members. These arrests account for the majority of Palestinians taken into custody to date by the PA. The category of detainees most at risk of physical mistreatment, according to preliminary evidence, is persons suspected of collaborating with the Israeli authorities. Palestinian human rights groups report that they have collected evidence of several incidents in which such suspects have been beaten under interrogation. Moreover, these suspects appear to be more likely than others to be held for extended periods without charge and without access to private meetings with lawyers and human rights monitors.

By far the largest place of detention in the self-rule areas is Gaza Central Prison, built as a police station during the British Mandate and nicknamed "*as-Saraya*" by Palestinians, meaning the "the palace". The building, located in downtown Gaza City, was the Israel Prison Service's largest facility in the Gaza Strip until the transfer of authority. It had an official capacity of 707 inmates. In addition to Gaza Central Prison, the PA operates smaller detention facilities in the self-rule areas, including at police stations in Jericho and Khan Yunis.

The Police (*ash-Shurta al-Madaniya*) is responsible for administering Gaza Central Prison with the exception of the interrogation wing, according to Tareq Abu Rajab, a senior official of the General Intelligence forces.<sup>30</sup> The interrogation wing is run by General Intelligence, Abu Rajab said. Interrogations in the self-rule areas are conducted also by the Preventive Security agency.

---

<sup>29</sup> See Human Rights Watch/Middle East, *Torture and Ill-Treatment: Israel's Interrogation of Palestinians from the Occupied West Bank and Gaza Strip* (New York: Human Rights Watch, 1994); and B'Tselem, *Torture during Interrogations: Testimony of Palestinian Detainees, Testimony of the Interrogators* (Jerusalem: B'Tselem, 1994).

<sup>30</sup> Interview with representatives of Human Rights Watch, Palestine Human Rights Information Center, and Solidarity International for Human Rights, September 21, 1994.

In a laudable indication of willingness to allow outside monitoring, the PA has given the International Committee of the Red Cross access to its places of detention. The ICRC began visiting places of detention in the self-rule areas after signing an agreement with the PLO on July 13 that granted access to all detainees as soon as they were arrested.<sup>31</sup> The ICRC's findings and concerns are communicated privately to the authorities rather than made public, save in exceptional circumstances. Human Rights Watch urges the PA to allow the ICRC to maintain a program that insures access to all places of detention and visits conducted at regular intervals, in keeping with the ICRC's established procedures worldwide when visiting detention facilities.

Human Rights Watch also urges the PA to permit as much independent monitoring of prison conditions as possible, particularly in this formative period, so as to ensure that violations of minimum standards in the treatment of prisoners<sup>32</sup> are exposed and corrected. So far, no organization other than the ICRC has been granted permission to meet with prisoners on a regular basis. The group that has enjoyed the best access so far has been the Palestinian Independent Commission for Citizens' Rights (PICCR), the independent ombudsman organization headed by Hanan Ashrawi and established on the basis of a decree issued by PLO Chairman Arafat.<sup>33</sup>

Among the independent Palestinian human rights organizations that lack any special status vis-à-vis the PA, a few have been permitted to make limited, ad hoc visits with prisoners in both Gaza and Jericho. But since October, their access to prisons in Gaza has become far more restricted. Authorities have not approved requests from the two largest Palestinian human rights organizations, al-Haq and the Gaza Center for Rights and Law, for regular access to places of detention in the Gaza Strip. In Jericho, however, both al-Haq and another Ramallah-based organization, the Mandela Institute, have had continued access to criminal prisoners, who are small in number.

Until October 1994, representatives of the Palestine Human Rights Information Center and Solidarity International for Human Rights had occasionally received permission to visit and interview prisoners in Gaza Central Prison about their treatment in detention. However, they were unable to visit prisoners at random, and in most cases their visits took place with a member of the security forces present in the room. This casts doubt on whether the prisoners spoke freely to them.

When Hanan Ashrawi, head of the PICCR, visited Gaza Central Prison in late September, she reported that conditions for prisoners had improved compared to an earlier visit. She told the Reuter news agency, "At the beginning, we had enormous complaints about the use of physical and psychological violence, about inadequate prison conditions ... and about certain gaps in legal procedures. On subsequent trips [to prisons] we noted most of these areas have been dealt with positively. Not a single detainee complained of violence."<sup>34</sup> No data to substantiate these findings were released by the PICCR.

---

<sup>31</sup> International Committee of the Red Cross, *Israel, the Occupied Territories, and the Autonomous Territories: ICRC Action since 1967* (Geneva: ICRC, 1994), p. 9. According to this report, the ICRC-PLO memorandum of understanding enables the ICRC to visit "all persons detained by the Palestinian authorities as soon as they are arrested." The memorandum was signed July 13 by ICRC president Cornelio Sommaruga and Farouk Kaddoumi, head of the political department and member of the executive committee of the PLO.

<sup>32</sup> See the Standard Minimum Rules for the Treatment of Prisoners, approved by the U.N. Economic and Social Council by resolutions in 1957 and 1977.

<sup>33</sup> In a decree dated September 30, 1993, Chairman Arafat urged the creation of a Palestinian human rights commission "to monitor and guarantee the protection of human rights in the various Palestinian laws, legislation and agencies, as well as in the work of the various departments, institutions and apparatuses in the state of Palestine and the PLO." Ashrawi characterized the PICCR as "a legally constituted state institution that has the mandate of acting as ombudsman as well as state comptroller." "Palestinian Watchdog Group Is Set for Self-Rule Territories," *Boston Globe*, June 9, 1994.

<sup>34</sup> Sami Aboud, "Human Rights Group Says Gaza Prisons Improved," Reuter, September 20, 1994.

Concerned about allegations of mistreatment, Palestinian human rights organizations have urged the PA to divulge guidelines for the conduct of interrogations.<sup>35</sup> The PA has not complied. Officials have denied that the agency's interrogators use physical force or torture suspects. In a September 21 interview with Human Rights Watch, Tareq Abu Rajab, the senior General Intelligence official, did say that interrogators pressure suspects by employing such tactics as depriving them of cigarettes, depriving them "in rare cases" of sleep for specified periods of time, and forcing them to stand for limited periods—"certainly for less than a day." Acknowledging that force had been used against Farid Jarbou, who died in detention, Abu Rajab said, "We learned from this case," and insisted that torture or violent methods were not tolerated within the agency.

As the first instance of a death in detention in the self-rule areas, the Jarbou case stirred intense emotions in a population that had in recent years known cases of suspicious deaths in the same facility when it was an Israeli-run prison. The victim, a taxi driver from the Rafah refugee camp, was arrested on June 25 on suspicion of dealing drugs and collaborating with the Israeli authorities. His family had no news of his whereabouts until July 6, when authorities informed them that he had died in custody. An autopsy had been conducted without the victim's family having been informed or given the opportunity to be represented by an independent observer. When the family received his body the following day, it bore the marks of violence and of the autopsy.<sup>36</sup>

In the first official public comment on the case, Justice Minister Freih Abu Medein issued a statement on July 9 announcing that a forensic medical investigation ordered by the general prosecutor found that the death had been caused "by the use of violence." It stated that "all those responsible for the incident have been arrested and are being investigated by the General Prosecutor. The Justice Ministry, because of its commitment to be bound by the laws and regulations, views the matter with great seriousness, and will issue additional statements on it in due time."

Some observers welcomed both the PA's admission that interrogators had caused the death of Jarbou and the announcement that they would be prosecuted. But the PA's handling of the death was unsatisfactory. It denied the family an opportunity to participate in the autopsy, and broke its promise to keep the public informed of developments in the case. The suspects in the killing were later released on bail, with at least one of them reportedly charged with negligent homicide. But by late January 1995, Younis al-Jaro, one of the lawyers representing the defendants, told us that the file was still in the hands of the prosecutor and that no trial had begun.

Palestinian human rights lawyers and advocates told Human Rights Watch they have collected testimony indicating that other suspected collaborators have been badly beaten while in detention. The continued incarceration of these suspects, and the restricted access that outsiders have had to them, have hindered documentation of these allegations.

Gaza lawyer Jamal Soussi described to Human Rights Watch one apparent case of beating. Soussi represents Ibrahim Saqr, who was among fourteen persons arrested on May 27 on suspicion of collaborating with the Israeli authorities. Despite numerous attempts to meet with his client, Soussi was prevented from doing so until September 13. Judges had by that point extended Saqr's detention three times without a lawyer being present. Soussi said that when he first saw Saqr, he observed marks on Saqr's back that, Saqr said, had resulted from his having been beaten with an electric cable during the first days of detention. Soussi said that as of mid-November, six months after Saqr's arrest, his client remained in detention without charge. In several court appearances the judges have refused to release him on bail.

The case of Ramadhan Shehadeh differs somewhat, in that he was beaten at a police station rather than at an interrogation center, and was released after two days. Shehadeh, the taxi driver whose arrest was described above, recounted his treatment at the hands of security force members after he was taken to Sheja'iya police station in Gaza City:

---

<sup>35</sup> For example, in a July 9, 1994 communiqué, the Gaza Center for Rights and Law urged the Justice Minister "to make publicly available any regulations governing the procedures used during interrogation."

<sup>36</sup> See Gaza Center for Rights and Law, press release, July 9, 1994; and al-Haq, press release, July 9, 1994.

An hour after I was put in a room, a policeman and an intelligence officer entered. The intelligence officer accused me of being involved in drugs, moral offenses, and collaborating with Israel. I was so astonished I could not answer. They left and came back ten minutes later. They started slapping my face, asking me what kind of work I did and what I had to say for myself.

Then they took me to a small room underground that had been used for storage. Two soldiers came in and ordered me to take off my clothes. I refused. They tore off my shirt and pulled down my pants. They began beating me, with electric cables, until I started bleeding. Then they left the room.

Shehadeh remained jailed until late the following day, and was then freed without charge. Shehadeh promptly filed a formal complaint at the Rimal Police Station. He also submitted a complaint via the Gaza Center for Rights and Law, an independent human rights organization. As of late September, three months after the incident, he had received no response to his complaint.

As this report went to press, a second Palestinian died in custody. According to Col. Jibril Rajoub, head of Preventive Security Service in Jericho, the detainee, Suleiman Musa 'Atta Jalaita, died on January 18 while being interrogated by agents of the Preventive Security in Jericho. The cause of death would be investigated, Rajoub said, and the results made public.<sup>37</sup>

Like detainee Farid Jarbou in Gaza, Jalaita was reportedly suspected of collaboration with the Israeli authorities.<sup>38</sup> According to testimony collected by the Mandela Institute, a Ramallah-based prisoners' rights organization, Jalaita had been arrested from his home three days earlier. His son stated he went the day after his father's arrest to the offices of both the Police and Preventive Security and was informed that neither agency had information on the whereabouts or status of his father. According to the Mandela Institute, on January 18, Suleiman Jalaita's brother heard on the street that he had been taken to Jericho Hospital. When he reached the hospital he was told that Suleiman had been brought there dead on arrival.

On the basis of its preliminary inquiry, the Mandela Institute stated: "We demand to know specifically which party is in charge of the investigative committee covering Suleiman's death. We only know that the party which announced the committee's formation, the Preventive Security Service, is the very organization that is alleged to have abused him. Moreover, we require that the conclusions of the autopsy, performed 19 January, be made available to the family so that the cause of death will be revealed."<sup>39</sup>

### **The Treatment of Suspected Collaborators**

The issue of collaboration with the Israeli authorities remains explosive in the self-rule areas, where it is widely believed that informants continue to provide the Israeli General Security Service with intelligence about the political affiliations and activities of their compatriots. The PA has arrested tens of persons on suspicion of collaborating and is still holding many of them in Gaza Central Prison. Others have been released. Many of those currently in detention were arrested in May or June. More recently, officials announced that at least three suspected collaborators had been arrested in connection with the killing of Hani Abed. Unofficial estimates of the number of suspected collaborators in prison has in recent months ranged from thirty to one hundred. When asked in a September 21 interview if the number of suspected collaborators in custody was "around eighty," General Intelligence official Abu Rajab would say only that that figure was too high.

---

<sup>37</sup> Voice of Palestine radio, Jericho, January 18, 1995, as monitored by the BBC Monitoring Summary of World Broadcasts.

<sup>38</sup> Barton Gellman, "Second Arab Dies in Custody of Palestinian Authority," *Washington Post*, January 19, 1995.

<sup>39</sup> Mandela Institute, press release, January 22, 1995.

During the intifada, Palestinian informants played a key role in Israeli efforts to suppress resistance activities. Often armed and themselves responsible for violent abuses, collaborators helped Israeli security forces identify activists, locate fugitives, and track the activities of the various political movements. Tips by collaborators had grave consequences for those they informed on: restrictions on their liberties, detentions, and, sometimes, fatal shootings.

Beginning in 1988, the identification and punishment of suspected collaborators became one of the chief activities of street militants in the occupied territories. Between 1988 and April 1994, 822 Palestinians were killed by other Palestinians on suspicion of collaborating, according to figures compiled by the Associated Press.<sup>40</sup> Hundreds more were wounded.

Human Rights Watch has condemned the execution-style killings of suspected collaborators by Palestinian militants. Capital punishment is particularly repugnant when it is carried out with little semblance of due process, as in most or all of these cases. The absence of a formal Palestinian judicial system in the areas under Israeli occupation cannot excuse the resort to harsh summary justice, especially when the penalty is death, often after torture. In a major study of collaborator-related abuses, the Israeli rights group B'Tselem charged that hundreds of those killed as suspected collaborators were in fact not operating in the service of the security authorities, but, rather, had been accused mistakenly or as a cover for other motives.<sup>41</sup>

Upon assuming its responsibilities, the PA came under immediate pressure from militants to take action against collaborators, especially as PA officials were warning activists that they could no longer take the law into their own hands. On May 28, PA Security Chief General Nasr Youssef issued a statement condemning the first two killings of suspected collaborators in the Gaza Strip since the start of self-rule. The two victims had been kidnapped and were later found hanging from lampposts. The killings were claimed by Hamas activists. General Youssef's statement read, in part:

We are hereby warning with unhesitating resolve those who think they can continue to prey on and plunder our people and their rights to security, justice, and peace, and thereby attack our duties as a National Authority with its own security apparatus and forces capable of enforcing security all across the nation for its citizens and institutions. To those who practice criminal methods, exemplified by kidnapping, torture and killing, and persist in masking their faces and using weapons wrongfully, we declare that we ... refuse to allow a reversion to a state of fear and extortion, regardless of the group that is responsible and regardless of who stands behind it. We will pursue killers, and arrest them and anyone else who harms the public order...

Speaking from a position of commitment to the national responsibilities, we ask Hamas to turn in the killers [of the two suspected collaborators]. We call upon our brave people to reject all negative phenomena, and to cooperate with the security apparatus and the national forces in order to secure the rule of law.

Hamas reportedly responded from its office in Damascus, "We refuse to hand over our militants and hope that the Palestinian police can carry out its role of pursuing collaborators. If so, it will save Hamas having to do it."<sup>42</sup> Hamas has continued to make such threats.<sup>43</sup>

---

<sup>40</sup> The IDF Spokesperson's office provided a figure of 1,050 for the same period. Both figures are cited in B'Tselem's press release of May 1994 updating statistics on casualties of Israeli-Palestinian political violence through the end of April 1994.

<sup>41</sup> B'Tselem, *Collaborators in the Occupied Territories: Human Rights Abuses and Violations* (Jerusalem: B'Tselem, 1994), p. 206.

<sup>42</sup> Agence France-Presse, May 30, 1994, as reported in FBIS, May 31, 1994.

<sup>43</sup> Threats were made, for example, after the assassination of Hani Abed. See "Assassination Hurts Chances of Dialogue," *Palestine Report*, November 13, 1994.

The problem of collaborator-related violence has many dimensions. With the release of thousands of Israeli-held prisoners, the PA warned the families of murdered collaborator suspects not to take revenge on ex-prisoners who had been convicted of killing their relatives.<sup>44</sup> There were subsequent news reports that the PA had authorized the arming of released prisoners who were deemed at risk of this sort of revenge attack.

Attacks on suspected collaborators in the West Bank and Gaza Strip dropped sharply in 1994 compared to the previous year, when a total of ninety-seven Palestinians were killed on suspicion of collaborating, according to an Associated Press tally.<sup>45</sup> Shortly before the start of self-rule, Hamas and the Fatah Hawks, the armed wing of the Fatah faction of the PLO, announced a joint decision to stop killing collaborators "on condition that during that period all efforts will be directed toward dealing with this phenomenon."<sup>46</sup> Following the two killings noted above, no Palestinians were killed in the self-rule areas on suspicion of collaborating for several months, to the best of our knowledge. However, in November and December, there were two or three killings in the Gaza Strip that may have been linked to suspected collaboration. The details remained unclear as this report went to press.

PA officials have made inconsistent statements regarding the prosecution of suspected collaborators. Justice Minister Freih Abu Medein told Human Rights Watch on June 23 that the PA was arresting only persons suspected of having collaborated with Israel after the signing of the Israeli-PLO Declaration of Principles on September 13, 1993. But on September 21, 1994, Tareq Abu Rajab, the senior General Intelligence official, told us that the PA was detaining only those persons who collaborated after May 4, the date that the Gaza-Jericho agreement was signed. He denied that any persons accused of collaborating between September 1993 and May 1994 were in detention.

In fact, the legal status of accused collaborators is wholly unclear. To the best of Human Rights Watch's knowledge, none has been formally charged or brought to trial on charges of collaborating. There is considerable doubt as to whether existing law contains a provision that criminalizes the act of collaboration itself, as opposed to common criminal offenses that collaborators may have committed. There is also doubt as to whether the Gaza-Jericho Agreement permits prosecution of the act of collaboration.

The PA insists that the prosecutor general is investigating collaboration cases according to Palestinian law. When asked what charges they may face, Justice Minister Freih Abu Medein alluded in a June 23 interview with Human Rights Watch to the provision of the Palestinian penal code regarding high treason. But that statute, Article 49, cannot be reasonably applied to acts of collaboration with the Israeli authorities. It states, in part:

1. Anyone who wages war against his Majesty the King with the aim of intimidating or terrorizing the High Commissioner will be deemed to have committed treason punishable by death.
2. Anyone who conspires with another person who is in Palestine or abroad to rise up in rebellion against his Majesty the King, with the intent of causing an act of rebellion that would be considered high treason if committed by a subject of his Majesty, will be deemed to have committed treason punishable by death.

In order to define an offense of collaboration with Israel, revisions in the law are required. But here, the hands of the PA are tied. First, as described below on page 35, the Gaza-Jericho Agreement makes the PA's power to make or revise laws subject to Israeli review, and such efforts must comport with the provisions of the Agreement. Article XX(4) of the Agreement states:

[T]he Palestinian side commits itself to solving the problem of those Palestinians who were in contact

---

<sup>44</sup> Jon Immanuel, "Collaborators' Families Warned against Revenge," *Jerusalem Post*, June 14, 1994. On June 22, 1994, Hamas activist Nasr Sallouha of Gaza City was slain allegedly in retaliation by the survivors of a suspected collaborator who had been murdered by Hamas activists during the intifada. Three suspects in Sallouha's killing are currently being held in pre-trial detention.

<sup>45</sup> Cited in monthly press releases issued by B'Tselem providing statistics on casualties of political violence.

<sup>46</sup> *Haaretz*, April 24, 1994, as reported in FBIS, April 25, 1994.

with the Israeli authorities. Until an agreed solution is found, the Palestinian side undertakes not to prosecute these Palestinians or to harm them in any way.

If the PA were eventually to enact statutes that criminalize the act of collaborating with Israel, customary international law would prohibit prosecution for offenses committed prior to that enactment.<sup>47</sup> The PA would therefore violate customary law if it were to prosecute on collaboration charges those it was currently holding. Of course, if the evidence warrants, they could be charged with violations of existing statutes, such as assault or attempted murder, that were committed in the course of collaborating.

In sum, complex legal and political problems confront the PA in its handling of persons who collaborate with the Israeli authorities.<sup>48</sup> But this cannot excuse holding suspected collaborators in prison for months without charging them or bringing them to trial, and without divulging the laws that apply to their detention. Under these circumstances, the basic rights of these detainees are being violated. If the PA persists in detaining suspected collaborators, it must provide a public accounting of:

- the legal basis on which suspected collaborators are being held;
- how long they may be legally held without charge or trial;
- the legal procedures for prolonging their detention; and
- the laws and regulations applicable to their rights while in detention.

### **Restrictions on Expression, Assembly, and Association**

The Gaza-Jericho Agreement provides in Article 12 that "Israel and the Palestinian Authority shall seek to ... abstain from incitement, including hostile propaganda, against each other and, without derogating from the principle of freedom of expression, shall take legal measures to prevent such incitement by any organizations, groups or individuals within their jurisdiction."

The PA has, to the best of our knowledge, never invoked Article 12 to justify repressive measures. But it has taken a number of ominous steps to restrict freedom of expression. These include the closure of *an-Nahar* (The Day) daily in July until it adopted a more pro-PLO line, a directive in September forbidding unauthorized political gatherings in Gaza's main meeting halls, and impeding the distribution of newspapers in Gaza during one week at the end of November.

These measures, however inexcusable, do not amount to a systematic campaign by the PA to suppress the diverse and active political life in the self-rule areas. Political organizations hold meetings and rallies, local human rights organizations document and publicize abuses by the PA, and criticism of the PA is heard from a variety of quarters. Although the PA forced *an-Nahar* to shut down for five weeks, new independent newspapers have sprung up. In September, a permit was granted to Imad Faluji, a senior Hamas activist in Gaza, to start a newspaper called *al-Watan* (The Homeland). Its first issue appeared in early December, carrying several articles critical of the PA and Oslo accord. The Islamic Jihad organization publishes a weekly called *al-Istiqlal* (Independence). The PA also gave a permit to Taher Shriteh, a correspondent for the Reuter news agency and other foreign media, to launch a daily called *Filastin* (Palestine). The paper began publishing, initially in a weekly edition, in late September, but has since stopped appearing, apparently for financial reasons.

---

<sup>47</sup> Retroactive punishment is forbidden by the International Covenant on Civil and Political Rights (Article 15(1)): "No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed." This article is viewed as expressing a norm of customary international law, according to Professor Theodor Meron in his *Human Rights and Humanitarian Norms as Customary Law* (Oxford: Clarendon Press, 1989), p. 96.

<sup>48</sup> Another issue is the fate of the village of Dhaniya in the southern Gaza Strip, into which Israel has moved collaborators for their safety. According to the Gaza-Jericho Agreement, Dhaniya will remain under direct Israeli military protection "pending a declaration of a general amnesty for the residents of the village, and provision having been made for their protection" (Annex I, Article IV, parag. 6). See Youssef M. Ibrahim, "On Edge of Gaza, A Haven for Israel's Informers," *The New York Times*, June 7, 1994.

Although Shriteh received a publication license, he has come under pressure to limit what he reports to the foreign media. Shriteh told Human Rights Watch that he had been asked not to report on statements issued by opposition movements without first showing them to the authorities. Officials in the security forces have also phoned him to request that he refrain from reporting on certain developments, Shriteh said. These included the outbreak of cholera in Gaza at the beginning of November, a development that the PA had originally attempted to deny.<sup>49</sup>

Shriteh was also arrested three times by the PA in October and held without charge in Gaza Central Prison. He was first detained on October 13, along with three colleagues<sup>50</sup> from the Reuter bureau in Gaza, after Reuter had obtained a videocassette prepared by the captors of Israeli soldier Nachshon Waxman. Shriteh said after his own release that he had been questioned about how Reuter had obtained the videocassette, but was not harshly treated. Shriteh was detained twice more before the end of October, again neither physically or verbally abused. "I was not interrogated," he told Human Rights Watch. "I just sat in an office. They didn't know what to do with me."

\*\*\*

The week-long interference with newspaper distribution in Gaza from November 28 through December 2 was particularly disturbing because of the refusal of the PA even to confirm that it was behind the daily blockage. The problem began early in the morning of November 28, when trucks delivering the day's papers from Jerusalem, where they are printed, were stopped by Palestinian police upon reaching the Gaza Strip. Authorities did not allow the papers to be distributed until the early afternoon. The following morning, *al-Quds* reported it had received a phone call from Ghazi Jabali, the Director-General of Police in Gaza. Commander Jabali, the paper said, had demanded that its coverage of a Hamas rally in Gaza put the number of participants at 5,000, which would have made it smaller than a rally organized by Chairman Arafat earlier in the week.<sup>51</sup> *Al-Quds* claimed that the reporting of higher attendance figures for the Hamas rally had angered Commander Jabali and led to the harassment. The pattern of interference was repeated each morning through December 2, affecting the two Palestinian dailies, *al-Quds* and *an-Nahar*, the English-language daily *Jerusalem Post*, and the Palestinian weekly *al-Manar* (the Lighthouse).

---

<sup>49</sup> See "Cholera Epidemic," *Palestine Report*, November 13, 1994.

<sup>50</sup> Two of those arrested with Shriteh, Shamseddin Odeh and Ahmed Jadallah, were among three Palestinian journalists who were wounded by gunfire during the clashes between police and demonstrators in Gaza City on November 18. The third casualty was an Associated Press photographer.

<sup>51</sup> *Al-Quds*, November 29, 1994, as reported in FBIS, November 30, 1994.

The PA failed to take full responsibility for what was in effect a five-day-long police operation against the press, much less to provide a legal basis for it. While accusing the newspapers of inflating attendance figures at the Hamas rally,<sup>52</sup> Commander Jabali repeatedly denied responsibility for interference with their circulation. "The newspapers have not been banned or confiscated at all," he said on Israeli television. "There is no decision to ban or impound newspapers. All that happened was that the newspapers' arrival to the distributors was delayed."<sup>53</sup> The only affirmation of official responsibility came from Minister of Culture and Information Yasir Abed Rabbo, who, contradicting the police chief, said "a decision by the authority at the highest level" was responsible for the delay.<sup>54</sup> No further details were forthcoming.

The PA was more open in acknowledging responsibility for the closure of *an-Nahar* daily in July. However, the pretext it provided for the closure could not disguise what was clearly an act of political censorship. In tone and content, *an-Nahar* had been displaying less enthusiasm toward the PLO, and more toward King Hussein, than *al-Quds*, the other Arabic-language daily serving the occupied territories.

On July 28, PA chairman Yasir Arafat ordered the confiscation of issues of *an-Nahar* reaching the Gaza Strip from Jerusalem, and effectively forced editor-in-chief Othman Hallaq to close down the paper. Employees at the paper reportedly said that they had also been warned not to distribute it in the West Bank or Jerusalem.

The pretext provided by the PA was that *an-Nahar's* license had expired. Arafat told the press that *an-Nahar* had refused to apply to the PA for a license, thereby showing its "rejection of the establishment of a Palestinian state," which was unacceptable.<sup>55</sup> But neither Arafat nor other officials furnished the legal basis for the PA's licensing requirement for newspaper distribution.<sup>56</sup> Israeli authorities require all Jerusalem-based Palestinian publications to obtain a valid license to publish and another to distribute in the occupied territories. But as for PA-issued licenses, *al-Quds* editor Mahmud Abu Zouluf commented, "We don't have a license and nor does anyone else. I know nothing about registration."<sup>57</sup>

The closure of *an-Nahar* was widely interpreted as punishment for the paper's favorable coverage of King Hussein's Washington summit with Prime Minister Rabin, at which Israel invited the King to assume custodial responsibilities over Muslim holy sites in Jerusalem. A statement issued by the PA on the day of the ban accused *an-Nahar* of advocating "a line that contradicts the national interests of the Palestinian people." The pro-Jordanian weekly, *Akhbar al-Balad*, was banned at the same time. *An-Nahar* did not resume publication until September 5, following meetings between Chairman Arafat and editor Hallaq. Since reappearing, the paper's tone has been distinctly less pro-Jordanian.

During the absence of *an-Nahar*, the consequences of having only one daily to serve the Palestinian community became quickly apparent. The remaining paper, the pro-PLO *al-Quds*, withheld a number of articles and blacklisted one well-known writer for apparently political reasons. Daoud Kuttab, who had been contributing articles on a freelance

---

<sup>52</sup> Agence France-Presse in English, November 29, 1994, as reported in FBIS, November 30, 1994.

<sup>53</sup> Jerusalem New Channel Two Television Network in Hebrew, December 1, 1994, as reported in FBIS, December 5, 1994.

<sup>54</sup> Joel Greenberg, "Palestinian Authority Holds Up Delivery of Newspapers in Gaza," *The New York Times*, December 1, 1994.

<sup>55</sup> Interview in *ash-Sharq al-Awsat*, August 3, 1994, as reported in *MidEast Mirror*, August 3, 1994.

<sup>56</sup> In fact, the Gaza-Jericho Agreement transfers from Israel to the PA the authority to license newspapers and publications in the self-rule areas (Annex II, Article II, b.1). But the PA did not announce if or how it intended to put this new authority into practice.

<sup>57</sup> *MidEast Mirror*, August 1, 1994.

basis to *al-Quds*, was informed on August 2 that he could no longer publish in the daily after he had organized a protest by journalists over the banning of *an-Nahar*. Publisher Abu Zouluf reportedly explained that Kuttab had shown more allegiance to *an-Nahar* than he had shown toward *al-Quds* when the latter had been suspended by the Israeli authorities. Abu Zouluf claimed that the decision was his own and had not been suggested to him by political authorities.<sup>58</sup> Kuttab told HRW on January 11 that *al-Quds* continued to refuse to publish his articles.

---

<sup>58</sup> *MidEast Mirror*, August 3, 1994.

During August, *al-Quds* also refused to publish an article on press freedom that the human rights organization al-Haq had prepared to run in a weekly human rights column. Al-Haq had overseen the column in *al-Quds* since 1993. The editors initially requested a postponement "due to the sensitivity of the subject," and then informed al-Haq that the article had been rejected.<sup>59</sup> *Al-Quds* also declined to publish the results of a public opinion poll conducted by the Center for Palestine Research and Studies (CPRS) in Nablus. The August poll surveyed Palestinian views of the latest appointments by the PA to municipal posts, the closure of *an-Nahar*, and other sensitive issues. In the past, *al-Quds* had usually published the findings of the respected CPRS monthly polls in their entirety.<sup>60</sup>

A radio station run by the PA, the Voice of Palestine, began broadcasting from Jericho in July. There has also been limited television broadcasting within the Gaza Strip. Both show indications of heavy control over political content, despite a few lively programs, such as radio call-in shows.

Radwan Abu Ayyash, head of the Palestinian Broadcasting Authority, said in December that the authority was hoping to begin regular broadcasting throughout the West Bank and Gaza Strip in March 1995.<sup>61</sup> A major test of the PA's commitment to free expression will come when the Broadcasting Authority, whose officials were appointed by the PLO, launches full-time television programming. A commitment to provide reasonable and consistent access to independent and opposition political views—especially as Palestinians prepare for elections—will signal a welcome change from the norm among state broadcasting authorities in the Middle East.

### **Restricting Gatherings**

On September 9, Gaza Police Director-General Ghazi Jabali issued two directives designed to control political activity. In Human Rights Watch's view, these directives, whether based on local laws or not, violate the right to freedom of assembly and should be repealed or revised.

The first directive barred the management of Gaza's four main meeting halls from allowing political meetings, "regardless of their orientation or aim," without obtaining a permit in advance from the police. The police chief's one-sentence directive referred to "the legal articles regulating gatherings," but did not specify those articles. (Al-Haq later noted that, in fact, Police Ordinance No. 17 of 1926 empowers the Police Director-General to require a permit prior to the holding of a political meeting.<sup>62</sup>)

The directive—and a large contingent of policemen who ringed the building—prevented the Democratic Front for the Liberation of Palestine from holding the regional conference it had planned for that day at the YMCA. The DFLP, a PLO faction that opposes the peace accords, relocated its meeting to a hall in Khan Yunis, where it was allowed to proceed without further interference.

Also on September 9, Commander Jabali issued a directive to all bus operators in the self-rule areas. The directive, which also cited no legal basis, read, in full:

Effective this date, you are forbidden from transporting any groups of any political persuasion and for whatever purpose without prior written permission from the Director-General of Police.

---

<sup>59</sup> Al-Haq, press release, September 2, 1994.

<sup>60</sup> Center for Palestine Research and Studies, press release, August 27, 1994.

<sup>61</sup> Jericho Voice of Palestine in Arabic, December 3, 1994, as reported in FBIS, December 5, 1994.

<sup>62</sup> See al-Haq, press release, October 6, 1994.

### Handling demonstrations

The confrontations in the streets of Gaza City on November 18 sent shock waves throughout the Palestinian community. They were the first violent clashes between demonstrators and Palestinian security forces. At least thirteen civilians were killed, and more than one hundred were reported wounded. Demonstrators inflicted extensive damage to property. Until that date, demonstrations in the self-rule areas had been allowed to run their course without attempts to quell them using lethal means.<sup>63</sup>

Human Rights Watch did not conduct its own investigation into the events of November 18. Some observers charged that security forces had planned that day's confrontation with Hamas supporters, who had intended to march, following prayers, from the Palestine Mosque to the home of the family of Hisham Hamad, the militant who had carried out a suicide attack on an Israeli police post one week earlier. Officials of the PA countered that the clashes were the premeditated deeds of unspecified outside forces, and charged that the first shots had been fired at the police from the crowd. They also claimed, without divulging the evidence, that forensic tests showed that some of the victims had been shot with types of ordnance that were not used by the Palestinian security forces.<sup>64</sup>

No matter what triggered the violence, it is clear that over the course of the next few hours, the police used excessive force against unarmed demonstrators. As al-Haq reported, on the basis of its initial investigations, "The police opened fire into the gathered crowd indiscriminately. The police chose from the outset to use lethal force without attempting first to use less violent and dangerous methods of riot control which are internationally known and accepted." Al-Haq noted that a local directive issued by security officials in 1963 concerning police open-fire rules stressed that the force employed to control disturbances should be both necessary and proportional with respect to the threat posed.<sup>65</sup>

Chairman Arafat appointed a commission to investigate the events of November 18. The Commission, headed by a senior civil court judge, has begun hearing the testimony of witnesses. It has promised to make its findings public.

Both before and after the events of November 18, a large number of demonstrations and rallies have taken place, in stadiums and on the streets, with only occasional police interference. Many of the events were organized by Islamist and nationalist groups and factions opposed to the current peace process. Their rallies have, since mid-October, taken on a stronger anti-PA, anti-Arafat tone than previously. For example, several thousand Gazans rallied angrily on October 15, 16 and 17 outside Gaza Central Prison, to protest the mass arrest of Hamas activists. The police handled the demonstrations with restraint, and no serious injuries were reported.

---

<sup>63</sup> However, on August 20, security forces shot and killed fifteen-year-old Salah Salaam ash-Sha'ir in Rafah after they reportedly scuffled following a wedding celebration. The incident prompted clashes with police the next day in which six persons were reportedly wounded. Palestinian police officials promised a full investigation (see Caryle Murphy, "Shooting, 'Death Threats' Leave Palestinians Uneasy, *Washington Post*, August 22, 1994). Requests from al-Haq to learn the findings of any official investigation into the case were still unanswered by the end of 1994.

<sup>64</sup> Clyde Haberman, "Arafat's Forces Arrange a Truce with Militants, *The New York Times*, November 20, 1994; and "Arafat Warns He Means to Wield Control in Gaza," *The New York Times*, November 22, 1994.

<sup>65</sup> Al-Haq, press release number 80, November 19, 1994. The police directive is entitled *Decision of the Director of the Interior and Public Security Related to the Methods To Be Used in All Situations Before Issuing Warnings and Shooting*, promulgated on October 22, 1963.

## THE LEGAL OBLIGATIONS OF THE ISRAELI AUTHORITIES

The continuing humanitarian obligations of the Israeli military government toward Palestinians in the self-rule areas derive from its still-significant control over the daily lives of the population. Israel retains authority in all spheres that have not been explicitly transferred to the PA. Its armed troops in the Gaza Strip continue to come into daily contact with Gazans. It maintains direct control over wide swaths of the Gaza Strip that are excluded from the self-rule areas. And it exercises control over Palestinians' freedom of movement, economic life, and access to resources.

As an occupying power, Israel is required to balance its security needs against an obligation to maintain the public life and general welfare of the occupied population. Prior to the transfer of authority to the PA, Israel's Supreme Court, sitting as the High Court of Justice, affirmed this obligation on several occasions. In a 1972 case it expressed the general principle:

The occupant is entitled to impose its authority on the population of the territory...But alongside the right of the occupant is its duty to be concerned with the welfare of the population.

Israel remains bound by this duty to the extent that Israel remains an occupying power within the meaning of humanitarian conventions. As the Gaza-Jericho Agreement and statements by Israeli officials make clear, only limited authority has been transferred to the PA. The Israeli military government continues to maintain ultimate authority over the self-rule areas. The Agreement states, in Article V, parag. 3.b:

Israel shall exercise its authority through its military government, which for that end, shall continue to have the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law....

Article XXIII, parag. 7 makes clear that the legal status of the self-rule areas is unchanged:

The Gaza Strip and the Jericho Area shall continue to be an integral part of the West Bank and the Gaza Strip, and their status shall not be changed for the period of this Agreement. Nothing in this Agreement shall be considered to change this status.

In early 1994, Joel Singer, legal advisor to the Israeli Foreign Ministry and senior legal negotiator in the talks with the Palestinians, minced no words in describing Israel's continuing authority over the self-rule areas:

The dissolution of the Israeli Civil Administration will have no impact on the status of the West Bank and Gaza Strip. The Civil Administration was created in the early 1980s as an organ of the Israeli military government in order to discharge the powers and responsibilities of the military government in civilian matters. It should be noted that prior to the establishment of the Civil Administration, the military government itself had been performing both civilian and non-civilian functions. Thus, with the dissolution of the Civil Administration, the military government will simply resume all the powers and responsibilities of the Civil Administration not transferred to the Palestinian Council. In this context, the fact that the military government in the West Bank and Gaza Strip will continue to exist is very significant. It emphasizes that, notwithstanding the transfer of a large portion of the powers and responsibilities currently exercised by Israel to Palestinian hands, the status of the West Bank and Gaza Strip will not be changed during the interim period. These areas will continue to be subject to military government. Similarly, this fact suggests that the Palestinian Council will not be independent or sovereign in nature, but rather will be legally subordinate to the authority of the military government. In other words, operating within Israel, the military government will continue to be the source of authority for the Palestinian Council and the powers and responsibilities exercised by it in

the West Bank and Gaza Strip.<sup>66</sup>

Complex issues of international law are raised by the unusual interim self-rule arrangements. However, the IV Geneva Convention makes clear that the implementation of interim arrangements between the occupying power and elements or representatives of the occupied population do not automatically signal an end to the occupation, and above all, that such arrangements cannot diminish the rights of protected persons under the Convention. The intent is clear: protected persons must not be left in legal limbo during a transitional period.

As for determining when an occupation is over, humanitarian law provides only general guidance. Article 42 of the Hague Regulations states:

Territory is considered occupied when it is actually placed (*se trouve placé de fait*) under the authority of the hostile army. The occupation applies only to the territory where such authority is established, and in a position to assert itself.

It is evident that, following implementation of the interim self-rule arrangements, Jericho and the Gaza Strip are "under the authority of the hostile army" to a lesser extent than they were previously.<sup>67</sup> Article 6 of the IV Geneva Convention, building on the definition of occupation in the Hague Regulations, states that obligations of the Occupying Power shall continue "for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory..."<sup>68</sup> The authoritative commentary to Article 6 of the Convention argues that these obligations remain intact during circumstances that are transitional and possibly ambiguous:

[T]he word "occupation," as used in the Article, has a wider meaning than it has in Article 42 of the [Hague] Regulations....So far as individuals are concerned, the application of the Fourth Geneva Convention does not depend upon the existence of a state of occupation within the meaning of the Article 42 referred to above....

Article 6 does not say when the Convention will cease to apply in cases of occupation where there has been no military resistance, no state of war and no armed conflict. This omission appears to be deliberate and must be taken to mean that the Convention will be fully applicable in such cases, so long as the occupation lasts. The Convention could only cease to apply as the result of a political act, such as the annexation of the territory or its incorporation in a federation, and then only if the political act in question had been recognized and accepted by the community of States; if it were not so recognized and accepted, the provisions of the Convention must continue to be applied.<sup>69</sup>

---

<sup>66</sup> Joel Singer, "The Declaration of Principles on Interim Self-Government Arrangements," *Justice* (published by the International Association of Jewish Lawyers and Jurists) 4, February 1994, p. 6.

<sup>67</sup> For an analysis of the meaning of "under the authority of the hostile army," see Eyal Benvenisti's paper, "The Present Status of the Palestinian Authority." Benvenisti argues: "What matters is the extent of that power's effective control of civilian life *within* the occupied area." He concludes, "Israel does not control civil life in the Gaza Strip and Jericho Area. These areas are therefore not "occupied" in the sense of the international law of occupation." Human Rights Watch's position, as set forth in this report, differs somewhat with this finding.

<sup>68</sup> This obligation pertains to articles 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, the 61 to 77, and 143 of the Convention.

<sup>69</sup> Jean S. Pictet, ed., *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 60, 63.

When new political arrangements are established in a land under occupation, these do not annul or alter the protections provided by the Convention, so long as those arrangements fall short of a cessation of occupation, as made clear by Article 47.<sup>70</sup> The relations between Israel and the PA clearly fit this description: they constitute an interim arrangement resulting from an armed conflict whose outcome has not yet been fully and definitively settled.

Neither Israel, the Palestinians, nor any governments, acting singly or in concert at the United Nations have challenged this view. To our knowledge, none has made any statement to the effect that Israel's occupation has ended in the self-rule areas. The ICRC has announced no change in its position that Israel is the occupying power in the Gaza Strip and West Bank, although the organization has reached agreements with the Palestinian authorities to conduct activities in the self-rule areas. As for the U.S., the State Department has made no statement indicating a modification of its position that the West Bank and the Gaza Strip are under Israeli occupation and are governed by the Hague Regulations and the IV Geneva Convention.

As stated above, the extent of Israel's continuing humanitarian obligations stem from the significant control over the self-rule areas it retains under the agreements reached so far. The three chief areas of continuing Israeli control are summarized here, in order to convey its scope and nature:

- A military presence in the Gaza Strip;
- Continuing control over the lives of residents of the self-rule areas; and
- Restrictions on the powers ceded by Israeli military authorities to the PA.

**Israel's continuing military presence.** The Israeli military has not withdrawn fully from the Gaza Strip. Substantial numbers of troops remain at checkpoints on the roads, and at bases and posts near the borders and Jewish settlements. The Gaza-Jericho Agreement places no restrictions on the number of Israeli troops that may be stationed in the Gaza Strip. Nor does it expressly forbid them from entering the self-rule zones, which they have done on several occasions. These include a clash on January 2, 1995, in which Israeli soldiers fatally shot three Palestinian policemen, and an incident the following day, in which a group of Israeli soldiers from an undercover unit was discovered by Palestinian police near Khan Yunis. With regard to the latter incident, the IDF stated that the soldiers had been pursuing a suspicious car in connection with the reported kidnapping of an Israeli soldier. The kidnapping report turned out to be untrue. The soldiers were escorted out of the area by the Palestinian police.

At their posts and during patrols, Israeli troops inside and along the borders of the Gaza Strip continue to come into contact with Palestinians. They are authorized, in certain circumstances, to open fire or to take Palestinians into custody. Although less frequently than before their redeployment, Israeli troops in the Gaza Strip continue to be involved in the kinds of incidents, such as clashes with stone-throwers, that gave rise to grave human rights violations during the intifada. To date, the gravest clash with civilians was the one that occurred at the Erez checkpoint on July 17, in which two Palestinians were killed and scores wounded. One Israeli soldier was also mortally wounded in the clashes. More recently, on December 22, Israeli troops fired at and wounded two unarmed fishermen in a small boat off the northern Gaza coast.<sup>71</sup>

The Gaza-Jericho Agreement sets forth rules of engagement for both Israeli and Palestinian security forces. The rules state that, when confronted with acts committed by civilians or others that threaten life or property, security force

---

<sup>70</sup> Article 47 states: "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory."

The authoritative commentary to Article 47 states, "The text in question is of an essentially humanitarian character.... The main point, according to the Convention, is that changes made in the internal organization of the State must not lead to protected persons being deprived of the rights and safeguards provided for them. Consequently it must be possible for the Convention to be applied to them in its entirety, even if the Occupying Power has introduced changes in the institutions or government of the occupied territory" (p.274).

<sup>71</sup> Earlier examples of Israeli incursions into the self-rule areas are cited in the June-July 1994 report of the Gaza Center for Rights and Law.

members may respond in a fashion aimed at preventing or terminating such an act, or apprehending its perpetrators (Annex I, Article VIII, parag. 9.a). Opening fire is restricted to certain situations:

Engagement with the use of firearms shall not be allowed, except as a last resort after all attempts at controlling the act or the incident such as warning the perpetrator or shooting in the air have failed. Use of firearms should be aimed at deterring and not at killing the perpetrator. The use of firearms shall cease once the danger is past (Annex I, Article VIII, parag. 9.c).

It is disturbing that the Gaza-Jericho Agreement defines the permissible use of guns in a way that does not restrict lethal fire to situations where it is the only means available to avert an imminent threat to life. The Agreement stresses that firearms are to be used "as a last resort," but permits opening fire when confronting threats not just to life but to property of unspecified value, and seems to permit opening fire as a means of apprehending perpetrators whether or not they continue to pose a mortal threat. Thus, the agreement deviates from the dual principles of proportionality and necessity, which Human Rights Watch considers the relevant international norms governing the use of firearms by law enforcement officers.<sup>72</sup>

The Gaza-Jericho Agreement divides the Gaza Strip and Jericho Area into three types of areas in terms of the extent of Israeli authority. In no area has Israel fully relinquished its authority over security matters. Even in the self-rule areas, where the PA has assumed primary responsibility for internal security, Israel retains secondary responsibility with regard to offenses committed against Israel or Israelis.<sup>73</sup> In the other two types of areas, which account for thirty-five to forty percent of the Gaza Strip's 365 square kilometers,<sup>74</sup> Israel exercises either direct control or overriding security responsibility:

*Zones in which Israel exercises overriding security responsibility:* In zones adjoining settlements, the Israeli army exercises "overriding responsibility and powers for security," while civil affairs fall under PA jurisdiction.<sup>75</sup> Similarly, along three east-west roads connecting settlements to Israel, the army retains "all necessary responsibilities and powers in order to conduct independent security activity," even though these are officially under Palestinian jurisdiction (Annex I, Article IV, parag. 7). Israeli soldiers are authorized to respond to threats to life or property in these zones, but are to turn over, at the earliest opportunity, further handling of such incidents to the Palestinian Police.

---

<sup>72</sup> The 1979 U.N. Code of Conduct for Law Enforcement Officials, the leading codification of these norms, provides, in Article 3: "Law enforcement officials may use force only when strictly necessary to the extent required for the performance of their duty." The official commentary to the Code elaborates: "The use of firearms is considered an extreme measure....In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender." See discussion in Middle East Watch, *The Israeli Army and the Intifada: Policies That Contribute to Killings* (New York: Human Rights Watch, 1990), pp. 10-15.

<sup>73</sup> Annex III, Article I, parag. 7 states: "Nothing in this Article shall derogate from Israel's criminal jurisdiction in accordance with its domestic laws over offenses committed outside Israel (including in the Territory) against Israel or an Israeli with due regard to the principle that no person can be tried twice for the same offense. The exercise of such jurisdiction shall be subject to the provisions of this Annex and without prejudice to the criminal jurisdiction of the Palestinian authority."

<sup>74</sup> The figure of "thirty-five to forty percent" was given by an Israeli "senior military officer" cited in the *Jerusalem Post International Edition*, May 14, 1994.

<sup>75</sup> Annex I, Article IV, parag. 4.a. For example, the Muwasi agricultural area near the Gush Katif settlements, and the several thousand Palestinians who live there, remain under Israeli authority for security purposes and under Palestinian authority for other matters.

*Zones in which Israel exercises direct control:* Israel exercises direct control over a "military installation area" on the Egyptian border and over Jewish settlements, as delineated in a map attached to the Agreement (Annex I, Article IV, parags. 3 and 6). Settlers, settlements, and settler-related resources are excluded from PA jurisdiction. In the areas under direct Israeli control, Israel maintains criminal jurisdiction. Thus, in addition to being authorized to respond to acts threatening life or property, Israeli soldiers in these areas may arrest and then hold in custody Palestinians suspected of having committed offenses against Israel or Israelis.<sup>76</sup>

The Gaza-Jericho Agreement gives the PA no parallel powers to detain Israelis: "Israelis shall under no circumstances be apprehended, arrested or placed in custody or prison by Palestinian authorities." Palestinians can, at most, hold an Israeli suspect in place until the arrival of a Joint Patrol unit or other Israeli representative. Uniformed members of the Israeli military forces cannot be stopped by Palestinian police under any circumstances (Annex I, Article VIII, parags. 4 and 6).

The Gaza-Jericho Agreement maintains Israeli control over resources used by Jewish settlers, and thus perpetuates inequities between settlers and Palestinians that are the result of the discriminatory policies of successive Israeli governments. In violation of the IV Geneva Convention,<sup>77</sup> successive Israeli governments have aided the settlement of its own citizens in the occupied territories. They have furnished settlers with land, development subsidies, infrastructural improvements and other benefits that have not been made equally available to Palestinians. Today, between 4,000 and 5,000 settlers—half of one percent of the total population of the Gaza Strip—occupy over ten percent of the Strip's land. An even larger amount of Israeli-controlled land surrounding the settlements is off-limits to Palestinians. Thus, the Strip's population density of more than 2,200 per square kilometer, which already exceeds that of nearly all countries of the world, becomes even higher when Jewish settlement areas are excluded from the calculation.

Settlers also strain Gaza's dwindling water supply. Although the issue of access to natural resources lies beyond the scope of this report, it is worth noting that at a time when Gaza's poor water quality is deteriorating due to overconsumption, pollution, salt infiltration and other factors, settlers use water at a far higher average per capita rate than do Palestinians.<sup>78</sup> Under the Gaza-Jericho Agreement, the water serving Israeli settlements and military installation areas is exempted from the transfer to the PA of control over existing water systems (Annex I, Article II, parag. 31.b).

**Israel's continuing control over the lives of residents of the self-rule areas.** The authority of the Israeli military over the self-rule areas includes powers in the realm of security and law-and-order that underscore Israel's continuing role as an occupying power. Israel's coercive powers are evident in the following practices, which are examined in greater detail below:

---

<sup>76</sup> Under such circumstances, an Israeli-Palestinian Legal Committee is to determine the forum for prosecution (Annex III, Article I, parag. 2).

<sup>77</sup> Article 49 states, in part, "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." The International Committee of the Red Cross, generally considered to be the guardian of the Geneva Conventions, contends that the implantation of settlements in the occupied territories, "carried out with the Israeli authorities' support, constitutes a violation of the Fourth Convention, in particular Articles 27, 47 and 49. *Annual Report 1983* (Geneva: ICRC, 1984), p. 67.

<sup>78</sup> See David Kahan, *Agriculture and Water Resources in the West Bank and Gaza (1967-1987)* (Boulder, Colorado: Westview Press, 1987), and Sara Roy, *The Gaza Strip: The Political Economy of De-Development* (Washington, D.C.: Institute of Palestine Studies, in press).

*Restrictions on Palestinians' right to travel:* Israel continues to control all points of passage into and out of the Gaza Strip and Jericho Area, thus determining when and which residents of these areas may travel, not only into Israel and abroad, but across Israel to reach other parts of the occupied territories, including East Jerusalem. Israel continues to have veto power over who may enter the Gaza Strip and Jericho Area from Egypt and Jordan respectively, and who may receive residency status in these areas.<sup>79</sup> Palestinians who need Israeli approval to return to the West Bank or Gaza Strip include suspected activists deported by Israel; residents who were stripped by Israel of their status as permanent residents while living abroad,<sup>80</sup> and Palestinians in exile who now wish to reside in the West Bank or Gaza Strip.<sup>81</sup>

For Gazans, the issue goes well beyond enjoyment of their right to travel. It involves their ability to reach the jobs inside Israel on which so many of them depend, and the many essential institutions found in the West Bank that are absent in the Gaza Strip. Because of the paucity of jobs inside the Gaza Strip—due in large part to Israeli policies that for years stymied economic development locally—access to jobs inside Israel remains critical to the welfare of the Gaza population.

*Holding of prisoners:* Israel continues to incarcerate inside its own borders over one thousand Palestinians from the self-rule areas, most of whom were arrested prior to the implementation of the Gaza-Jericho Agreement. If Israel's military occupation were indeed deemed to have ended in the self-rule areas, Israel would have been required by Article 77 of the IV Geneva Convention to turn over to the PA all remaining prisoners whom it had not freed.<sup>82</sup> This has not occurred.

The Israeli military court for the Gaza Strip continues to try Gazans at its new location just inside the northern border of the Gaza Strip. There, Gazans are being tried both for offenses allegedly committed before the Gaza-Jericho Agreement and for offenses committed after it. (In the latter category, the majority of cases involve charges of entering Israel without a valid permit—see the section on restrictions on movement, page 41.) Palestinians from the self-rule areas continue to be detained for interrogation as they pass through international border crossings and Ben Gurion airport. Several Gazans have been arrested while traveling to or from Egypt and taken to Ashkelon prison, where they were held under interrogation for several days or longer. Residents of the self-rule areas are in this respect subject to Israeli arrest and interrogation, as are all West Bank Palestinians.

---

<sup>79</sup> "The Palestinian Authority may grant permanent residency in the Gaza Strip and the Jericho Area *with the prior approval of Israel*" (Annex II, Article II, parag. 27.1 of the Gaza-Jericho Agreement). (Emphasis added.)

<sup>80</sup> For an overview of the regulations governing residency in the territories, see al-Haq, *The Right to Unite: The Family Reunification Question in the Palestinian Occupied Territories* (Ramallah: al-Haq, 1990), pp. 11-12.

<sup>81</sup> Annex 1, Article X, parag. 3.f of the Gaza-Jericho Agreement stipulates that at border crossings, both the Israeli and the Palestinian authorities are empowered to deny the entry of persons who are not residents of the Gaza Strip and West Bank. The Agreement defines "residents of the Gaza Strip and West Bank" as persons who, on the date of entry into force of the Agreement, "are registered as residents of these areas in the population registry maintained by the [Israeli] military government of the Gaza Strip and West Bank, as well as persons who have subsequently obtained permanent residency in these areas with the approval of Israel, as set out in this Agreement." When entry is granted to non-residents, the PA is obligated to ensure that they do not overstay the duration of their entry permits (Annex II, Article II, parag. 27.j).

<sup>82</sup> Article 77 states, "Protected persons who have been accused of offenses or convicted by the courts in occupied territory, shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory." It should be noted that Israel's incarceration of residents of the occupied territories inside Israel is a violation of Article 76 of the Convention, which states, in part, "Protected persons accused of offenses shall be detained in the occupied country, and if convicted they shall serve their sentences therein."

**Restrictions on the powers ceded by Israel to the PA.** The limited powers granted so far to the PA fall well short of those that characterize a sovereign government. For example, the PA's power to make laws, except in the spheres of authority explicitly granted to it,<sup>83</sup> is subject to Israeli review. Article VII, parag. 9 of the Gaza-Jericho Agreement states, "Laws and military orders in effect in the Gaza Strip or the Jericho Area prior to the signing of this agreement shall remain in force, unless amended or abrogated in accordance with this Agreement." Efforts by the PA to revise or replace existing legislation are subject to review by an Israeli-Palestinian committee, and must comport with the provisions of the Agreement. Israel can refer to the joint committee legislation that in its view exceeds the jurisdiction of the PA or otherwise violates the Agreement (Article VII, parags. 2 and 3). In security matters, Israel retains "the responsibility for defending against external threats ... as well as the responsibility for overall security of Israelis and Settlements, for the purpose of safeguarding their internal security and public order, and will have all the powers to take the steps necessary to meet this responsibility" (Article VIII, parag. 5).

### **Israel's Continuing Humanitarian Obligations toward Residents of the Self-Rule Areas**

The degree of control that Israel retains over both governance and daily life in the self-rule areas entails a continuation of Israel's humanitarian obligations toward the residents of these areas. These include specific provisions of the IV Geneva Convention, such as prohibitions on intentionally inflicting physical suffering (Article 32), imposing collective punishments (Article 33); deporting members of the protected population (Article 49) and incarcerating protected persons outside the occupied territories (Article 76).

More generally, humanitarian law requires an occupying power to weigh the measures it takes to ensure its own security against a general obligation to attend to the welfare of the local population under its control. This obligation derives from Article 43 of the Hague Regulations, which states that the occupier "shall take all steps in his power to re-establish and insure as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." Article 43 has been widely interpreted as imposing on the occupier obligations toward maintaining the general right to public life of the occupied population. Christopher Greenwood writes:

The phrase "public order and safety" is an inadequate translation of "*l'ordre et la vie publics*," the term used in the French text, which is the only authentic text of the Hague Regulations. A duty to restore "*l'ordre et la vie publics*" reaches far beyond the mere restoration of public order and extends to the conduct of "the whole social, commercial and economic life of the country."<sup>84</sup> The occupant is thus under a duty to prevent economic collapse as well as a breakdown of law and order. This duty probably extends to requiring the occupant to ensure that there is a functioning currency in the occupied territory and that essential services are maintained.<sup>85</sup>

That the obligations of the military government evolve in situations of long-term occupation has been recognized by Israel's Supreme Court. It held in a 1972 case, "A prolonged military occupation brings in its wake social, economic and commercial changes which oblige [the occupier] ... to adapt the law to the changing needs of the population."<sup>86</sup> In a 1982 case, Israel's Supreme Court weighed the obligation of a military government toward the

---

<sup>83</sup> Article VI(2) of the Declaration of Principles states, "Authority will be transferred to the Palestinians in the following spheres: education and culture, health, social welfare, direct taxation, and tourism....[T]he two parties may negotiate the transfer of additional powers and responsibilities, as agreed upon."

<sup>84</sup> *Grahame v. Director of Prosecutions* 14 Ann. Dig. 228 at 232. See also the decision of the Supreme Court of Israel in *A Cooperative Society Lawfully Registered in the Judea and Samaria Region v. Commander of the IDF Forces in the Judea and Samaria Region*, H CJ 393/82, summarized in *Israel Yearbook of Human Rights* 14 (1984), pp. 301-313. Cited in Greenwood, "The Administration of Occupied Territory in International Law," in *International Law and the Administration of Occupied Territories*, Emma Playfair, ed. (Oxford: Clarendon Press, 1992), p. 246.

<sup>85</sup> "The Administration of Occupied Territory in International Law," p. 246.

<sup>86</sup> *The Christian Society for the Holy Places vs. The Minister of Defense et al.*, H CJ 337/71, 1972, summarized in *Israel Yearbook of Human Rights* 2 (1972), pp. 354-355.

welfare of the population against its obligation to respect local laws. It found a strong obligation to maintain social welfare:

The authority of a military administration applies to taking all measures necessary to ensure growth, change and development. Consequently, a military administration is entitled to develop industry, commerce, agriculture, education, health, welfare, and like matters which usually concern a regular government, and which are required to ensure the changing needs of a population in a territory under belligerent occupation.<sup>87</sup>

Israel's responsibility for the economic well-being of Palestinians, in light of the dependency of their economy on that of Israel's, was underscored by Supreme Court President Meir Shamgar in a 1981 case:

The economy of the territories is connected by umbilical cord to that of Israel. A severing of the two economies would prevent the effective upholding of the responsibility to ensure public order. This dependent economy, which relies on the Israeli economy in many and varied ways, would suffer an immediate negative effect if an attempt were to be made to revert to the economic relations that existed prior to 1967. Any severing of the two economies — as long as Israel is in control of the territories — would be likely to have immediately destructive results on the economy of the territories and the welfare of their population.<sup>88</sup>

Justice Shamgar's reasoning remains germane to Israel's present obligations toward Gazans, whose economic welfare remains heavily dependent on jobs in Israel, and whose daily life depends on access to Jerusalem and the West Bank. Human Rights Watch is not advocating a permanent right to enter Israel or a right to a job, but rather, recognition of continuing Israeli obligations due to the unique features of this occupation: the division of the Palestinian community into two geographically separate entities; Israel's control over the land and sea frontiers of the self-rule areas; and a legacy of Israeli policies that have kept the economy of the occupied lands underdeveloped and highly dependent on the export of labor to Israel.<sup>89</sup>

## ISRAEL'S VIOLATION OF RIGHTS IN THE SELF-RULE AREAS

The implementation of the Gaza-Jericho Agreement, including the withdrawal of Israeli troops from population centers and the arrival of Palestinian security forces, has led to dramatic changes in the lives of Palestinians living in

---

<sup>87</sup> *A Cooperative Society Lawfully Registered in the Judea and Samaria Region v. Commander of the IDF Forces in the Judea and Samaria Region et al.*, HCJ 393/82, summarized in *Israel Yearbook of Human Rights* 14 (1984), p. 309. The court's reasoning has been criticized for allowing the military government discretion to alter existing legislation solely on the basis of its own determination of what measures serve the welfare of the local population. See e.g., Emma Playfair, "Legal Aspects of Israel's Occupation of the West Bank and Gaza: Theory and Practice," in *Occupation: Israel over Palestine*, Naseer H. Aruri, ed. (Belmont, Massachusetts: Association of Arab-American University Graduates, 1983), pp. 101-126.

<sup>88</sup> *Abu 'Itta et al. v. Commander of Judea and Samaria*, HCJ 69, 493/81, P.D. 37(2), p. 197. Cited in B'Tselem, *The Closure of the West Bank and Gaza Strip: Human Rights Violations against Residents of the Occupied Territories* (Jerusalem: B'Tselem, 1993), p. 6. The court's decision in this case was to favor the imposition of a value-added tax on residents of the occupied territories.

<sup>89</sup> On Israeli measures that stunted Palestinian economic growth during the years of occupation, see Sara Roy, *The Gaza Strip: The Political Economy of De-Development* (Washington, D.C.: Institute for Palestine Studies, in press); Jerusalem Media and Communication Centre, *Israeli Obstacles to Economic Development in the Occupied Palestinian Territories* (Jerusalem: JMCC, 1992); Al-Haq, *Protection Denied: Continuing Human Rights Violations in the Occupied Palestinian Territories* (Ramallah: al-Haq, 1991), chapter five: "Overview of Restrictions on Economic Development"; Samir Abdallah Saleh, "The Effects of Israeli Occupation on the Economy of the West Bank and Gaza Strip," in *Intifada: Palestine at the Crossroads*, Jamal R. Nassar and Roger Heacock, eds. (New York: Praeger, 1990), pp. 37-51; Simcha Bahiri, *Industrialization in the West Bank and Gaza* (Jerusalem: West Bank Data Base Project, 1987); Richard Toshiyuki Drury and Robert C. Winn, *Plowshares and Swords: The Economics of Occupation in the West Bank* (Boston: Beacon Press, 1992); Ze'ev Schiff and Ehud Ya'ari, *Intifada* (New York: Simon and Schuster, 1990), p. 91.

these areas. They have far less contact with Israeli soldiers in their daily lives. They are no longer under a nightly curfew. Demonstrations and rallies take place without violent police intervention. (The fatal clashes that took place on November 18 were, of course, a major exception.) Thousands of prisoners have been released and a number of deported activists have been permitted to return. Yet despite tangible and dramatic improvements in the human rights situation for Gazans that resulted from the redeployment of Israeli troops, Israeli policies continue to impact heavily on their basic rights.

### **Restrictions on Freedom of Movement**

The Gaza-Jericho Agreement puts all border crossings under either exclusive or shared Israeli control.<sup>90</sup> Israeli authorities determine who may enter Israel and annexed East Jerusalem, travel to a third country, or cross between the Gaza Strip and the West Bank.

In this regard, the main innovation of the Gaza-Jericho agreement is to add a new bureaucratic layer to the process, in the form of an office of the PA that serves as a conduit between Palestinian applicants and the Israeli authorities. Previously, applicants with an urgent need of a permit could sometimes locate a sympathetic Civil Administration employee willing to expedite a travel request or arrange for a review of a negative decision. Today, there is no longer direct contact between the person who applies to travel and a representative of the authority that decides on his or her request. This development diffuses accountability: the Israeli and Palestinian authorities have blamed one another when asked to explain long delays or the absence of a reply to permit applications (see below).

In the summer of 1994, the Association for Civil Rights in Israel (ACRI) appealed to the IDF liaison office for the Gaza Strip on behalf of a Gazan seeking to enter Israel. The IDF replied that the IDF could no longer respond to interventions regarding individuals residing in the self-rule areas, since the Agreement had in essence deprived them of standing as individuals vis-à-vis the Israeli authorities:

It was agreed that every request is to be presented only via the Palestinian Authority, which will represent the resident before the IDF, and that the Palestinian Authority will convey the answer that has been decided upon. Therefore, for this matter please refer your client to the Palestinian Authority in his area of residence in order to submit his application.<sup>91</sup>

When Israeli authorities reject an application for a permit or magnetic card (a prerequisite for Gazans seeking a permit; see below), they do not provide the reasons for the refusal. Nor do they provide the applicant with an in-person hearing or any venue for a substantive review of the decision. Applicants can submit a request for reconsideration, but they can hardly begin to argue their case effectively because they are denied information about the basis for the initial refusal. The procedure was outlined by Israel's Foreign Ministry:

A resident whose entry is denied may appeal to the Palestinian Authority. This appeal should also be transmitted to the Israeli authorities. Once the Palestinian Authority is informed by the Israeli authorities of their decision regarding the appeal, it must make it known directly to the applicant.<sup>92</sup>

If a Palestinian's application is refused on appeal, his or her final recourse is to file a petition with Israel's Supreme Court, sitting as the High Court of Justice. One of the functions of that Court is to hear petitions against administrative decisions taken by Israeli government agencies. Throughout the occupation, petitions filed by Palestinians against decisions taken on purported security grounds have rarely succeeded, since the Court has tended to defer to the military authorities unless it finds that they exceeded their authority in taking a certain measure. However, petitions, including on travel requests, have succeeded somewhat more frequently in another fashion: when faced with

---

<sup>90</sup>Travel via the sea is no exception: pursuant to the Agreement, Palestinian travel into and out of Gaza's coastal waters is not permitted (Annex I, Article XI, parag. 4.c).

<sup>91</sup> Letter from Tali Marcus of the office of the IDF Legal Advisor for the Gaza District to ACRI lawyer Tamar Pelleg, August 21, 1994.

<sup>92</sup> Letter from Yael Ronen, Department of Human Rights, Ministry of Foreign Affairs, to Human Rights Watch, September 12, 1994.

the prospect of responding in court to a petition, military authorities have sometimes cancelled or mitigated the administrative restrictions in question rather than allow them to undergo the Court's scrutiny.

The Israeli government has not indicated that it intends to deny residents of the self-rule areas recourse to the High Court of Justice. The Ministry of Foreign Affairs told Human Rights Watch, "Any individual may petition the Supreme Court of Justice. It is immaterial whether the petitioner is an Israeli citizen or not. Therefore there is nothing to bar residents of the areas governed by the Jericho-Gaza Agreement from submitting a petition to the Supreme Court of Justice."<sup>93</sup>

The right of persons to travel freely, enshrined in Article 12 of the International Covenant on Civil and Political Rights, encounters some restrictions under humanitarian law. An occupying power has the authority to restrict movement of protected persons if such restrictions are required by circumstances.<sup>94</sup> But, in the view of Human Rights Watch, the sweeping and indiscriminate manner in which Israel has restricted movement amounts to a violation of:

- *The right of Palestinians to leave and return to their place of residence*, as guaranteed by Article 12 of the ICCPR;

- *The humanitarian obligation of the occupying power to maintain the community life ("vie publique")* of the protected population (see page 36), by allowing Gazan and West Bank Palestinians, to the fullest extent possible, access to those resources that constitute elements of normal life: the institutions, facilities and persons that are part of their community and family life but, due to historical circumstances, are separated by Israeli territory and/or military checkpoints.

- *The humanitarian obligation toward the economic welfare of the population under occupation*, which suffers from a stunted economy inside the territories and constant interruptions in access to jobs inside Israel. While Israel is entitled to restrict entry at its borders in a manner consistent with international law, it has an obligation as the occupying power to ease the economic hardship caused by its restrictions on movement. At one point Israel created temporary jobs inside the occupied territories to cushion the economic blow caused by the closure of the territories, but halted such relief assistance after implementation of the Gaza-Jericho Agreement (see below). There is, in Human Rights Watch's view, no reason why such relief should be suspended merely because of the transfer of limited authority.

- *The prohibition of collective punishments*, as provided by Article 50 of the Hague Regulations and Article 33 of the IV Geneva Convention. Indiscriminate and prolonged bans on movement, when imposed in response to offenses committed by individual Palestinians (or Israelis), have constituted in many instances acts of collective punishment, applied in disregard of the occupier's obligation to weigh adequately its perceived security needs against the harm caused the local population. As a result of the sudden and unpredictable closures, Palestinians who count on being able to move about are unable to plan their immediate future with any confidence: a worker employed in Israel is unable to predict his income, a student from Gaza is unsure whether she will be able to complete her semester, and so forth.

### **Freedom of Movement: Background**

Between 1971 and 1989, Israel generally allowed West Bank and Gaza Palestinians to enter and traverse Israel and annexed East Jerusalem. But since 1989, restrictions on entry and passage have been tightened progressively, albeit

---

<sup>93</sup> Ibid.

<sup>94</sup> Article 27 of the IV Geneva Convention states, in part: "[T]he parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war."

The authoritative commentary to this passage states: "The right to personal liberty, and in particular, the right to move about freely, can naturally be made subject in war time to certain restrictions made necessary by circumstances. So far as the local population is concerned, the freedom of movement of civilians of enemy nationality may certainly be restricted, or even temporarily suppressed, if circumstances so require. That right is not, therefore, included among the other absolute rights laid down in the Convention, but that in no wise means that it is suspended in a general manner. Quite the contrary: the regulations concerning occupation and those concerning civilian aliens in the territory of a Party to the conflict are based on the idea of the personal freedom of civilians remaining in general unimpaired." (Jean S. Pictet, ed., *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 202.)

with many fluctuations. The restrictions have been enforced through a pass system, military checkpoints, raids on workplaces inside Israel, and the punishment of Palestinians discovered in Israel, the West Bank or the Gaza Strip without permission to be there.

The West Bank and the Gaza Strip constitute parts of a single community. For the many Gazans who rely on institutions and amenities in the West Bank, travel restrictions have severely disrupted day-to-day life. They are to varying degrees prevented from seeing relatives, conducting business, attending school, receiving medical care, and visiting religious shrines.

With its Arab population of 150,000, East Jerusalem is the preeminent Palestinian city, the one to which free access for residents of the occupied territories matters most. But East Jerusalem remains the area of the occupied territories to which access by Palestinians is most tightly restricted, since Israel unilaterally annexed this area in 1967 and considers it part of Israel. East Jerusalem is filled with institutions, services, and amenities that are vital to the life of the Palestinian community and that are not found elsewhere in the occupied territories, particularly in underserved Gaza.<sup>95</sup> These include specialized hospitals,<sup>96</sup> foreign consulates,<sup>97</sup> sophisticated financial and professional services, headquarters of local and international nongovernmental organizations, and several major Christian and Muslim holy sites.

---

<sup>95</sup> For background, see al-Haq, "Restriction of Access to and through East Jerusalem," *Al-Haq/Human Rights Focus*, April 4, 1991.

<sup>96</sup> To cite two examples, Jerusalem contains the only adult orthopedic hospital (Maqassid) and the only adult ophthalmic hospital (St. John's) in the occupied territories.

<sup>97</sup> Palestinians must travel to Tel Aviv or Jerusalem to apply for visas for third countries that require them. There are no foreign consulates or embassies in the self-rule areas with visa-granting services. The Gaza-Jericho Agreement, in Article VI, parag. 2. forbids the opening of foreign embassies or consulates in the self-rule areas.

On October 19, 1994 a strict closure was imposed on the occupied territories in response to the suicide bombing of a Tel Aviv bus filled with civilians, carried out by a West Bank Palestinian. This closure resembled several earlier border tightenings that had been imposed in response to lethal attacks by Palestinians on Israelis, or in anticipation of disturbances, such as following the massacre by an Israeli of Palestinians in Hebron on February 25, 1994.<sup>98</sup> As in the past, the restrictions were eased very gradually, beginning in November. With few exceptions, the only Palestinians initially allowed to enter Israel were a small number who were issued work permits. By December, the number of permits issued to workers had grown to 21,000 for Gazans and 22,000 for West Bankers. Other types of applicants, including students (see below), also began to get permits after a two-month freeze. But the easing of permit restrictions was abruptly halted, and a strict closure reimposed immediately after the bombing January 22 of a bus stop near Tel Aviv filled with soldiers, killing nineteen Israelis.

Invariably, the closures have kept thousands of workers from reaching their jobs for days, weeks or months. This despite the fact that since March 1993, when the Rabin government ordered an unprecedented indefinite closure of the territories, none of the attacks on Israelis committed inside Israel have been committed by Palestinians holding work permits, according to a defense establishment study cited by Prime Minister Rabin.<sup>99</sup> The study's finding reinforces the case that long-term closures of the territories constitute a form of collective punishment, harming tens of thousands of innocent persons accused of no wrongdoing.

The Gaza-Jericho Agreement preserved Israel's absolute control over who shall enter or cross Israeli territories:

Entry of residents of the Gaza Strip and the Jericho area to Israel shall be subject to Israeli laws and procedures regulating entry into Israel....The provisions of this Agreement shall [not] prejudice ... Israel's right, for security and safety considerations, to close the crossing points to Israel and to prohibit or limit the entry into Israel of residents and of vehicles from the Gaza Strip and the Jericho Area.<sup>100</sup>

To enter Israel (and thereby to reach the West Bank, including East Jerusalem), Gazan males between sixteen and fifty years of age must possess two documents, in addition to the standard Israeli-issued ID card: a valid "magnetic card" and an entry permit. Introduced in 1989 for the Gaza Strip only, magnetic cards are denied by the Israeli authorities to men deemed security risks. Most males who have served time in administrative detention or in prison on security charges are denied magnetic cards, and thus cannot work legally in Israel. Many other Palestinians who have no security records are also denied permission to enter Israel. A man who lacks a magnetic card cannot apply for a permit.

Gazan women are exempt from the magnetic-card system. However, they are still required to obtain permits in order to enter Israel.

Today, Gazans who are caught inside Israel without valid permits are likely to be jailed until they are brought before a military court. If convicted, they are routinely fined and sentenced to between twenty-one days and two months

---

<sup>98</sup> Israeli authorities have justified closures as a means of curbing violent attacks by Palestinians or preventing disturbances at highly charged moments. For example, the IDF spokesman stated, "In March 1993, there was a marked increase in the number of terror attacks both in the territories and within the Green Line....There has also been a rise in the incidence of attacks using improvised weapons (particularly knives)....The decision to impose the closure was taken in this context." Cited in B'Tselem, *The Closure of the West Bank and Gaza Strip: Human Rights Violations against Residents of the Occupied Territories* (Jerusalem: B'Tselem, 1993), p. 14. The IDF spokesman justified the closure following the Hebron massacre as "intended only to prevent massive disturbances, and the risk to human life, and to reduce friction between Jews and Arabs." Cited in B'Tselem, *Lethal Gunfire and Collective Punishment in the Wake of the Massacre at the Tomb of the Patriarchs* (Jerusalem: B'Tselem, 1994), p. 17.

<sup>99</sup> Cited in *Haaretz*, July 7, 1994, as reported in FBIS, July 7, 1994.

<sup>100</sup> Annex I, Article VII, parags. 1.c and d. However, residents of the Gaza Strip and the Jericho area who are denied entry into Israel may be permitted by Israel to use the "safe passage" route that is to be established between the two areas (Annex I, Article IX, parag. 2.d). The opening of that route is still under negotiation.

imprisonment. Most are sent to the Ketsiot military detention center in the Negev desert to serve their sentences. They also risk confiscation of their magnetic cards, if they possess them, which would prevent them from reapplying for an entry permit.<sup>101</sup>

A permit is valid only for a limited period of time—generally two months for workers—and must be renewed if the holder wishes to enter or traverse Israel after its expiration. The permit usually bears a number of restrictions: it names the specific locations where the holder is permitted to be, and forbids the holder from being in Israel after a designated hour in the evening. Violators of the permit's terms are subject to arrest and cancellation of the permit.

Applicants have found the response time for permit applications difficult to predict. During those periods since May when the closure policy was eased somewhat, many Gazans complained of having to wait for periods of one week or longer for responses to their applications to leave the Strip, or of simply receiving no reply at all to their applications. For example, Nabil Shehadeh, a human rights fieldworker, applied three times between mid-August and mid-September to travel from the Gaza Strip to the West Bank headquarters of al-Haq, his employer, without receiving a response. He told Human Rights Watch that he had submitted all of the necessary documents: his ID card, magnetic card, completed application, and a letter from al-Haq. Eventually, Shehadeh received a one-month permit.

Before the Gaza-Jericho Agreement, the Israeli Civil Administration for the Gaza Strip served as the official conduit for permit requests. Now, magnetic-cardholders apply for entry by submitting to the Palestinian authorities the completed forms, stating the destination and purpose of the visit. The Palestinian authorities turn the application over to the Israeli authorities via the Israeli-Palestinian Joint Civil Affairs Cooperation and Coordination Committee. The Israeli reply is transmitted via the Joint Committee to the Palestinian authorities, who then convey the decision to the applicant.

---

<sup>101</sup> Some 4,500 West Bank and Gaza residents were arrested in Israel's Central District during the first eight months of 1994 for entering the country without a permit, according to the district's police chief. Most Palestinians employed in Israel work in this district, which includes Tel Aviv. (Raine Marcus, "4,500 Illegal Arab Workers Detained in Central District So Far This Year." *Jerusalem Post*, September 19, 1994.)

This new arrangement adds a new layer of bureaucracy to the process and diminishes accountability. When questioned about restrictions on the movement of Palestinians, Israeli officials have sought at times to suggest that the PA might have a hand in obstructing travel, thereby deflecting some of the responsibility from themselves. For example, Israel's ambassador to London stated, "It is possible that ... extra checks and new criteria demanded by the Palestinian Authority has [sic] created further obstacles for the [Gazan] students in gaining access to their [West Bank] universities."<sup>102</sup>

This suggestion was flatly rejected by Fraij al-Khairi, the Palestinian head of the Joint Committee. He said, "We forward all the applications we receive from the local Palestinians to the Israeli officials as soon as possible. Upon receipt of the Israeli permit or rejection, we hand it over to the Palestinian concerned."<sup>103</sup>

Human Rights Watch has no evidence to indicate whether the PA is or is not complicit in deliberately blocking or delaying travel requests from Gazans. However, it is clear that, with representatives of the PA rather than of the Israeli Civil Administration now serving as the point of contact for applicants, some of the fury and frustration with delays and rejections is being directed toward them.

### **Workers**

According to the Gaza-Jericho Agreement, "the procedures for distributing employment permits to work in Israel and in the settlements shall be agreed upon between Israel and the Palestinian Authority" (Annex II, Article II, b.21.a).

---

<sup>102</sup> Letter to Bob Parry, Member of the Parliament of Great Britain, June 30, 1994.

<sup>103</sup> Cited in letter from al-Haq to MP Bob Parry, August 9, 1994, responding to letter of the Israeli Ambassador in London, cited in footnote 102.

A Gazan wishing to work inside Israel must meet a long list of conditions. He must possess a magnetic card and be married and at least thirty years old. (The minimum age has been twenty-three at times.) An employer inside Israel must furnish the applicant with a job offer and apply to the authorities for a work permit on his behalf.<sup>104</sup> Even after a worker obtains all of the necessary documents, he must allow for considerable time each day for delays when passing through the Israeli military checkpoint at the entrance into Israel. Despite the obstacles, Gazans continue to be drawn to jobs inside Israel, where the average daily wage for Palestinians of NIS 60 (about U.S. \$20)<sup>105</sup> far exceeds the average wages in the Gaza Strip.

The decline over the last five years in the number of Palestinians permitted to work inside Israel has been a blow to the economy of the occupied territories, which had already been battered by intifada-related disruptions and the drop in remittances from Palestinians employed in the Gulf countries. Until 1989, between 55,000 and 85,000 registered and unregistered workers entered Israel from Gaza daily.<sup>106</sup> Their earnings accounted for about half of Gaza's gross national product.<sup>107</sup> The number began to decline with the introduction in 1989 of the magnetic card system restricting entry into Israel. New entry restrictions following the Gulf War reduced the Gazan workforce in Israel to between 30,000 and 40,000. Then in March 1993, Prime Minister Rabin closed the territories indefinitely, only to reopen them gradually for reduced numbers of workers.

When implementation of the Gaza-Jericho Agreement began in May 1994, the number of Gazans legally employed in Israel had crept up to 20,000. The number reached 25,000-30,000 by the time Israel resealed the territories on October 11, in response to the kidnapping by Hamas of an Israeli soldier. During that period, however, entry for Gazans had been suspended a number of times, including for one week in late May, following the killing of two soldiers by Palestinian gunmen, and for five days following clashes between workers and Israeli troops at Erez checkpoint on July 17. During such periods of closure, workers went unpaid and were unsure when they would be permitted to resume work.

Just prior to the October closure, the Israeli-imposed limit on the number of permits for Gazan workers actually exceeded by a few thousand the number of workers who were able to obtain the required invitations from Israeli employers. A growing number of job-seekers were being forced to remain at home because fewer Israelis were willing to continue employing them. According to press accounts, the reluctance of employers stemmed from fear of violent attacks, the unpredictability of the workforce due to the closures, and the government-encouraged recruitment of laborers from overseas.

Israel has the right to restrict entry at its borders, in a manner consistent with international human rights law. Israel is under no statutory obligation to provide employment inside its own borders for residents of the occupied lands. However, as the occupying power, Israel has a duty to balance its security needs against its duty to care for the well-being of the population of the West Bank and Gaza Strip. When it abruptly deprives of their jobs thousands of Palestinians who have been accused of no wrongdoing and have no alternative means to provide for their dependents, the government of Israel has an obligation to ensure that the occupied population has some means of support. Israel's obligations are increased by its having, throughout the years of occupation, stymied the growth of an independent economy and infrastructure in the occupied territories while transforming the economy of these areas into satellites of Israel's own economy.<sup>108</sup>

---

<sup>104</sup> Because Gazans cannot enter Israel to look for employment, job-seekers find work either by phone contact with former employers or by being recommended to employers by friends or relatives who are employed inside Israel.

<sup>105</sup> An estimate provided by Workers' Hotline for the Protection of Workers' Rights, a Tel Aviv-based group.

<sup>106</sup> Estimates vary widely due to divergent estimates of unregistered workers.

<sup>107</sup> Brigadier General Freddy Zach, deputy coordinator of activities in the territories, quoted in the *Jerusalem Post*, January 3, 1991.

<sup>108</sup> See footnote 89.

Palestinian workers receive no compensation when they are forced to remain idle by the Israeli government. Unlike Israeli workers, they receive no unemployment benefits, even though the same deductions are taken from the paychecks of registered Palestinian workers as are taken from Israeli workers.<sup>109</sup> For the thousands of Palestinians who have been denied permission to work in Israel, the Gaza and West Bank economies can at present offer replacement jobs to very few, especially as the loss of income earned in Israel further shrinks the local economic base, and along with it the potential tax revenues for the PA.

Israeli courts have recognized the government's responsibilities that derive from the territories' economic dependency on Israel (see page 36). Officials of the present government have recognized obligations toward those Palestinians who had been employed inside Israel. Minister of Labor and Social Affairs Ora Namir acknowledged, "We have a greater obligation to employ workers from the territories than we have to employ workers from abroad."<sup>110</sup> For a period, the Rabin government provided relief for workers whom the closure had rendered jobless, by financing temporary public-works jobs in the occupied territories. This initiative was announced in April 1993, following the indefinite closure of the territories ordered the previous month. Funds were allocated for these jobs at a monthly rate of ten to twenty million New Israeli Shekels (NIS; equivalent to U.S. \$3.3 million – \$6.6 million), according to a Defense Ministry official.<sup>111</sup> But this program was terminated as of May 31, 1994, the month in which the Gaza-Jericho Agreement was signed—as if that accord had nullified the territories' economic dependency overnight along with Israel's responsibilities toward the occupied population.

The economic vulnerability of Gazans to Israeli closure policies is illustrated by the plight of three men interviewed by Human Rights Watch. Khalil Ibrahim ad-Drimli, aged twenty-nine, and his cousin Hamdi Youssef ad-Drimli, thirty-four, had worked their entire adult lives in Israel until the closure that followed the Hebron massacre. Khalil, who lives in the Sabra neighborhood of Gaza City, had worked nine years in Israel as an auto mechanic. A father of three young children, Khalil was at the time of the closure earning NIS 100 a day (and netting NIS 70, equivalent to U.S. \$23).

Khalil told Human Rights Watch that during the closure he had obtained a job offer from an Israeli employer and submitted it along with an application for a permit, but never received an answer. He reapplied on August 20. He kept checking with the Palestinian office that handles permit requests, only to be told that no answer to his application had yet come from the Israeli authorities. Khalil told us on September 21 that he had no idea why he was not getting a permit. His only security run-in with the authorities occurred in 1989, he said, when he had received a three-month sentence. After this conviction, he said, he managed to obtain a magnetic card, and the one he now possessed was still valid. Khalil has been struggling to make ends meet by performing odd jobs in the Gaza Strip and by withdrawing money from his pension savings. Except for the NIS 10-15 shekels his father earns every day doing odd jobs, Khalil is the only breadwinner for his parents, children, wife, and two young brothers.

Khalil's cousin Hamdi was also earning NIS 100 a day in a car repair shop in Jaffa. He held a magnetic card and permit, and had been working inside Israel for fourteen years. He told Human Rights Watch he had never been

---

<sup>109</sup> See the newsletter of the Workers' Hotline for the Protection of Workers' Rights, March 1993, p.1; and "New Israeli Measures Restricting Palestinian Workers," *From the Field: A Monthly Report on Selected Human Rights Issues* (Jerusalem: Palestine Human Rights Information Center, July/August 1992), p. 8.

Under the Gaza-Jericho Agreement, the money deducted for unemployment benefits from Palestinian wages paid by Israeli employers are to be transferred to the PA, which will decide how to compensate workers for these deductions. The same arrangement is to cover deductions taken out of Palestinian paychecks for health insurance and other benefits (Annex IV, Article VII, parag. 3). Deductions for retirement pensions will be handled differently: they are to be transferred to a Palestinian pension institution that is supposed to set aside the money in a fund bearing the name of the individual worker. Once the PA receives the deductions from Israel, it "will assume full responsibility ... for pension rights and other social benefits of Palestinians employed in Israel, that accrue from the transferred deductions related to these rights and benefits" (Annex IV, Article VII, parag. 5).

<sup>110</sup> Letter to Workers' Hotline for the Protection of Workers' Rights, May 8, 1994.

<sup>111</sup> Telephone conversation with Shmuel Ozenboi, Deputy Coordinator of Activities in the Territories, July 25, 1994.

arrested in his life. However, since the Hebron massacre, he has been prevented from resuming work inside Israel. Hamdi told Human Rights Watch that his employers had told him they still had work for him. Hamdi said he had applied for a permit in July, but received no answer. Since March, Hamdi has been employed by Bezek, the Israeli telephone company, in the Gaza Strip, earning NIS 25 a day (U.S. \$8). While the Bezek job provides Hamdi and his family with health insurance, it does not pay him enough to support his six children and other dependents. Like his cousin, Hamdi has had to draw from his pension to make ends meet.

A young man from Jabalya camp, who asked to remain unnamed, has been more fortunate. Employed in an Arab-owned business in the city of Jaffa, he too could not reach his one-hundred-shekel-a-day job because of the closure following the Hebron massacre. For four months he was idle, and received no compensation for being prevented from working. In July, after applying several times, he received a new permit and resumed work. Since that time, the young man has been spending several consecutive nights at a time at his workplace before returning home, thereby risking arrest and confiscation of his permit. (His permit, like the standard one issued to workers, allows the bearer to be in Israel only during daytime hours.) He said he preferred taking this chance to the risk of being cut off from his job were he to be in Gaza the next time that entry for workers into Israel is blocked.

### **Medical Patients**

Gazans with special medical needs are dependent on health care facilities located in Israel, the West Bank and abroad, due the Gaza Strip's lack of a comprehensive medical care system. Gaza contains, for example, no oncology or pediatric cardiology facilities. Some Gazans need to undergo operations or forms of physical therapy or treatment that are not locally available. For such patients, access to care is premised on obtaining the permits necessary from the Israeli authorities to enter or cross through Israel.

An analysis of the health care system of the occupied territories is beyond the scope of this report.<sup>112</sup> Of concern here is the fact that, both before and after the implementation of the Gaza-Jericho Agreement, Israel's permit process has prevented some Gazans from obtaining specialized health care, or delayed their access to it.<sup>113</sup> Overall, the permit-granting process for medical cases has improved over the past year, human rights workers report. However, they noted that bureaucratic delays can be lengthy and each new closure brings the system to a halt for days or weeks. Interventions by their organizations on behalf of applicants are sometimes key to expediting the process.

### **University Students**

Between October 19 and mid-December, Israel's closure of the territories blocked all students who are residents of the Gaza Strip from legally reaching universities in the West Bank. Because higher education was not considered a basis for exemption from the closure policy, Gaza students registered in West Bank schools were forced to miss most of the fall 1994 semester, just as many had been forced to miss the spring semester.

Gazan students register in West Bank universities for a variety of reasons. For many, the subjects they wish to study are simply unavailable for specialization at Gaza's two universities. These include chemical and electrical engineering, sociology, and political science, to name a few.

As outlined above, Human Rights Watch believes that Israel's obligations under the Hague Regulations include a duty to balance its security needs against the welfare of the population under occupation, including the right to education. Because the Gaza Strip is so underserved in terms of higher education, Israel should make every effort to facilitate access for Gazan students wishing to attend West Bank universities. Any restrictions imposed on such travel, in terms of duration and the number of persons affected, should be the minimum required, in order to serve either legitimate security purposes or the welfare of the occupied population. Any restrictions should also be susceptible to a meaningful appeal by any person who has been harmed by them.

---

<sup>112</sup> See Defence for Children International-Israel Section, *Improving Health Care Access for Palestinian Children: Visions for the Future* (Jerusalem: DCI Israel, July 1994); Association of Israeli-Palestinian Physicians for Human Rights, *Annual Report 1993, Focus On: The Transfer of Health Services to a Palestinian Authority* (Tel Aviv: AIPPHR, 1994); Jay J. Schnitzer and Sara M. Roy, "Health Services in Gaza under the Autonomy Plan," *The Lancet*, June 25, 1994.

<sup>113</sup> See examples provided by the Gaza Center for Rights and Law, June-July 1994 newsletter.

In mid-December, the Israeli military authorities began reissuing permits for Gazan students to reach their universities in the West Bank. However, the students' continuing access was thrown into question by the new border tightening implemented after the bombing of a crowded roadside junction near Tel Aviv on January 22. As of January 25, however, the Israeli military authorities had not issued an order cancelling valid permits for students.

When it began issuing new permits for students in December 1994, the authorities explicitly rejected handling the problem as one of attempting to protect individual rights in the context of Israeli security concerns. Instead of announcing that each Gazan student would receive a permit unless there were individualized and compelling security reasons to deny it, the authorities announced that permits would be issued according to a quota system, and would be contingent on declarations of support for the peace process by the applicants — after which, approval would still hinge on the applicant receiving security clearance. Israel's Ministry of Defense outlined the policy as follows:

In spite of the existing closure, the Prime Minister and the Minister of Defense, Mr. Yitzhak Rabin, has recently allowed 200 students from Gaza to study at Birzeit University in the region of Judea and Samaria subject to the following conditions:

- A. The Palestinian Authority will transfer to the Israeli authorities a list of 200 students studying at Birzeit University.
- B. The list will be checked from a security point of view.
- C. The students will undertake before the Palestinian Authority to refrain from acts of terror and to support the peace process.
- D. Further entry of students to Judea and Samaria is conditioned by the results that might arise from the entry of the present 200.<sup>114</sup>

As of the beginning of January 1995, 269 of Birzeit University's 373 Gazan students had received permits since mid-December, most of them valid through early March, according to the university's Human Rights Action Project (HRAP).

During the 1993-1994 academic year, some 900 Gazan students were registered at Hebron, Bethlehem, Birzeit, and an-Najah universities in the West Bank, and another 400 were enrolled at vocational colleges in the West Bank. This number does not include would-be students who had abandoned plans to enroll due to having been refused a permit. Two hundred of the 1,300 enrolled students lacked the required permits from the Israeli authorities prior to the Hebron massacre on February 25, 1994, according to Birzeit University. Most, but not all, of those refused had in the past either been imprisoned, arrested, or administratively detained on security charges or accusations. However, the reasons for a permit refusal were not provided to the applicant. For students whose applications were successful, the permits were valid for short periods (three months or less), requiring them to return to Gaza for renewals, which were sometimes rejected.

Following the Hebron massacre, Israeli authorities imposed a closure on the occupied territories and revoked all permits. At that time, some 900-1,000 of the Gazan students enrolled at West Bank schools were in the Gaza Strip, having returned home for Ramadhan holidays. After the army lifted the curfews on the West Bank, allowing schools to reopen, these students remained stranded in Gaza. They were told they had to apply for new permits. However, only female students met with any success when they reapplied; male students were refused. Several West Bank university faculty members residing in Gaza were also without permits to reach their schools after the Hebron massacre. This disrupted class schedules for several weeks until they were able to obtain permits.

---

<sup>114</sup> Letter to al-Haq, dated December 13, 1994, cited in an al-Haq press release, December 24, 1994.

It was only in the first half of May 1994 that permits began being granted again in large numbers to Gazan students. Most of those issued, however, were short-term permits, requiring students to apply for extensions once they reached the West Bank. Some ninety Gazan students at Birzeit University reported being refused permit extensions once they reached the West Bank. (The actual number is probably higher.) They had to choose between remaining illegally in the West Bank or returning to the Gaza Strip. Those who remained risked arrest, a fine and permit problems in the future.<sup>115</sup> If they chose instead to return to Gaza they risked being stranded again. (Students who were in the Gaza Strip on May 19 found themselves confined by the weeklong closure imposed after Palestinian gunmen killed two Israeli soldiers near Erez checkpoint.) Birzeit University estimated that, due to permit problems, fifteen percent of the university's 350 Gaza students had lost the spring 1994 semester entirely.

The plight of student Ayman Ibrahim Abu Mrahil illustrates the obstacles faced by Gaza students even during intervals when the closure is less than total. Abu Mrahil, a twenty-one-year-old resident of Jabalya refugee camp, sought to obtain permission to reside in the West Bank as a student at Bethlehem University during the fall 1994 semester. Abu Mrahil told Human Rights Watch he had been arrested only once in his life, for eighteen days in 1991, and had been released without charge.

During the summer of 1994, Abu Mrahil received a three-day permit from the Israeli authorities to travel from Gaza through Israel to Bethlehem, where he sought to register at the university. However, when he reached Bethlehem, the Israeli Civil Administration there refused to extend his permit. According to Abu Mrahil, the Civil Administration office claimed he was not registered at the school, even though, he explained to Human Rights Watch, he had furnished the office with a letter from the school. He returned to Gaza and applied for a new permit to return to Bethlehem. He received the permit, but when he reached the Erez checkpoint, the soldier on duty confiscated his magnetic card, claiming that it was forged. (There is a brisk business in the forging of the papers that Palestinians need to enter Israel). The card, which Abu Mrahil said was authentic, was later returned to him. However, when he next reapplied for a permit to return to Bethlehem, he was refused. When interviewed on September 19, he was waiting for a reply to the appeal that he had submitted four days earlier.

### **Travel Abroad**

The Gaza-Jericho agreements have given the Palestinian security forces only limited responsibilities at the border crossings between the West Bank and Jordan, and between the Gaza Strip and Egypt.<sup>116</sup> Israel retains ultimate control over who may enter or leave the West Bank and Gaza Strip, via the land crossings as well as through Ben Gurion Airport, currently the only international airport operating in Israel and the territories.

Palestinians residing in the self-rule areas are not exempt from Israeli restrictions on foreign travel, nor from detention and interrogation as they pass through the international border posts and Ben Gurion international airport. Several Gazan residents have been arrested while traveling to or from Egypt and taken to Ashkelon prison, where they have been held under interrogation for several days or longer.

Since implementation of the Gaza-Jericho Agreement, Israel has prevented certain residents of the self-rule areas from traveling abroad. Data on the number of such cases is difficult to obtain. The case of Salim Ahmed Salama is one example. Salama, the acting vice-rector of the Islamic University in Gaza City, was effectively prevented by the Israeli authorities from accepting an invitation to participate in a conference in the Netherlands in October. The conference, entitled "Islamic Revival and the West," was organized by the International Dialogues Foundation. Salama could not leave the Gaza Strip because Israeli authorities had not issued him travel documents to replace the ones they

---

<sup>115</sup> The Israeli army carries out occasional raids near West Bank university campuses to check the residency status of young men. For example, on April 28, 1994, soldiers raided the village of Abu Qash, where many Birzeit students reside, and arrested twenty-nine students from Gaza. They were briefly held at Ramallah prison and then bussed back to Gaza and ordered to pay fines of NIS 450 (U.S. \$150). Birzeit reported in the summer of 1994 that all of its students who have been fined for being in the West Bank without a permit were subsequently refused a permit when they applied.

<sup>116</sup> See Clyde Haberman, "Arabs Now Take Charge (Sort Of) at Allenby Border Post," *The New York Times*, November 3, 1994.

had confiscated in 1992. Salama received no response to his application, filed July 2, 1994 via the Palestinian side of the Joint Committee, for new Israeli documents. His original documents had been confiscated by Israeli soldiers when Salama was expelled to Lebanon in December 1992, along with 414 other suspected Islamist activists. (He was allowed to return to Gaza in September 1993.)

### **Imprisonment of Residents of the Self-Rule Areas**

There remain between five and six thousand Palestinians from the occupied territories in Israeli prisons, following the release of roughly the same number of prisoners since the signing of the Declaration of Principles in September 1993. Those still in prison include over one thousand from the self-rule areas, not including those who have been arrested since May. (The latter consists mainly of persons convicted for illegally entering Israel.) Among the prisoners, a number—the exact figure is not known—were convicted or are being held not for offenses directly involving violence or weapons, but for nonviolent political activities on behalf of "illegal organizations."

Most incarcerated Palestinians are held either in prisons run by the Israel Prison Service or in detention centers run by the IDF. A small number are held in police jails. As of August 31, 1994 — a date after which there have been no sizeable prisoner releases — the Israel Prison Service was holding the following number of Gazans, according to the Ministry of Foreign Affairs:

116 convicted and sentenced for criminal offenses;  
424 convicted and sentenced for security offenses;  
6 detained for criminal offenses; and  
328 detained for security offenses.

The IDF, according to the Foreign Ministry, was holding as of August 22 the following number of Gazans:

307 convicted and sentenced prisoners;  
96 detained until the end of proceedings;  
12 administrative detainees; and  
60 other detainees.<sup>117</sup>

One example of a person held on apparently political charges is Abd al-Aziz Rantissi, a prominent Hamas activist from Khan Yunis in the Gaza Strip. Currently in Beer Sheva prison, Rantissi has been in detention since being permitted to return from Lebanon, to which he had been expelled in December 1992. Thus, Rantissi has been either in forced exile or in pre-trial detention for over two years. A letter from Human Rights Watch to Israel's Justice Ministry, dated July 19, 1994, asking for the basis of Rantissi's continuing imprisonment, brought an acknowledgment but no reply.

The formal charge sheet against Rantissi accuses him of membership in an illegal organization (Hamas), providing services to an illegal organization — specifically, appointing officials within Hamas, instructing others within Hamas to recruit persons into the organization, and providing reports to his superiors within the organization.

Human Rights Watch is concerned that he and others are being held solely on charges of a general nature concerning an organization outlawed by Israel, without charges alleging specific involvement in the planning or execution of acts of violence or in other recognizably criminal offenses. In our view, mere membership or unspecified activities in Hamas do not constitute conclusive evidence that a person has participated in planning or committing acts of violence. While Hamas has claimed responsibility for numerous violent actions, it also conducts a wide range of nonviolent political and charitable activities.<sup>118</sup>

We believe that prosecutions should not go forward solely on charges of membership or unspecified services in a complex political organization, but only when charges can be sustained regarding the involvement of an individual in

---

<sup>117</sup> Letter from Yael Ronen, Department of Human Rights, Ministry of Foreign Affairs, to Human Rights Watch, September 12, 1994.

<sup>118</sup> See, e.g., Youssef M. Ibrahim, "Palestinian Religious Militants: Why Their Ranks Are Growing," *The New York Times*, November 8, 1994.

an organization's pursuit of violence or other recognizably criminal acts. If this is not to be the case with respect to Abd al-Aziz Rantissi, he should be released. If, on the other hand, he and others who are being detained for real or alleged association with an outlawed political organization are charged with recognizably criminal offenses, they are entitled to a fair trial in which their due-process rights are safeguarded.

The military prosecutor has refused to drop the charges against Rantissi or release him on bail. According to informed observers, military prosecutors are using Rantissi's case to pressure the Palestinian Authority to reach an agreement on procedures for summoning to Israeli courts witnesses who live in the self-rule areas. This is apparently an issue in the Rantissi case, in which the military prosecutor is seeking to use the testimony of two Palestinian ex-prisoners whose statements had implicated Rantissi. For their testimony to be deemed admissible they must appear in court. But since they reside in the Gaza Strip, the prosecutor has been unable to summon them to court without their cooperation.

Another example of a Gazan held by Israel is Khader Muhammad Mustafa Abbas, who has been held without charge since his arrest in April, shortly before the redeployment of Israeli troops. A resident of Jabalya refugee camp, Abbas is reportedly suspected of being an activist in the Islamic Jihad organization. He was placed under interrogation for several weeks, but was not charged. He was then given an administrative detention order that expired in December, at which time he was transferred back to interrogation.

*Prisoner releases:* The manner in which Israel has released prisoners has caused continuing controversy. The Gaza-Jericho Agreement provided that Israel will release "about 5,000 Palestinian detainees and prisoners" within a period of five weeks, and that these, as well as future releases, "will be subject to the fulfillment of the procedures determined by Israeli law for the release and transfer of detainees and prisoners" (Article XX, parags. 1 and 3). While most freed prisoners were able to return home, over five hundred from the West Bank were transferred from their cells to the Jericho autonomous area, where they were placed under PA auspices and forbidden by Israel, under penalty of reimprisonment, from returning home until the end of their sentences. The transfer of so many prisoners—an option permitted by Article XX of the Gaza-Jericho Agreement—has drawn protests from Palestinians who see this arrangement as something less than a release.<sup>119</sup> Israel has allowed about one-third of those transferred to Jericho to return home; others whom it arrested outside of Jericho without permission risked reimprisonment.

Also controversial has been a pledge-signing requirement that Israel imposed on many prisoners as a condition of their release. Some of the pledges that were presented to prisoners for signature violate their right "to hold opinions without interference" (Article 19 of the ICCPR). One such form stated:

I the undersigned hereby pledge to abstain from all acts of violence and terror. I also declare that I am fully aware that signing this document is a condition and prerequisite of my release from jail. I am also fully aware that this release has taken place in the context of peace negotiations, which I support, between Israel and the PLO in order to implement the Declaration of Principles signed September 13, 1993.

Enforcement of this precondition appeared inconsistent. Not all prisoners were made to sign a statement in order to be freed. Among those who refused to sign, some were released anyway while others remained in prison.<sup>120</sup> Following protests in June, authorities presented prisoners with revised versions of the statement. One of the amended versions read:

I am aware that my release from prison is taking place in the framework of the Cairo agreement. I commit myself to abstain from involvement in any terrorist activity and to respect the law.

Many who had refused to sign the earlier version agreed to sign this one, with its deletion of the pledge of support for

---

<sup>119</sup> See Caryle Murphy, "For Some Palestinian Prisoners, Accord Does Not Bring Freedom," *Washington Post*, September 7, 1994.

<sup>120</sup> Jon Immanuel, "Prisoners Refusing No-Terror Pledge Stay in Jail," *Jerusalem Post*, June 17, 1994.

the Declaration of Principles.

Defending the pledge requirement, Prime Minister Rabin said at an August 8 press conference, "We offered to members of what we call the rejectionists [to] sign a paper in which they say 'we support the peace, we are committed to refrain from terror and violence.' Several hundred refused to sign. If they refuse to sign, we cannot reduce whatever their sentence holds."<sup>121</sup>

Human Rights Watch believes that Israel violates the rights of prisoners to freedom of belief by conditioning their release on a pledge of support for the Israeli-PLO agreement. Once prisoners are told that their freedom depends on endorsing a particular political viewpoint, their continued imprisonment constitutes a form of discrimination on the basis of their beliefs—regardless of the acts for which they were initially imprisoned. Human Rights Watch urges Israel not to require a pledge of support for the Israeli-PLO agreement as a condition for any future releases of prisoners.

\*\*\*

*Human Rights Watch is grateful to the human rights organizations that assisted us in the preparation of this report, especially the Gaza office of Solidarity International for Human Rights, al-Haq, the Human Rights Action Project at Birzeit University, the Mandela Institute, the Center for International Human Rights Enforcement, and the Gaza Center for Rights and Law. Responsibility for the content of the report rests with Human Rights Watch.*

***Human Rights Watch/Middle East (formerly Middle East Watch)***

*Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Middle East division was established in 1989 to monitor and promote the observance of internationally recognized human rights in the Middle East and North Africa. Christopher George is the executive director; Eric Goldstein is the research director; Aziz Abu Hamad and Virginia N. Sherry are associate directors; and Brian Owsley is the Leonard Sandler Fellow. Gary Sick is the chair of the advisory committee and Lisa Anderson and Bruce Rabb are vice chairs.*

---

<sup>121</sup> *MidEast Mirror*, August 9, 1994.