

EMHRN and the Palestinian Human Rights Organisations Council's submission to the EU ahead of the EU-PA sub-committee on human rights, good governance and the rule of law



مجلس منظمات حقوق الإنسان الفلسطينية
Palestinian Human Rights Organizations Council





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1. INTRODUCTION

On 29 April 2013, the EU-PA sub-committee on human rights, good governance and the rule of law (sub-committee) is convening in Ramallah, the Occupied Palestinian Territory (OPT). This meeting is an opportunity to address the Palestinian Authority's (PA) implementation of the existing EU-PA Action Plan¹ and its human rights record since April 2012. With respect to this meeting, the Euro-Mediterranean Human Rights Network (EMHRN) and the Palestinian Human Rights Organisations Council (PHROC) present this submission to the European Union (EU), outlining their concerns relating to the PA's compliance with human rights, the rule of law and democracy during the past year.

The human rights situation in the OPT is the result of two principal factors: the on-going Israeli occupation and the physical and political divide between the Gaza Strip and the West Bank. While the undersigned organisations recognise that the PA's control over the occupied West Bank is limited, the PA is nonetheless responsible for complying with its obligations under international customary law in all parts where it exercises full authority.

The undersigned organisations stress that accountability, including access to justice for human rights violations, is an overarching issue that should be addressed with the PA. We, however, note with regret the absence of focus on accountability in the ENP progress report for Palestine covering

¹ EU-PA action plan (2005), available at : http://ec.europa.eu/world/enp/pdf/action_plans/pa_enp_ap_final_en.pdf.



2012.² We therefore call upon the EU to ensure that it is a priority in EU-PA relations, including in the implementation of the new Action Plan, which was adopted on 18 March 2013. To this end, and considering Palestine's new status as a non-member State of the United Nations, we call on the EU to encourage Palestine to ratify all international law instruments by identifying such ratification as a priority in the new Action Plan and in turn address it in its political dialogue with the PA.

The undersigned organisations take this opportunity to welcome the new EU-PA Action Plan, which will enhance EU-PA relations. In this regard, we look forward to an Action Plan that will contain measurable benchmarks accompanied by a timetable that will serve as an indicator to condition possible advancement of EU relations with the PA, in line with the 'more for more criteria' of the reviewed European Neighbourhood Policy.³ We hope that this will be included in the matrix accompanying the Action Plan, which is set to be adopted shortly. Moreover, such benchmarks should be based on, and seek to ensure, the PA's compliance with customary human rights and IHL obligations, including the rights to freedom of expression, peaceful assembly, association and a fair trial, and the prohibitions against torture and arbitrary detention. A review mechanism should also be established to assess the implementation of the objectives of the Action Plan by the PA. Such a mechanism should include formalised, regular and timely consultations with human rights organisations.⁴

The undersigned organisations greatly appreciate the consultations and debriefings of human rights organisations held previously in connection

² European Commission and High representative of the EU for foreign affairs and security policy, Implementation of the European Neighbourhood Policy in Palestine Progress in 2012 and recommendations for action (20 March 2013), available at http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_progress_report_palestine_en.pdf.

³ "A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean", Commission Communication, 8 March 2011, COM (2011) 200 final, available at http://ec.europa.eu/commission_2010-2014/president/news/speeches-statements/pdf/20110308_en.pdf; and "A New Response to a Changing Neighbourhood", Joint Communication from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, 25 May 2011, COM (2011) 303, available at http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf.

⁴ EMHRN and Palestinian Human Rights NGOs recommendations ahead of the EU-PA action plan (1 March 2012), available at http://www.euromedrights.org/files/2012_03_01_Statement_EU_PA_action_plan_903074131.pdf.



with the sub-committee and hope that this good practice will continue. Furthermore, we underline the importance of consulting all Palestinian human rights organisations at a location in East Jerusalem, including those based in the Gaza Strip.

2. RULE OF LAW AND DEMOCRACY

2.1 Concerns related to the principle of separation of powers

The undersigned human rights organisations have long bared witness to the PA's inability to ensure the separation of powers between its executive, judiciary and legislative branches. Most recently, this concern was demonstrated by a series of proposals presented by the Minister of Justice to the Presidential Office, including one proposal that aims at merging the position of the Minister with that of the Attorney General. The Attorney General forms part of the judicial branch and is mandated to, *inter alia*, monitor and supervise the work of members of security agencies, ensure that members of security agencies are held accountable by their supervisors for violations of the law, ensuring the implementation of Court decisions, and supervising prisons. The Minister of Justice, however, forms part of the executive branch.

The undersigned organisations have repeatedly urged the EU to object to the President's interference in the work of the Attorney General and to raise the issue with the PA, including ahead of last year's sub-committee on human rights, good governance and the rule of law. It is therefore with grave concern that we stress that the independence of the Attorney General is severely threatened not only by the above mentioned proposals but also by the fact that he remains under the direct political influence of the President.

Moreover, on the initiative of the Minister of Justice, the President recently issued a presidential decree which infringes on the independence of the Constitutional Court by amending the Palestinian Constitutional Court's Law to allow the Presidential Office to assign the Court's presiding judge.⁵ While

⁵ For further information, see Al-Haq, (2 November 2012) available at http://www.alhaq.org/arabic/index.php?option=com_content&view=article&id=632:2013-02-19-14-56-28&catid=92:2013-02-19-14-53-30&Itemid=232



this alarming decree is awaiting to be enforced as it is yet to be published in the Palestinian Official Gazette, Palestinian human rights organisations fear that this may happen at any time.

2.2 Free and Fair Elections

Following the political split between the authorities in the Gaza Strip and those in the West Bank in 2006, the Palestinian people have suffered from a wave of human rights abuses related to the political stalemate, including the oppression of political opponents. As human rights organisations, we highlight the need to engage with all relevant actors in the best interests of the civilian population and request that the EU reconsiders its policy not to engage with the authorities in the Gaza Strip. Moreover, the EU should actively encourage the inter-Palestinian reconciliation process, as well as respect the will of the Palestinian people as expressed through free and fair elections under a future unity government that is respectful of the rights and freedoms inalienable for free and fair elections.

2.2.1 Local Elections in the West Bank in 2012

In October 2012, local elections were held in the West Bank under the supervision and responsibility of the Central Elections Commission (CEC). While the general local election took place on 20 October 2012, police and security personnel participated in an early voting day on 18 October 2012. Supplementary elections, initially postponed due to the Israeli offensive on the Gaza Strip in November 2012, took place on 22 December 2012. Furthermore, additional supplementary elections are planned to take place on 1 June 2013.

Al-Haq, one of the undersigned organisations, monitored the elections and concluded that overall the local elections were impartial and transparent. However, violations were committed during and in connection with the elections. *Inter alia*, during the pre-election phase, beginning 18 September 2012, Palestinian security services carried out a large-scale detention campaign across the West Bank. Detainees were questioned about their position towards the local elections, election trends, and their



relationship with candidates. Moreover, during the early voting day for the security services, some security officers seemingly tasked with checking the voters against a list of members of security agencies, verified the voters' identification cards, and struck their name off the list before they went to vote. The security officers in charge of those lists would also call those that did not vote and request them to do so. Similarly, during the general election, candidates and their proponents remained adjacent to the polling centres and carried lists to check and register voters' names. Finally, Al-Haq received complaints that money and pre-paid mobile phone cards had been distributed during the elections in exchange for votes. Al-Haq also received complaints indicating that bribes had been offered within certain elected councils of local bodies with the aim of influencing the choice of chairpersons of these local bodies.⁶

3. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

3.1 Freedom of Expression

The right to freedom of expression is enshrined in numerous international human rights instruments, including the Universal Declaration of Human Rights (UDHR), which is largely reflective of customary international law. Unfortunately, during the past five years, the undersigned human rights organisations have witnessed with grave concern an increase in PA violations of the right to freedom of expression. It is common practice for the security forces to contact journalists in order to prevent the publication of articles that criticise the PA. Authors of comments published on social media networks about public figures have been ordered to remove them or reveal their sources of information.⁷ Moreover, the PA forces have physically attacked journalists.⁸

⁶ For further information, see Al-Haq, *Final Report on Observation of the Local Elections* (2012), available at: http://www.alhaq.org/arabic/index.php?option=com_zoo&task=item&item_id=111&Itemid=218

⁷ For more information, see Al-Haq, (2012) انتهاكات حرية الرأي والتعبير والحريات الإعلامية في مناطق السلطة الوطنية الفلسطينية (انتهاكات حرية الرأي والتعبير والحريات الإعلامية في مناطق السلطة الوطنية الفلسطينية), available at: http://www.alhaq.org/arabic/index.php?option=com_zoo&task=item&item_id=103&Itemid=218

⁸ See Palestinian Center for Development & Media Freedoms (MADA), *Violations of Media Freedoms in the Occupied Palestinian Territory during July 2012* (2012), available at: http://www.madacenter.org/report.php?lang=1&id=1199&category_id=13&year=2012 ; MADA, *Violations of Media Freedoms in the Occupied Palestinian Territories , Annual Report 2011* (2011) available at: http://www.madacenter.org/report.php?lang=1&id=1140&category_id=5&year=2012 .



Allegations and charges of slander and defamation against the PA President are commonly used as a threat against journalists, bloggers and social media activists who are regularly summoned for investigations. For example, on 31 March 2012, Palestinian journalist Rami Nabil Samarah was brought to the Intelligence Headquarters and was accused of slander and defamation against the President on the basis of pictures that Rami had posted on Facebook. He was also accused of being affiliated with Hamas and the Popular Front for the Liberation of Palestine. Rami was released later that same day.⁹

The PA's ongoing violations of the right to freedom of expression are made possible by the inadequate protection of the right under Palestinian law, as well as the expanded interpretation of outdated provisions on slander and defamation laid down in the Penal Code that is implemented in Palestine (West Bank),¹⁰ which warrants significant legal reform.

3.2 Freedom of Assembly

The year 2012 was tainted by violent suppressions of peaceful demonstrations carried out across the West Bank, most notably on 30 June and 1 July 2012. In response to the attacks on such demonstrations, the PHROC created a committee responsible for independently investigating possible violations of international and Palestinian law committed in relation to those incidents. The PHROC committee's main findings were that the Criminal Investigation unit within the Palestinian police had resorted to disproportionate force against the peaceful demonstrators; that those detained in relation to the demonstrations were intentionally beaten, humiliated and treated in an inhumane and degrading manner; and that the police, including the criminal investigations unit did not adhere to arrest and detention procedures established under Palestinian law. Alarming, the PHROC committee also found that orders to prevent demonstrators from reaching the Presidential compound and to use disproportionate force to suppress the

⁹ Al-Haq Affidavit 7194/2012: see also Al-Haq Affidavit 7256/2012 for the similar case of 'Issmat 'Abdul-Khaliq.

¹⁰ For more information, see Al-Haq, 2012) (انتهاكات حرية الرأي والتعبير والحريات الإعلامية في مناطق السلطة الوطنية الفلسطينية), available at: http://www.alhaq.org/arabic/index.php?option=com_zoo&task=item&item_id=103&Itemid=218



peaceful demonstrations were issued by high-ranking officials from within the Presidential office. Furthermore, the peaceful demonstrators did not threaten public security nor did they violate Palestinian law and as such there was no justification for the use of violence. The committee also documented instances where the security forces prevented journalists from carrying out their work. Journalists were also arrested and detained in relation to the demonstrations. Whilst in detention, the journalists were questioned about their work and treated in a humiliating and degrading manner.

The committee also noted with grave concern that statements issued by the spokespersons of the security forces at the beginning of the demonstrations, incited violence against the peaceful demonstrators by describing them as traitors and collaborators who sought to disturb public security and incite riots. The spokespersons also accused the demonstrators of being funded by foreign countries to cause chaos and attack the Palestinian police. Such statements, as well as similar statements by other officials, encouraged the police and investigation officers to resort to greater violence.

Finally, the committee documented an unprecedented use of obscene words, curses and generally degrading statements by the officers.¹¹

As human rights organisations, we deplore the numerous human rights violations that the Palestinian security forces committed in connection with the demonstrations which amounted to a violation of the right to peaceful assembly, as well as expression. In addition, we stress that those who violated international and Palestinian law must be held accountable in order to deter similar violations in the future and to ensure that Palestinians are able to fully exercise their rights to peaceful assembly and expression.

11 For more information, see PHROC, (2 November 2012) available at:

تقرير لجنة تقصي الحقائق التي شكلها مجلس منظمات حقوق الانسان الفلسطينية بشأن قمع الشرطة الفلسطينية للمسيرة السلمية برام الله
http://www.alhaq.org/arabic/index.php?option=com_content&view=article&id=622:2013-01-05-09-19-58&catid=91:2012-07-14-11-00-24&Itemid=231



3.3 Freedom of Association

The right to freedom of association, enshrined in both the UDHR and the International Covenant on Civil and Political Rights (ICCPR), entails the freedom to pursue collective action and for individuals to form associations free from the interference of governments.¹² This right is reflected in Article 26 of the Palestinian Basic Law which stipulates that “Palestinians shall have the right to participate in political life, both individually and in groups [...] They shall have the right to form and establish unions, associations, societies, clubs and popular institutions in accordance with law”.¹³ However, the PA has made it increasingly difficult for Palestinian civil society organisations to exercise this right. On 15 December 2012, the PA President signed an Order on the Establishment of the Civil Society Organisation Affairs Commission. This order follows the adoption of the April 2011 Presidential decree on the Law on Amendment of the Law on Charitable Associations and Civil Society Organisation. The 2012 order establishes a Commission that is tasked with coordinating and regulating the functions, including decision making and the selection of partners, between all Palestinian and foreign CSOs as well as various government bodies. The 2011 decree allows for unconstitutional and illegal seizures by transferring dissolved property belonging to CSOs to the PA Public Treasury Account. The 2011 decree and 2012 order are thus part of a process that allows the Minister of Interior to interfere in the activities of CSOs and follows a 2007 decision by the Minister of Interior to terminate 103 CSOs.¹⁴

CSOs, including human rights organisations, play a pivotal role in a democratic society and are significant actors for the fulfilment of the Palestinian peoples’ aspirations and national goals. We therefore urge the EU to address the PA’s unlawful interference in CSOs work as well as its infringement on the right to freedom of association in its political dialogue. We also demand that the PA comply with its international and national legal

¹² Moekli, Shah and Sivakumaran, *International Human Rights Law*, Oxford University Press (2010), at 272.

¹³ Article 26, Palestinian Basic Law.

¹⁴ For further information, see Al-Haq, *Unconstitutional Presidential Decrees Seek to Control Civil Society Organisations* (18 February 2013), available at: <http://www.alhaq.org/advocacy/topics/palestinian-violations/673-unconstitutional-presidential-decrees-seek-to-control-civil-society-organisations>



obligations by immediately revoking the above mentioned decrees.

3.4 The Right to a Fair Trial

The undersigned human rights organisations remain concerned about Palestinians being tried by military courts instead of civilian courts. The UDHR, largely reflective of customary international law, provides that everyone is entitled to “full equality to a fair and public hearing by an independent and impartial tribunal”¹⁵. Bringing civilians before military courts is arguably inconsistent with the principles of equality and impartiality.¹⁶

On 15 January 2011, the PA General Intelligence decided to discontinue their policy of bringing civilians before military courts. On 17 January 2011, the chiefs of military and general security agencies met and agreed that this decision would apply to all agencies. The decision to no longer bring civilians before military courts is positive and since it was taken no civilian has been brought before a military court. However, as human rights organisations, we are concerned that this decision was neither official nor legally binding. As such, the decision to not bring civilians before military courts could be arbitrarily implemented depending on the political situation. Moreover, the PLO Revolutionary Laws of 1979 remain in force. These laws apply in both the West Bank and the Gaza Strip and provide for the possibility of bringing civilians before military courts in relation to 42 broadly defined crimes.

Another issue of concern is that the decision in question does not apply to civilians accused of so called ‘crimes against the state’ who continue to be tried by military courts. These crimes have been recently invoked in the Gaza Strip, in particular with regard to Palestinians accused of spying and for being collaborators of Israel.

Finally, although no civilian has been brought before a military court since the decision of 2011, those who were convicted and imprisoned by a military court prior to the informal decision have not been released. At

¹⁵ Article 10, Universal Declaration of Human Rights (1948)

¹⁶ Moekli, Shah and Sivakumaran, *International Human Rights Law*, Oxford University Press (2010), at 320-321: see also Human Rights Committee, General Comment 32 (23 August 2007), para 22.



present, there are 22 Palestinian civilians still in prison, serving sentences issued by Palestinian military courts. The continued detention of these civilians is in contradiction of several decisions of the Palestinian High Court of Justice, which has affirmed that civilians cannot be tried or held under military jurisdiction, and that civilians who were held by security forces on the basis of military rulings should be immediately released.¹⁷ .

3.5 Prohibition of Arbitrary Arrest and Detention

The undersigned organisations are concerned about an ongoing trend in which the security forces, as a punitive measure, arbitrarily detain and arrest Palestinians. The arbitrary nature of the arrests and detentions is demonstrated by the fact that the detainees are not prosecuted due to lack of grounds and solid evidence. The security forces at times also repeatedly summon and detain the same person without bringing any charges against him/her. In January and February 2013, the Palestinian Independent Commission for Human Rights received 52 complaints in the West Bank related to arbitrary arrest and detention or arrest and detention for political reasons.¹⁸

Arbitrary detention and arrest is made possible by the Attorney General's inability and unwillingness to fulfil his mandate independently. According to his mandate he is required to hold members of the security forces accountable for any violations of the law, including for arbitrarily arresting and detaining Palestinians.

In light of the above, it is essential that the law be reformed to allow for members of the security forces to be held criminally responsible for the arbitrary arrest and detention of Palestinians. Furthermore, it is necessary that the independence of the Attorney General be safeguarded so that he can effectively fulfil his function.

17 Al-Haq, 2011) (حدود وصلاحيات الأجهزة الأمنية في احتجاز المدنيين) available at: http://www.alhaq.org/arabic/index.php?option=com_zoo&task=item&item_id=109&category_id=12&Itemid=218

18 The Independent Commission for Human Rights, *Monthly Report on*

Violations of Human Rights and Public Freedoms in the Palestinian-controlled Territory January 2013 (2013), at 5 and The Independent Commission for Human Rights, *Monthly Report on Violations of Human Rights and Freedoms in the Palestinian - Controlled Territory February 2013* (2013), at 6.



3.6 Prohibition against Torture

The undersigned organisations can confirm that in comparison with the situation of 2006-2010, 2011 and 2012 were characterised by a reduced number of cases of torture and ill-treatment of political prisoners under Palestinian custody in the OPT. However, individual cases of torture have been documented. Al-Haq is currently following up on seven cases of torture committed against Tarik Di'es, Amjad Hussein, Baha' Zahdah, Mahir Abu Fannouneh, Karim Shahin, and Mahran Jabir. In January and February 2013, the Palestinian Independent Commission for Human Rights received 48 complaints of torture and ill-treatment from both the West Bank and the Gaza Strip.¹⁹ Allegations of torture involve "suspension from the ceiling, punching, beating and ill-treatment."²⁰

Torture is facilitated by the lack of criminal accountability for members of the security forces that endorse, facilitate and commit torture. Thus far, no member of the security forces has been held criminally responsible for inflicting torture. As with arbitrary arrest and detention, torture continues unimpeded due to the Attorney General's lack of independence.

In light of the above, we urge the EU to demand that the PA ensures that any person who commits, attempts to commit, or is complicit in the commission of torture is held criminally responsible. To this end, the PA must safeguard the independence of the Attorney General so that he can exercise his function, as well as criminalise torture in accordance with international customary law. The undersigned organisations underline that the crime of torture currently present in Palestinian legislation does not reflect customary international legal standards. We take this opportunity to reiterate that in the interest of Palestinians, the State of Palestine should join the International Convention Against Torture.

¹⁹ The Independent Commission for Human Rights, *Monthly Report on*

Violations of Human Rights and Public Freedoms in the Palestinian-controlled Territory January 2013 (2013), at 5; and *The Independent Commission for Human Rights, Monthly Report on Violations of Human Rights and Freedoms in the Palestinian - Controlled Territory February 2013* (2013), at 5.

²⁰ *Ibid.*



3.7 Accountability for violations of customary human rights law

The undersigned organisations also take this opportunity to recall that the United Nations Fact-Finding Mission on the Gaza Conflict (UNFFMGC) found that the PA's "actions [e.g. arrest, detention and torture] against political opponents in the West Bank, which started in January 2006 and intensified during the period between 27 December 2008 and 18 January 2009, constitute violations of human rights and of the Palestinians' own Basic Law".²¹ In this regard, the undersigned organisations would like to emphasise that the PA must implement all of the recommendations provided by the UNFFMGC. As such, the PA must:

issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigation of all allegations of serious human rights violations by security forces, and end the use of military justice for all cases involving civilians;

release, without delay, all political detainees currently in their custody and refrain from further arrests on political grounds and in violation of international human rights standards;

refrain from interfering with the operation of Palestinian non-governmental organisations, including human rights organisations, and of the Independent Commission for Human Rights.²²

We also note that the Palestinian Independent Commission Investigating the allegations presented in the UNFFMGC²³ issued 12 conclusions and

²¹ United Nations Fact Finding Mission on the Gaza Conflict, *Human Rights In Palestine and Other Occupied Territories, Report of the United Nations Fact Finding Mission on the Gaza Conflict* (A/HRC/12/48 (25 September 2009), para. 1586.

²² *Ibid.*, para 1974

²³ On 25 January 2010, pursuant to General Assembly Resolutions No A/RES/64/10 and [A/RES/64/254](#), PA President Abbas issued a decree for the establishment of an independent commission to investigate allegations presented in the UNFFMGC.



28 recommendations, which were never implemented.²⁴ The undersigned organisations also request that this report be fully implemented.

We further call on the EU to pressure the PA to set up an accountability and compensation mechanism of redress for all human rights violations committed by Palestinian state agents.

4. CONCLUSION

This submission highlights the areas in which the PA has failed to meet its international customary human rights obligations. The fundamental freedoms noted in this report are essential for the promotion of a democratic Palestinian state – as aspired to by the EU. Due to its political and financial relations with the PA, the EU can positively influence the PA's human rights record by conditioning its relation with the PA on its compliance with international law. The sub-committee on human rights, good governance and the rule of law is an opportune occasion towards this end.

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²⁴ Report of The Palestinian Independent Commission Investigating for Goldstone's Report, *Palestinian Independent Commission established pursuant to the Goldstone report: violations allegedly committed by Palestinians, Final Report*, available at: http://picigr.ps/details_ar.php?id=0iiclia2711yifgezftcw



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