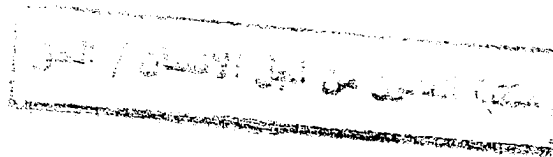


The Right to Freedom of Assembly:

An Analysis of the Position of the Palestinian National Authority

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Preface

The Arabic version of this study was published in May 1995. While preparations for the publication of this English version were made, important and legal changes took place. These changes, however, do not diminish the relevance of this study to the new Palestinian context.

Nevertheless, this preface has been added in order to inform the reader of the relevant legal and factual changes which have occurred since May 1995.

Following the entry into force of the Interim Agreement (hereinafter the IA), signed between the PLO and Israel on 28 September 1995, the PNA exercises jurisdiction in internal security matters, *inter alia*, over all West Bank cities, except Jerusalem and Hebron, and about 450 towns and villages, as well as in parts of the Gaza Strip. Additionally, local legislation which was applicable only in Jericho and parts of the Gaza Strip at the time of the publication of the Arabic version of this study is now also applicable in the rest of the West Bank territory under PNA rule. As a result, Jericho has been reincorporated into the judicial structure of the West Bank, and consequently the Ramallah-based High Court of Appeals has jurisdiction over all West Bank territory under PNA rule for the purposes of judicial review.

As for the factual basis of this study, despite the fact that more than a year has already passed since the publication of the Arabic version, no substantial change has taken place in the attitude of the Palestinian security organs *vis-a-vis* the right to freedom of assembly. If this study had been published at a late date, the only observable difference would have been the inclusion of further examples of undue restrictions on the right to freedom of assembly. The most extreme example which has occurred since the publication of the Arabic version took place on 30 March 1996, when Palestinian security forces raided the campus of the Nablus-based al-Najah University in order to enforce a ban imposed on a press conference that was being

held on university premises. During the raid, police forces arrested students and used excessive force that resulted in the injury of several persons.

Thus, it is clear that the attitude of the Palestinian security forces towards freedom of assembly has not changed. Whilst the events referred to in this study occurred approximately two years ago, reliable documentation proves that the PNA still does not respect the right to freedom of assembly even though full enjoyment of this right is crucial for the political and civil life of Palestinian society. These facts stand behind our decision to publish this English version of the study, in the hope that it will have a positive impact on respect for the right to freedom of assembly in the future.

Mustafa Mar'i,

March 1997

I. INTRODUCTION

During the second half of 1994, al-Haq intervened with the PNA and the Director-General of the Palestinian Police, Brigadier-General Ghazi al-Jabali, regarding orders and directives issued by Brigadier-General al-Jabali which placed certain restrictions on the rights to freedom of assembly and expression. Al-Haq's correspondence with Brigadier-General al-Jabali directly addressed the content of two directives, issued on 9 September 1994, which imposed restrictions on the rights to freedom of assembly and expression. Soon after, al-Haq received a copy of a directive, issued by the PNA Ministry of Education and Higher Education, prohibiting sports, cultural and social events in schools unless a permit is obtained in advance from the Palestinian police.

Al-Haq considers it essential to analyze the restrictions imposed by the PNA on freedom of assembly and expression since the subject has serious implications for basic freedoms and democracy within Palestinian society.

Al-Haq finds the directives issued by the Director-General of Police and the PNA Ministry of Education and Higher Education to be closely linked: the three directives were issued by organs of the PNA, and impose similar restrictions on the rights to freedom of assembly and expression. Al-Haq's legal analysis of the PNA's position on the rights to freedom of expression and assembly contained in this study is based on al-Haq's understanding of the above-mentioned directives and Brigadier-General al-Jabali's responses to al-Haq's interventions, as well as on the Palestinian police forces' practices concerning this issue.

In order to present a complete overview which is easily accessible to the public, it was decided that a study on the rights to freedom of expression and assembly under the PNA be prepared. This study is published within al-Haq's series of occasional papers, which present legal analyses of violations of human rights.

Brigadier-General al-Jabali asked al-Haq to publish his responses to al-Haq's interventions and press release concerning the directives and orders in question. Al-Haq indicated its readiness to do so in principle; al-Haq's correspondence with the PNA is attached in the annexes to this study. Al-Haq also presented this study to Brigadier-General al-Jabali before publication in order to provide him with further opportunity to express his position and address the issues discussed herein.¹ Al-Haq hopes therefore to have presented in an objective manner all the discussion between the PNA and al-Haq concerning the rights to freedom of assembly and expression.

Al-Haq wishes to express its appreciation of the spirit of cooperation and understanding specifically evident in Brigadier-General al-Jabali's responses. He reacted very promptly to most of al-Haq's inquiries, although he has not yet responded to some other matters raised by al-Haq. Al-Haq hopes that all the organs of the PNA are endowed with a spirit of public accountability similar to Brigadier-General al-Jabali's.

¹ See Annexes XI and XII for the complete text of al-Haq's two letters to Brigadier-General al-Jabali dated 15 February 1995 and 22 March 1995. Al-Haq has not received a reply from Brigadier-General al-Jabali to either of these letters or his comments on this study.

II. SEQUENCE OF EVENTS

1. 9 September 1994, or previous: the Palestinian police force becomes aware of the intention of the Democratic Front for the Liberation of Palestine (DFLP) to hold its Third National Conference on the premises of the YMCA in Gaza city on 9 September 1994. As a result, the Palestinian police force summons a member of the DFLP at around 2:00 a.m. on the morning of 9 September. Brigadier-General al-Jabali informs him that the police object to the conference being held since a permit has not been obtained.
2. 9 September 1994: Brigadier-General al-Jabali issues two directives. One directive, addressed to the Directors of al-Azhar University, Rashad al-Shawwa Cultural Center, the YMCA in Gaza city and al-Jala' Cinema, prohibits the holding of political gatherings in the halls and centers under their administration without a written permit obtained in advance from the Director-General of the Police. The other directive, addressed to bus companies in Gaza and Jericho, requires them to obtain a written permit in advance from the Palestinian police every time they intend to transport politically-affiliated groups irrespective of the purpose of their travel. Brigadier-General al-Jabali refers to Police Ordinance No. 17 of 1926, issued during the period of the British Mandate in Palestine, as the source of his authority to issue these two directives. (See Annexes I & II)
3. 9 September 1994: Palestinian police units surround the premises of the YMCA in Gaza, thereby preventing access to the building and the convening of the DFLP's Third National Conference. It is clear that this

operation is an execution of the decision communicated to the DFLP member the same morning prohibiting the convening of the conference and declaring it illegal.

4. 27 September 1994: the Palestinian Deputy Minister of Education and Higher Education, Dr. `Abdallah `Abd-al-Min'im, issues a directive stating that it is necessary to obtain the approval of the PNA, as represented by the Palestinian police, no less than four days prior to the date set for holding any sports, cultural or social event. This directive is addressed to the Directors of Education, who are instructed to communicate its contents to all school principals. (See Annex III)
5. 8 September 1994: al-Haq sends a letter to the PNA, the Director-General of Police, the Palestinian Independent Commission for Citizens' Rights (PICCR) and other human rights institutions expressing its grave concern over the requirement that permits be obtained in advance for holding political meetings in Gaza. Al-Haq also calls upon Brigadier-General al-Jabali to withdraw this directive. (See Annex IV)
6. 5 October 1994: al-Haq issues its press release No. 76 reiterating the contents of the letter of 28 September (see Annex V). The release states that:

Al-Haq regards these measures as a grave violation of the rights to freedom of assembly and association, guaranteed by Article 20 of the Universal Declaration of Human Rights and Articles 21 and 22 of the International Covenant on Civil and Political Rights. Such measures are not compatible with democratic values and political pluralism.

7. 6 October 1994: Brigadier-General al-Jabali responds to al-Haq's press release No. 76, and requests that al-Haq publish his response in a new press release. Brigadier-General al-Jabali states that:

We would like to inform you that the police force has, since its inception, functioned in accordance with the law in order to maintain public order and security for all citizens, regardless of their religious or political affiliations. ... [I]t is not in violation of the human rights to freedom of expression and freedom of assembly that the Director-General of Police has exercised the authority granted to him by the law in order to maintain security under the prevailing conditions, and with the aim of preventing inter-factional conflict amongst the opposition, solicited by the Israelis, who sow seeds of dissension everywhere.

For the same reason, the police banned the third national conference of the DFLP because its members violated the law by refusing to apply for a permit from the Director-General of Police within the designated time.²

8. 17 October 1994: al-Haq sends a supplementary letter to Brigadier-General al-Jabali explaining its position and requesting clarification of relevant issues. The following are some of the items included in the letter:

3. Regarding the banning of the DFLP's

² See Annex VI for the complete text of Brigadier-General al-Jabali's letter to al-Haq dated 6 October 1994.

Conference, al-Haq's objection is based on the failure to afford the DFLP the specified five-day period to apply for a permit to hold the conference, since your directive was issued on 9 September 1994, the day of the conference.

4. It is beyond doubt that you have the authority, and also the duty and responsibility, to preserve public order and safety. Al-Haq is in agreement that this is a weighty responsibility with regard to policing marches or assemblies held in public places. However, al-Haq does not see the need for such a requirement for closed meetings, for example meetings held in institutions and universities, since human rights standards guarantee the right to free and peaceful political discussion, while providing for the possibility of imposing restrictions, for instance, if a meeting becomes a platform for incitement to violence or armed insurrection. Such measures are taken against the instigators as individuals and not against the audience as a whole.³

9. 24 October 1994: Brigadier-General al-Jabali replies to al-Haq's letter dated 17 October 1994 (see Annex VIII), and encloses a copy of his letter dated 1 October 1994, which al-Haq had previously not received (see Annex IX), as well as a letter addressed to the PICCR dated 20 October 1994 (see Annex X). In his letter dated 1 October 1994, Brigadier-General al-Jabali responds to al-Haq's letter dated 28 September 1994.

Brigadier-General al-Jabali confirms in this letter

³ See Annex VII for the complete text of al-Haq's letter responding to Brigadier-General al-Jabali's letter dated 17 October 1994.

that the Palestinian police have not refused any requests submitted to hold political meetings. Moreover, the objective of his directive, which requires that a permit be obtained in advance from the Palestinian police, is, according to the letter, to regulate political meetings and not to prevent them. (see item 2 above)

It is relevant to mention that none of Brigadier-General al-Jabali's letters to al-Haq respond to concerns which al-Haq raised concerning the order's retroactive application, which prevented the DFLP from applying for a permit, or at least did not grant the DFLP sufficient time to apply. Brigadier-General al-Jabali's last letter stated simply that "Generally recognized principles of law stipulate that ignorance of the law is an inadmissible defense, and that a law remains in force as long as no other law has been issued to rescind it." Even though al-Haq agrees with Brigadier-General al-Jabali on the existence and authenticity of the aforementioned legal grounds, al-Haq maintains that his directive dated 9 September 1994 requiring that a permit be obtained in advance of public meetings had not been issued when the DFLP was informed of the objection of the Palestinian police to the holding of the conference that same day. The fact that the Police ordinance grants Brigadier-General al-Jabali the authority to issue the above-mentioned directive, and that the law was in force when the order was given to prevent the holding of the conference, does not affect any aspect of al-Haq's argument.

Since the correspondence discussed above does not adequately respond to all of al-Haq's concerns, and since al-Haq has concluded that the Palestinian police force is not willing to cancel these directives, al-Haq has decided to present hereinafter its legal analysis based on the available correspondence and documentation.

III. OVERVIEW OF THE RIGHT TO FREEDOM OF ASSEMBLY

In this overview al-Haq attempts to define both the right to freedom of assembly and the right to freedom of expression since these rights are closely related. Al-Haq also considers provisions concerning freedom of assembly in international human rights law and in the domestic law in force in Gaza and Jericho.

Freedom of expression, which is one of the basic freedoms that a free society should safeguard and guarantee, includes the right of the individual to express his opinions and personal views in addition to his right to receive information and disseminate it. Irrespective of time and place, meetings and marches have been two of the most significant methods used for the expression and dissemination of opinions. Therefore, any unlawful restriction on freedom of assembly leads in most cases to the violation of the right to freedom of expression.

In addition, human rights are universal and indivisible. In this context al-Haq quotes Article 5 of the Vienna Declaration and Program of Action adopted by the International Conference on Human Rights on 25 June 1993, which states that:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical,

cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.⁴

It can be said that freedom of assembly is intended to enable people to hold peaceful meetings anywhere for a specific period of time in order to express their opinions in any manner which they choose. The right to freedom of assembly is distinguished from other rights and freedoms in that this right is specifically exercised by groups and not by individuals.

This right is subject to a number of restrictions, such as maintenance of public order (*ordre public*). Meetings in private places such as houses, shops or private colleges do not require permission from the relevant authorities, whereas gatherings in streets, roads and public parks usually call for such permission since such gatherings could block roads or disturb traffic and public life. The executive should take special care not to exploit the use of these restrictions in order to suppress the expression of ideas and opinions which are in opposition to those of the ruling authority.

It should also be clarified that a meeting will not be considered peaceful if some of its participants or organizers carry weapons illegally or brandish them provocatively, or incite violence or hatred. If it is intended that the meeting or the march protests certain issues or specific opinions, then it is sufficient to assemble or to march with the idea of communicating this to the intended

⁴ Vienna Declaration and Program of Action, approved on 25 June 1994, U.N. Doc. A/Conf. 157/23.

public. At the same time, the authorities assume responsibility for protecting spectators or marchers in such a way as to guarantee the public's right of assembly and to ensure security

Palestinian society should maintain the appropriate balance between the right to freedom of assembly and the general responsibility of the authorities to provide security and to safeguard the freedoms and rights of others.

A. Freedom of Assembly under International Human Rights Law

Article 20 of the Universal Declaration of Human Rights states:

1. Everyone has the right to freedom of assembly and association.
2. No one may be compelled to belong to an association.

Article 19 of the International Covenant on Civil and Political Rights states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it

special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 21 of the Covenant states:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 2(2) of the same Covenant states:

1. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

B. Freedom of Assembly under the Applicable Local Law in the Gaza Strip and the West Bank

1. General

It should be noted that the law in force in the Gaza Strip is the same law that was applicable at the time of the PNA's assumption of power, with subsequent modifications. This law includes all legislation promulgated by the British Mandate Authority, in addition to legislation issued during the Egyptian administration of the Gaza Strip, and the military orders issued by Israel during its occupation of the Gaza Strip.

In the Jericho Area, the valid law in force is all Jordanian legislation which was in force when Israel occupied the West Bank in 1967, in addition to military legislation issued by the Israeli authorities and the subsequent amendments issued by the PNA.

In al-Haq's opinion, the majority of the military orders issued by Israel in both the Gaza Strip and Jericho Area is illegal. Most of these orders, especially those related to "security", exceed the restricted legislative authority granted to the Occupying Power in accordance with the Hague Regulations of 1907. Article 43 of these Regulations states the following:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the

laws in force in the country.

As stated in Article 43, the Occupying Power must ensure public order and safety at the same time, thereby achieving an acceptable balance between them. An examination of the military orders and other legislation issued by the Israeli occupying authorities in the West Bank and Gaza Strip reveals that most pieces of legislation were not for the benefit of the population under occupation or to protect Israel's legitimate security interests. Therefore, we will not analyze this legislation in detail when discussing the law applied in areas under PNA jurisdiction, since most of this legislation is null and void by reason of its illegality under international law.⁵

However, we shall refer to one provision of the occupier's legislation related to this issue because it is similar to the wording of the PNA Director-General of Police's directive. Article 3 of Military Order No. 101 of 27 August 1967, applicable in the West Bank, concerning the prohibition of incitement and hostile propaganda states the following:

⁵ President 'Arafat's Decree No 1 of 1994 states that the applicable law is the law which was in force immediately prior to 5 June 1967. The decree does not refer to new legislation or amendments to existing law which were introduced by the occupying authorities. Al-Haq is in favor of the retention of those military orders which have benefited residents of the West Bank and the Gaza Strip or which have granted certain rights, such as the extension of powers of attorney. There have been some positive amendments to existing legislation, such as Military Order No. 662 (West Bank) and No 536 (Gaza Strip); No. 663 (West Bank) and 637 (Gaza Strip), which obligate organizations to insure their employees against work-related injuries; and Military Order No. 677 (West Bank) and No 544 (Gaza Strip) which provide for compensation for those injured in traffic accidents. In general, however, those military orders which benefit the residents of the West Bank and the Gaza Strip are exceptional.

It is prohibited to hold meetings or demonstrations without a permit from the Military Commander.”⁶

It is evident that the occupying authorities consider every meeting or demonstration that takes place without their permission as illegal. In most cases, the occupying authorities disperse participants in such meetings by using excessive force, thus violating the right of Palestinians to, *inter alia*, freedom of assembly and expression.

⁶ The Military Commander for the Gaza Strip issued the equivalent Military Order No. 62 of 21 August 1967. Article 3 states: ‘It is prohibited to hold meetings or demonstrations without a permit from the Military Commander.’

It is worth mentioning that this military order was cancelled by the PNA in 1994. See Law No. 2 of 1995 dated 17 December 1994, published in “Al-Waqai’ al-Filistiniyyah” (the Palestine Gazette), No. 4, 6 May 1995, pp. 8-12, at 9.

2. Applicable Law in the Gaza Strip

Article 12 of the Constitutional Order of the Gaza Strip of 1962 states:

Freedom of opinion is guaranteed and every individual has the right to express and publish his opinion, in words, in writing or otherwise within the limits of the law.

Article 35(1) of the Palestinian Police Ordinance No 17 of 1926, as amended, states the following:

If the chief of police of a district deems it necessary for the maintenance of public security, he can issue a public or private declaration requiring any person who wishes to call for, hold or organize a meeting or a procession in his district, to apply in writing to the district commander within a period of no less than five days, or within any other period specified in the order, before the designated day of the meeting or procession for a permit to hold the meeting or the procession.

Brigadier-General al-Jabali's directive of 9 September 1994 was issued in the form of a directive similar to that referred to in the above provision. The directive also stated that the holding of public meetings without a permit was prohibited. The notice has since been used on several occasions, via the Palestinian police's

denial of permits, to prohibit certain public meetings.

3. Applicable Law in the Jericho Area (and the Rest of the West Bank)⁷

Article 16(1) of the Jordanian Constitution states the following:

Jordanians have the right to assemble within the limits of the law.

Article 3 of Jordanian Law No. 60 of 1953 on public meetings states:

It is permitted to hold public meetings in the Hashemite Kingdom of Jordan provided that notification is submitted 48 hours in advance of the meeting.

Article 2 of the same law defines a public meeting as:

Every meeting called by individuals to discuss political issues.

⁷ In principle, this is the law applicable in all the West Bank together with amendments introduced by the occupying authorities. This should also be the law in effect in East Jerusalem. However, the Israeli occupying authorities extended the application of Israeli law to occupied East Jerusalem following its occupation and illegal annexation of the city. The annexation of East Jerusalem was a unilateral act by Israel which is not recognized by the international community.

4. Other Provisions

In its 19th session entitled the "Intifada Session" held in Algiers between 12-14 November 1988, the Palestinian National Council adopted the document declaring the establishment of the state of Palestine. This declaration includes the following text:

The State of Palestine is the state of Palestinians wherever they may be. The state is for them to enjoy in it their collective national and cultural identity, theirs to pursue in it a complete equality of rights. In it will be safeguarded their political and religious convictions and their human dignity by means of a parliamentary democratic system of governance, itself based on freedom of expression and the freedom to form parties. The rights of minorities will duly be respected by the majority, as minorities must abide by decisions of the majority. Governance will be based on principles of social justice, equality and non discrimination in public rights, on grounds of race, religion, color, or sex under the aegis of a constitution which ensures the rule of law and an independent judiciary. Thus shall these principles allow no departure from Palestine's age-old spiritual and civilizational heritage of tolerance and religious coexistence.

In addition, Article 14 of the Cairo Agreement⁸, concluded between the PLO and the Israeli government in Cairo on 4 May 1994 for the implementation of self-rule in the Gaza Strip and Jericho Area states that:

⁸ Article XIX of the Interim Agreement of 28 September 1995 introduced a similar provision.

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.

Article 26 of the draft Basic Law of the Palestinian National Authority in the Interim Period⁹ states:

The right to peaceful assembly is recognized. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

Article 14 of the draft Basic Law states:

Every person shall have the right to freedom of thought, conscience and expression and publication of his opinion either orally, in writing or in the form of art or through any other form of expression, subject to observance of restrictions imposed by law for the respect of the rights or reputations of others, the protection of national security or of

⁹ See "The Draft Basic Law of the Palestinian Authority in the Interim Period" (Jerusalem: Jerusalem Media and Communication Center, 1994).

public order or of public health or morals.

Article 8 of the draft Basic Law states:

Security of the home is guaranteed; it may not be entered or inspected except in pursuance of a reasoned judicial order and in accordance with the law.

It is relevant to mention that there is partial congruence between the texts of some articles of this draft and the International Covenant on Civil and Political Rights. Despite the fact that this is only a draft law which has not yet been adopted and ratified, and thus is without any legal significance, the draft Basic Law is considered positive and vital at this stage. The incorporation of international principles of human rights into Palestinian legislation is considered an effective way of ensuring respect for these rights. Incorporation is particularly important since the PNA is unable to become a party to international treaties and conventions since it has not yet acquired the status of a state.

IV. AL-HAQ'S ANALYSIS OF THE PNA'S POSITION IN LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW AND DOMESTIC LAW

A. Prohibition of Political Meetings without Written Permission¹⁰

The directive issued on 9 September 1994, which prohibits the holding of political meetings unless permitted in writing, exceeds its stated purpose. Brigadier-General al-Jabali emphasized in his letters dated 1, 6, and 26 October 1994 that the purpose of this directive was not to restrict freedom of assembly and freedom of expression, but to improve regulation of meetings and to provide adequate protection for participants.

Al-Haq believes that if the directive aimed solely to protect participants and regulate the holding of meetings, a requirement to furnish information regarding the time and location of the meeting would be sufficient. It would be unnecessary that a written permit be obtained from the police in order for them to perform their duty of protecting participants. If this were the case, the police's

¹⁰ When the Arabic version of this publication was about to go to press, a serious development occurred that further restricted freedom of assembly in areas under the jurisdiction of the PNA. The PNA prevented the Gaza Center for Rights and Law from holding a study seminar on legal aspects of the formation of state security courts by the PNA. This development indicates that the restrictions imposed on the right to assemble peacefully, discussed in this study, have extended to prevent purely professional discussion on topics of great concern to Palestinians. Al-Haq expressed its concern about this incident in a letter to the Director-General of Police dated 22 March 1995 (see Annex XIII).

powers would be confined to either allowing the meeting, or postponing it to a later date in order to give the police sufficient time to provide adequate protection for the public.

Once the police are duly notified of the date and place of a public meeting, they have the right, or rather the duty, to be present in reasonable numbers at or within the vicinity of the meeting as required. The police's presence should guarantee the maintenance of law and order, ensure that the meeting is peaceful and does not cause any disturbance, and protect the audience's security and safety.

It is worth pointing out that in the case of the DFLP conference, the police were, within a few hours, able to be present in a large enough number to break up the conference. This is in clear contradiction of Brigadier-General al-Jabali's argument that the directive was justified because its objectives were the protection of participants and the regulation of meetings. It would have been more appropriate for the police to allow the DFLP to hold its conference as scheduled on 9 September 1994, or, at the most, to request its postponement, especially since it was previously known that the DFLP intended to hold the conference at a specific time in a specific place.

Hence, al-Haq reaffirms its previous position on this issue, expressed in its letter dated 28 September 1994 and in subsequent correspondence sent to Brigadier-General al-Jabali and the members of the PNA. Al-Haq agrees that the authority to issue such a directive is granted by the law applicable in Gaza. Police Ordinance No. 17 of 1926 and subsequent amendments grant the Director-General of Police the right to impose a requirement that written permission be obtained to hold any political meeting, and that the request for permission should be

submitted at least five days prior to the meeting. But al-Haq believes that:

The law itself violates the rights to freedom of assembly, as guaranteed by Articles 21 and 22 of the International Covenant on Civil and Rights. It is a source of deep concern to al-Haq that the Director-General of Police chose to exercise his authority to require that permits be obtained for political meetings. Such a requirement is not compatible with the building of a democratic Palestinian society based upon pluralism and respect for human rights.¹¹

It is worthwhile to note here that the Police Ordinance gives the Director-General of Police the discretion to issue a directive to prohibit political meetings without a permit. The issue of this directive is therefore an act of discretion and not one of obligation. Furthermore, the ambit of this directive should be intrinsically connected to the circumstances necessitating its issue, especially as regards the duration and geographical location of its application. For example, if circumstances in Khan Younes require the banning of a public meeting at a certain time, then the Director-General of Police may issue such a directive if he deems it necessary. The application of such a directive should be limited to a certain period of time and to a limited geographical area in accordance with the circumstances which required the directive's issue. Consequently, the application of such a

¹¹ Refer to al-Haq's letter dated 28 September 1994 (Annex IV).

directive, which imposes provisional restrictions on the enjoyment of certain freedoms, should come to an end with the cessation of the circumstances which necessitated its issue.¹²

It is important to note that Article 3 of the Jordanian Law on Public Assemblies only requires that the concerned authority be notified of the time and venue of the assembly in order to enable a representative of the authorities to attend the meeting and ensure that it is not in violation of the law.

Although the International Covenant on Civil and Political Rights allows states parties to impose restrictions on the exercise of the right to freedom of assembly, such restrictions must be necessary in a democratic society.¹³ It is of vital importance, in a democratic society, that citizens have the opportunity to adhere to political ideologies independent of the ideology of the government. Every banning of a political meeting prevents a particular group from expressing a political opinion and precludes them

¹² In principle, all freedoms should be respected. However, when a country's security is exposed to insurmountable danger, whether internal or external, it inevitably becomes necessary to place restrictions in different degrees on certain freedoms which may be exploited.

The existence of a declared state of emergency forms one of the exceptional situations in which this right could be restricted. At the conclusion of a debate on martial laws and emergency regulations which took place in a specialized meeting held in Morocco between 8-11 November 1988 and convened by the Permanent Office of the Arab Lawyers' Union it was recommended that the declaration of a state of emergency should be subject to review by representatives of the people in the Parliament every three months. It was also recommended that a declaration only be proclaimed in cases of extreme peril.

¹³ Article 21 of the International Covenant on Civil and Political Rights.

from participating in political life, inevitably hindering the development of democracy in society.

A distinction should be made between meetings held in private places and those held in public places. A simple definition of a 'public place' is a place in which the public is allowed to congregate freely without discrimination, even if the entry is subject to certain conditions, such as payment of a fee. Meetings held in private places are immune from the interference of the authorities in order to respect the right to privacy. Meetings held in public places are subject to certain restrictions, as described within this publication. Therefore, Brigadier-General al-Jabali's directive issued on 9 September 1994 prohibiting political meetings in certain venues is considered a violation of the immunity of these places, in that these places are not considered public places (Annex I). Supporting al-Haq's argument, Brigadier-General al-Jabali stated in his letter to al-Haq dated 17 October 1994 that he had not requested the universities to ban gatherings within the campus, in conformity with the need to preserve the immunity of private places from governmental interference (Annex 8).

Al-Haq finds that the directive issued on 9 September 1994 which requires that a written permit be obtained from the Palestinian police prior to any political meeting is, *per se*, a violation of human rights, particularly the right to freedom of assembly and the right to freedom of expression. In al-Haq's view, it is imperative that this directive be rescinded.

B. Palestinian Police Prohibition on the Holding of the Third National Conference of the DFLP

The directive prohibiting public political meetings without a permit was issued on 9 September 1994 and the police notified the leadership of the DFLP of its order prohibiting the holding of that conference early in the morning of the same day. While there is a remote possibility that the directive stipulating the requirement of a permit prior to holding any meeting was issued shortly before the prohibition of the conference, during the early hours of the morning, it is more likely that the conference was prohibited under the terms of a directive that had not yet been issued.

On either assumption it can be said that the Palestinian police's decision to ban the meeting of the DFLP was without legal basis in that the directive of 9 September 1994 had not yet been issued, or had been issued in the early hours of the same day, thereby denying those concerned sufficient time to apply for a permit. The directive itself requires persons to apply for a permit five days in advance of the meeting. However this directive did not exist five days prior to the meeting. In al-Haq's view, the directive was applied in bad faith, and retroactively, in direct contradiction with general principles of law.

International human rights law and internationally-recognized general principles of law do not permit the retroactive application of the law. Moreover, this principle is considered one of the basic standards of a legal system based on the rule of law.

The International Covenant on Civil and Political Rights prohibits the application of penal laws retroactively. Article 15(1) states that:

al-Jabali dated 17 October 1994, al-Haq has still not received a satisfactory response to all its queries concerning the banning of the Third National Conference of the DFLP.

C. Prohibition on Transport of Politically-Affiliated Groups

The Director-General of the Palestinian Police issued a directive on 9 September 1994 prohibiting bus companies operating in Gaza, Khan Younes and Jericho from transporting political groups. This directive has no stated justification or legal basis.

Although article 35(1) of Police Ordinance No. 17 of 1926 gives authority to a police officer, under certain conditions, to ask all procession organizers to apply for a permit for the procession, the ordinance does not apply to bus companies since the law places the responsibility of applying for a permit on the organizers and not on transportation companies. Transportation companies are established to provide transport services to citizens and should not, in al-Haq's opinion, be used to monitor travelers in order to ascertain their political affiliations and the purpose of their journey. Public transport should be accessible to all without conditions or restrictions.

In addition, it is unacceptable to extend the application of the British Mandate Police Ordinance to the Jericho Area where Jordanian law, which was in force at the time of Israeli occupation in 1967, is the main body of applicable law. Therefore the application of this Police Ordinance, and all legislation in force in the Gaza Strip,

should be limited to the Gaza Strip, at least until legislation applied in the Occupied Palestinian Territories since 1967 becomes unified. It should be noted here that the directive issued on 9 September 1994 by the Director-General of the Palestinian Police concerning the prohibition of political gatherings (Annex I) was restricted to the Gaza Strip and did not apply to the Jericho Area.

The directive concerning bus companies was directed against any type of travel by groups affiliated with a political party irrespective of the purpose of the group's travel. The directive (Annex II) provides for the prohibition of the transportation of:

... any groups affiliated with any political party and for any purpose without an advance written permit from the Director-General of Police.

Thus, even though a politically-affiliated group of citizens might be traveling in the Gaza Strip in order to, for example, attend a human rights seminar or to congratulate a recently released prisoner, their movement remains prohibited unless a special permit is obtained from the Director-General of Police. The mere fact that a bus company is transporting a politically-affiliated group without a permit makes the journey illegal. Al-Haq finds this issue extremely dangerous as the directive is based on discrimination against certain groups of citizens, and categorizes them according to their opinions and/or political affiliations.

D. Prohibition of Sports, Cultural and Social Events without Permission

As already mentioned in this publication, the Deputy Minister of Education and Higher Education issued a directive on 27 September 1994 requiring the acquisition of a special permit from the Palestinian police before the holding of any sports, cultural or social events within any school campus.

In al-Haq's opinion, this directive restricts the educational process and it impairs the achievement of its objectives. The negative effect of this directive is exacerbated by its application to events in general, whether they be sporting, cultural or social.

Al-Haq considers this directive inappropriate, especially as it comes at a period of great change, when citizens are engaged in a process of nation-building and reconstruction with special concentration on the future generation. This generation is still suffering from the effects of "under-education", and the closure of educational institutions by Israel. Therefore, there is an urgent need in this particular phase to promote activities which strengthen links between students and their schools, on the one hand, and activities which strengthen links between schools and the wider society on the other.

Sports, social and cultural events can obviously contribute to the strengthening of these links. In addition, extra-curricular activities play an undeniable role in developing students' skills, in promoting their creative abilities, and in widening their horizons.

Al-Haq considers it essential for the whole educational body to have the freedom to set up educational and recreational activities. This freedom should

It should be made clear that the absence of a legislative authority and the assumption of legislative powers by the executive are only temporary. Directives issued by the executive should not be allowed to create effects that may be difficult to redress in the future, even if such directives are not approved by the legislative authority after it assumes power.

The judicial system in the Occupied Palestinian Territories also suffers from numerous deficiencies. Al-Haq would like to emphasize that the safeguarding of human rights in any society requires the existence of effective and independent branches of government which can cooperate and avoid the domination of any one branch.

A. The Legislative Authority and Protection of Human Rights

Al-Haq feels obliged to elaborate on a vital issue: the appropriateness of the Police Ordinance No. 17 of 1926 to the current Palestinian situation. This law was adopted by the British authorities during the period of the British Mandate in Palestine. Times have changed and the circumstances which required the issue of this ordinance no longer exist.¹⁴ This ordinance came into effect at a time when Jewish immigration to Palestine was increasing greatly, leading to an insurrection by Palestinians against British collaboration with the Jewish settlers, whose presence had been a source of conflict throughout Palestine. At that time the British authorities issued a

¹⁴ See Dr. Mahmoud Mahmoud Mustafa, "Azmat hoqouq alinsan filwatan al-'Arabi" (Human Rights Crisis in the Arab World) (Cairo: Arab Lawyers' Union Center, 1989) p 89.

number of laws, including the above-mentioned police ordinance, which imposed restrictions on certain freedoms. These laws were in fact exceptional, even though they were not officially defined as such. What is relevant, however, is not the category of the law but the extent to which it restricts the freedoms and rights of individuals.¹⁵

Today, this ordinance is particularly inappropriate, since the Palestinian people, after a long struggle, have expectations of a society where human rights and freedoms will be respected. The Palestinians are also on the threshold of a critical stage which requires guarantees for the protection of all human rights, in particular freedom of expression and freedom of assembly, which the Palestinians have been deprived of for many years. It should be emphasized however, that the need for such guarantees is not temporary and context specific; these rights and freedoms should be secured at all times.

It is relevant to point out that there has been substantial development in human rights standards over the past few decades, especially during the period which followed the end of the Second World War and which witnessed the adoption of a number of international human rights instruments. Many human rights principles contained in these instruments have been acknowledged as forming part of customary international law, which obligates all states to refrain from violating these principles regardless of whether they are parties to these instruments or not.

One of the most important factors behind the failure of these British Mandate laws to conform with international human rights law is the fact that they are obsolete: many of these laws were issued several decades

¹⁵ Ibid., p. 89.

before the adoption of the Universal Declaration of Human Rights, and many similar pieces of legislation have been either amended or withdrawn in their countries of origin.

The Palestinian situation is complicated by the fact that the PNA is unable, at least in theory, to amend any Palestinian legislation without the approval of Israel. The Cairo Agreement, signed on 4 May 1994 by the PLO and Israel, provides for a specific legislative mechanism for the enactment of legislation by the PNA during the interim period. According to Article 7 of the Agreement, Israel is entitled, subject to certain criteria, to approve or reject Palestinian-proposed legislation; in other words, Israel has a right of veto over Palestinian laws issued during the interim period.¹⁶ There exists, nevertheless, the possibility that the PNA can utilize its limited legislative authority in order to promote, protect and respect human rights.

B. The Executive Authority and the Protection of Human Rights

It is unjustifiable for the executive authority, whenever it acts in violation of human rights standards, to use the pretext that it is obliged to implement existing

¹⁶ According to Article 18(4) of the Interim Agreement of 28 September 1995, Palestinian legislation which amends or abolishes laws in force, including military orders, shall have no effect and shall be void *ab initio* if such legislation exceeds the jurisdiction of the Legislative Council, or which is otherwise inconsistent with the provisions of the DOP, the Interim Agreement or any other agreement reached between the two sides during the interim period. According to Article 18(5), the PNA should provide Israel with all Palestinian legislation.

laws, especially if the law violates these rights and freedoms.¹⁷

It is the duty of the executive authority to assume the positive role of protecting human rights and freedoms, especially during this period in which the laws being implemented by the PNA are outdated and foreign in origin. It is time to introduce reforms and to modernize by amending, improving and changing laws in accordance with the needs of the population.

Decision-makers in the PNA should abstain from issuing any directive which could violate basic human rights as provided for in the international conventions and other instruments with which the PNA has declared, on several occasions, its determination to comply. Such compliance by the PNA will consolidate Palestinians' conception of their humanity on the one hand, and the possibility for change for the better on the other. This issue is particularly important since Israel continues to violate, both individually and collectively, the human rights of Palestinians, including the right to life, the right to physical integrity, the right to freedom of assembly and expression and the right to self-determination.

Al-Haq considers it vital that the PNA ensure respect for Palestinian human rights by issuing administrative orders prohibiting the implementation of any legal provision which violates any Palestinian human right. These orders would be based on the PNA's commitment, stated on several occasions, to respect human rights and freedoms. Furthermore, any person

¹⁷ It should be noted that responsibility rests on the Israeli occupying authorities for legislation in violation of human rights standards introduced by them, if and when they reject an amendment to any such legislation.

responsible for implementing the law should be aware of the principle of strict necessity. This requires that all organs of the PNA, particularly those responsible for implementing the law, have a deep awareness of, and commitment to, human rights and freedoms.¹⁸

Al-Haq is fully aware that the nascent PNA in the Gaza Strip and the West Bank is not a state, and cannot officially ratify international human rights instruments. However, the PNA can commit itself voluntarily to the principles contained in these documents without ratifying the relevant conventions. It could act to ensure that its procedures, and the instructions which it issues, conform with these international standards. It is relevant to mention that the PLO submitted a request to the Swiss government in 1989 to become a party to the four Geneva Conventions and the two Protocols annexed to them.¹⁹ The mere request indicates a moral commitment on the part of the PLO to respect Palestinian human rights, even if this commitment is not legally binding.²⁰ It is therefore expected that persons in the PNA responsible for law enforcement should abide by the PNA's commitment to respect human rights, a commitment owed above all else to the Palestinian people.

¹⁸ For some time al-Haq has been working with local Amnesty International groups and the Palestinian Human Rights Information Center on a national campaign conducted in villages, refugee camps and schools for raising human rights awareness. Al-Haq is also collaborating with the PNA in providing human rights training for members of the Palestinian Police Force.

¹⁹ Letter from Ambassador Nabil Ramlawi to the Swiss Federal Council dated 14 June 1989, reprinted in "Palestine Yearbook of International Law" (1989) pp. 319-321

²⁰ Letter from the Permanent Swiss Mission at the U.N. to the Palestinian Ambassador Nabil Ramlawi dated 13 September 1989. Ibid. p. 321

In its press release No. 76 discussing the two directives issued on 9 September 1994, al-Haq attempted to remind the PNA of its duty to respect Palestinian human rights and to remove all unlawful restrictions that impede the exercise of these rights. Al-Haq called upon the PNA to revoke these two directives. It also requested the PNA to:

... adhere to the Declaration of Palestinian Independence of 1988, and to Article 14 of the Agreement on the Gaza Strip and Jericho Area which states that the Palestinian authorities are required to exercise their powers and responsibilities under the Agreement "with due regard to internationally-accepted norms and principles of human rights and the rule of law.

C. The Judicial Authority and the Protection of Human Rights

The obvious inadequacy in the judicial structure in areas under PNA jurisdiction lies in the absence of a constitutional court that can investigate the extent to which current legislation conforms with applicable constitutional standards.²¹

During the initial stages of the existence of the

²¹ For an examination of the Palestinian legal system see "The Civilian Judicial System in the West Bank and Gaza: Present and Future" (Geneva: Center for the Independence of Judges and Lawyers and the International Commission of Jurists, June 1994).

PNA, a legal vacuum existed in the Jericho Area since no court had jurisdiction to conduct judicial review of PNA actions and decisions affecting the Jericho Area, or to act as a court of appeal against decisions of the lower courts in Jericho due to the separation of the Jericho courts from the rest of the West Bank after 4 May 1994. The situation has been partially resolved by the issue of a decree by the President of the PNA extending the jurisdiction of the High Court in the Gaza Strip to include judicial review of PNA actions and decisions in the Jericho Area and appeals from the lower courts in Jericho.²²

In conclusion, it can be said that even though the reasons lying behind violations of the right of assembly in the Palestinian case resemble the reality in the Arab world in general,²³ the first stages of the existence of the PNA in the Gaza Strip and Jericho Area have been characterized by immense difficulties. Although these difficulties do not justify human rights violations, they should prompt us to refrain from assuming that the current situation will remain constant.

Al-Haq considers it appropriate to conclude by quoting from a section of its press release No. 76 (Annex V):

Concerned for the protection of human rights
and the establishment of a Palestinian society

²² PNA: "Al-Waqai' al-Filistiniyyah" (the Palestine Gazette), January 1995, pp. 11-12.

²³ For a more detailed study on this subject see Dr. 'Abd-al-Aziz Banati' "Patterns and Explanations of Human Rights Violations" in "International Humanitarian Law and Human Rights in the Arab World" Thought Seminars Series, No. 6, (Cairo: Arab Human Rights Organization, 1992) pp. 73.

based upon respect for the rule of law and democratic practices, al-Haq calls upon the Director-General of the Palestinian Police in Gaza to withdraw these two directives immediately and to refrain from introducing other similar measures. Al-Haq calls upon the Palestinian National Authority to adhere to the Declaration of Palestinian Independence of 1988, and to Article 14 of the Agreement on the Gaza Strip and Jericho Area.

ANNEXES

Annex I
(Al-Haq's translation)

In the Name of God the Compassionate, the Merciful

Palestinian Public Security
Directorate of Police

Ref. Q. Sh
Date: 9/9/94

To: The Director of al-Azhar University
 The Director of Rashad al-Shawwa Cultural Center
 The Director of the YMCA / Gaza
 The Director of al-Jala' Cinema

Greetings,

In accordance with the provisions regulating assemblies and in compliance with the law, it is hereby prohibited from this date onwards to hold political assemblies in halls and centers under your administration, irrespective of the orientation or objectives of such assemblies, without a prior written permit from the Director-General of Police.

Brigadier-General Ghazi al-Jabali
Director-General of Police
(Signed)

cc: H. E. the President/ the General Commander/for
 information
 H. E. The Minister of Justice
 H. E. the Commander, Director-General of Security
 The area police chiefs for implementation

Annex II
(Al-Haq's translation)

In the Name of God the Compassionate, the Merciful

Palestinian Public Security
Directorate of Police

Ref: Q. Sh
Date: 9/9/94

To: All bus companies in Jericho, Gaza and Khan Younes Areas

Greetings,

As from this date onwards you are hereby prohibited from transporting any groups affiliated with any political party for any purpose without an advance written permit from the Director-General of Police.

Brigadier-General Ghazi al-Jabali
Director-General of Police
(Signed)

cc: H. E. the President/ General Commander/for
information
H. E. the Minister of Justice
H. E. the Minister of Transport
H.E. Director-General of Palestinian Public Security
The area police chiefs for implementation

Annex III
(Al-Haq's translation)

In the Name of God the Compassionate, the Merciful

Palestinian National Authority
Ministry of Education and Higher Education

Date: 27/9/1994

Messrs. Directors of Education

Greetings,

For the protection of the public interest, the maintenance of the benefits accrued by our victorious progress and the preservation of national unity, you are hereby requested to notify the directors of schools in your areas that they are required to obtain approval for any sporting, cultural or social event four days in advance from the Palestinian National Authority, represented by:

- Southern Area/ Colonel Isma'il al-Shafi'i, or his deputy
- Northern Area/ Brigadier-General Ziyad 'Ureif or his deputy

Your approval is also required.

For information and implementation.

Dr. Abdullah 'Abd-al-Min'im
Assistant Deputy Minister

... / 2

In the Name of God the Compassionate, the Merciful

Palestinian National Authority
Ministry of Education and Higher Education

Date: 27/9/1994

Messrs. School Principals

We have received the above directive from the Ministry of Education and Higher Education. You are required to comply with the directive in order to regulate our work and to promote the interests of our institutions.

May God bless our endeavor.

Director of Education
Muhammad Ramadan / Muhammad al-Hanjouri
(Signed)



AI-HAQ CONCERNED OVER NEW REQUIREMENT FOR PERMIT FOR POLITICAL MEETINGS IN GAZA

28 September 1994

Al-Haq, the West Bank affiliate of the International Commission of Jurists, is deeply concerned by a new requirement introduced by the Director-General of Police in the Gaza Strip on 9 September 1994 that the four main cultural centers in Gaza City must obtain permits before hosting political meetings. The Director-General of Police, Colonel-General Ghazi al-Jabali, sent the directors of Rashad al-Shawwa Cultural Center, the YMCA, al-Azhar University and al-Jala' Cinema a letter stating: "In accordance with the legal provisions regulating meetings, and in implementation of the law, from this date forwards the holding of political meetings in your centers and halls is prohibited regardless of aim or purpose without prior written permission from the Director-General of Police."

The law applicable in Gaza in fact allows such a directive. The Police Ordinance No. 17 of 1926, as amended by later legislation, gives the Director-General of Police the power to require the acquisition of a permit prior to the holding of a political meeting. An application must be made at least five days in advance.

According to affidavits taken by al-Haq, on 9 September 1994, the day set for the opening of the Third National Conference of the Democratic Front for the Liberation of Palestine (DFLP) at the YMCA, one of the DFLP members in the Gaza Strip was summoned at 02:00 by the Director-General of Police. The member was informed that the conference could not be held for lack of a permit. Later that morning a large number of Palestinian police officers surrounded the YMCA, and armed police officers with batons occupied the building and prevented participants from entering.

The use of this directive against the DFLP conference was unreasonable since the organizers were not afforded the opportunity to apply for a permit. The directive was only issued on 9 September, the

first day of the conference. In al-Haq's view the law itself violates the rights to freedom of assembly, as guaranteed by Articles 21 and 22 of the International Covenant on Civil and Political Rights. It is a source of deep concern to al-Haq that the Director-General of Police chose to exercise his authority to require that permits be obtained for political meetings. Such a requirement is not compatible with the building of a democratic Palestinian society based upon pluralism and respect for human rights.

Al-Haq calls upon the Director-General of Police in Gaza to withdraw this directive immediately, and upon the Palestinian authorities to amend the Police Ordinance to ensure its compliance with international human rights standards guaranteeing freedom of assembly and association. The Palestinian authorities are required by Article 14 of the Agreement on the Gaza Strip and the Jericho area to exercise their powers and responsibilities under the Agreement "with due regard to internationally-accepted norms and principles of human rights and the rule of law."

cc: Members of the Palestinian National Authority
Ghazi al-Jabali, Director-General of Police in Gaza
Palestinian Independent Commission for Citizens' Rights
Human rights organizations

For Limited Distribution



Press Release No. 76
For Immediate Release

5 October 1994

The Palestinian Police Restricts the Rights to Freedom of Assembly and Association of Political Activists

Al-Haq is deeply concerned by the recent issue by the Palestinian police of two directives which violate the rights to freedom of assembly, association and peaceful political expression.

On 9 September 1994 the Director-General of Police for the Gaza Strip, Ghazi al-Jabali, issued two directives. The first, addressed to Rashad al-Shawwa Cultural Center, the YMCA, al-Azhar University and al-Jala' Cinema in Gaza City, required these institutions to apply in advance to the Palestinian police for a permit to hold political meetings. The second directive was addressed to all bus companies operating in the Gaza Strip and prohibited them from "transporting political groups for any purpose without advance written permission from the Director-General of the Palestinian police."

According to al-Haq's documentation, on 9 September 1994 the Palestinian police banned the holding of the Third National Conference of the Democratic Front for the Liberation of Palestine under the terms of the first directive. The police sealed off the YMCA, the venue for the meeting, and participants were prohibited from entering the building.

Al-Haq regards these measures as a grave violation of the rights to freedom of assembly and association, guaranteed by Article 20 of the Universal Declaration of Human Rights and Articles 21 and 22 of the International Covenant on Civil and Political Rights. Such measures are not compatible with democratic values and political pluralism. The first directive states that it is made in accordance with the law, but the law breaches human rights standards. The second directive has no stated legal basis. Moreover, the second measure is a

limitation going beyond Military Orders 62, applicable in the Gaza Strip, and 101, applicable in the West Bank, which restrict freedom of assembly and association.

Concerned for the protection of human rights and the establishment of a Palestinian society based upon respect for the rule of law and democratic practices, al-Haq calls upon the Director-General of the Palestinian police in Gaza to withdraw these two directives immediately and to refrain from introducing other similar measures. Al-Haq calls upon the Palestinian National Authority to adhere to the Declaration of Palestinian Independence of 1988, and to Article 14 of the Agreement on the Gaza Strip and Jericho Area which states that the Palestinian authorities are required to exercise their powers and responsibilities under the Agreement "with due regard to internationally-accepted norms and principles of human rights and the rule of law."

Annex VI
(Al-Haq's translation)

In the Name of God the Compassionate, the Merciful

Palestinian Public Security
Directorate of Police

Ref: A15/118
Date: 6/10/1994

Messrs. al-Haq,
Affiliate of the International Commission of Jurists,
Ramallah - P. O. Box 1413

Greetings.

We write with reference to the press release issued by your organization dated 5 October 1994 and further to our letter to you dated 2 October 1994, addressed to the Commissioner-General of the Palestinian Independent Commission for Citizens' Rights, concerning the directive issued by the Director-General of Police prohibiting political assemblies in public places without prior permission from him.

We would like to inform you that the police force has, since its inception, functioned in accordance with the law in order to maintain public order and security for all citizens, regardless of their religious or political affiliations ... [I]t is not in violation of the human rights to freedom of expression and freedom of assembly that the Director-General of Police has exercised the authority granted to him by the law in order to maintain security under the prevailing conditions, and with the aim of preventing inter-factional conflict amongst the opposition, solicited by the Israelis, who sow seeds of dissension everywhere.

For the same reason, the police banned the third conference of the DFLP because its members chose to break the law by refusing to apply for a permit from the Director-General of Police ... In contrast, we have accompanied and provided protection for a procession of more than 20,000 people of all factions upon their request. This directive is a protective measure designed to provide police security for the participants, and is not motivated by fear of them. Enclosed is a copy of the law for your information.

Kindly publish this response to your press release and provide us with a copy for information.

Sincerely,

Brigadier-General Ghazi al-Jabali
Director-General of Police
(Signed)

Annex VII

AL-HAQ

Affiliate, International Commission of Jurists - Geneva

فروع لجنة المحققين الدولية - جنيف



Mr. Ghazi al-Jabali
Director-General of Police / Gaza

Date: 17/10/1994

Greetings,

We are writing in immediate response to your letter dated 6 October 1994 (ref. A15/118). Firstly we would like to thank you for the concern which you have displayed about the issue which we raised, and for your keenness to put matters in order.

We are ready to publish a follow-up press release which includes your reply; yet before doing so we find it necessary to complete our compilation of information so that our respective positions will be clear to all, out of respect for the right of all citizens to have access to all the relevant information. Therefore we hope that you will provide us with additional information concerning the following:

1. In your letter you referred to a letter dated 2 October 1994 sent to us via the Commission-General of the Palestinian Independent Commission for Citizens' Rights (PICCR). We have not received this letter and request you to send it again. We kindly ask you not to confuse our organization, which is an independent non-governmental organization, with PICCR, headed by Dr. Hanan 'Ashrawi, the Commissioner-General. We inquired at PICCR about this letter and were informed that they had not received it either.
2. We refer to our letter addressed to you dated 28 September and confirm that we are fully aware that sub-sections 35(a) and (b) of the Police Ordinance No. 17 of 1926 give the District Chief of Police the right to impose restrictions similar to those which you have imposed.
3. Regarding the banning of the Democratic Front conference, our objection is based on the failure to afford to the DFLP the specified five-day period to apply for a permit to hold the conference, since

your directive was issued on 9 September 1994, the day of the conference. Your assumption that the ordinance, on which the directive is based, is known to the public in general and to meeting organizers in particular is not valid: this law has not been previously used by the Palestinian National Authority. Therefore the ordinance should have been publicized prior to its revival.

4. It is beyond doubt that you have the authority, and also the duty and responsibility, to preserve public order and safety. We are in agreement that this is a weighty responsibility as regards the policing of marches or assemblies held in public places. However, we do not see the need for the requirement of a permit for closed meetings, for example meetings in institutions and universities, since human rights standards guarantee the right to free and peaceful political discussion, while providing for the possibility of imposing restrictions, for instance, if a meeting becomes a platform for incitement to violence or armed insurrection. Such measures are taken against the instigators as individuals and not against the audience as a whole. Therefore such actions should be taken once the meeting has been held, not prior to it.
5. In our press release No. 76 dated 5 October 1994, we point out that in addition to our concerns regarding the rights to freedom of political assembly and freedom of expression, we also have reservations about your second directive dated 9 September 1994 which prohibits transport companies from providing services to political groups without a permit. This directive did not refer to the legal provisions on which it is based. Therefore we request you to clarify the legal basis for the imposition of this restriction on bus companies.

Thank you for your cooperation. We await your reply.

Regards,

Fateh 'Azzam
Program Coordinator
al-Haq
(Signed)

cc. The Palestinian Independent Commission for Citizens' Rights

Annex VIII
(Al-Haq's translation)

Palestinian Public Security
Directorate of Police

Ref: Q. Sh.
Date: 24/10/1994

Messrs. al-Haq,
Affiliate of the International Commission of Jurists,
Ramallah - P. O. Box 1413

Greetings,

In reply to your letter dated 17 October 1994, please find enclosed a copy of our letter dated 2 October 1994. We remind you of the recognized legal principles that ignorance of the law is no excuse and that the law remains in force insofar as no law has been issued to repeal it. We have also not requested universities or institutions to prohibit assemblies and we have not addressed our letter to the hotels or wedding and funeral halls to ban assembly. The directive was not addressed to private places in order to safeguard the right of citizens to freedom of assembly. We specified that an advance permit must be obtained. This procedure is in conformity with the law and is aimed at facilitating the coordination of police efforts to provide protection for the audience and security for venues for meetings, not out of fear of the audience but out of a desire to protect it from possible actions of opposing factions.

Regarding our directive restricting transport companies from providing services to political parties, we enclose a copy of our reply to PICCR in this respect.

Regards,

Brigadier-General Ghazi al-Jabali
Director-General of Police
(Signed)

Annex IX
(Al-Haq's translation)

In the Name of God the Compassionate, the Merciful

Palestinian Public Security
Directorate of Police

Date: 1/10/1994

Dr. Hanan 'Ashrawi
Commissioner-General
Palestinian Independent Commission for Citizens' Rights

Greetings,

With reference to your letter (ref. D/9/94) dated 29 September 1994 concerning the Director-General of Police's directive prohibiting the convening of political meetings, and in response to your inquiries, we state the following:

1. This directive of the Director-General of Police is a procedural measure which aims to regulate rather than prohibit political meetings. Thus it is required that a permit be obtained in advance to enable the police to coordinate efforts to provide the required protection for the audience and to ensure the security of the venue for the meeting, not out of fear of the audience but in order to protect it from opposing factions.
2. No request by any political faction to organize a march or meeting has been refused to date, in compliance, on our part, with the right to freedom of political organization, freedom of assembly and freedom of expression.
3. Police Ordinance No. 17 of 1926 is still in force with regard to the functions and duties of the police. Order No. 6 of 1963 deals with the appointment, promotion, leave, discipline and termination of employment of police officers, and provides for a Higher Police Council etc.
4. According to Article 82 of the Penal Code, when there is no District Officer, his authorities are delegated to the District Commissioner or Police Commissioner. Article 35 of the Police Law directly discusses the role of the District Chief of Police, and these

provisions apply to the Chief of Police of a region. These provisions will become effective in the future when the Palestinian Authority assumes responsibility for the rest of the regions of the West Bank. Hence the Director-General of Police's authority to grant these permits is in accordance with the law and is not in violation of the law.

5. This directive does not apply to private places and is exclusively addressed to public places in order to protect the rights of citizens to freedom of expression and freedom of assembly in private places.

Best Regards,

Brigadier-General Ghazi al-Jabali
Director-General of Police
(Signed)

cc: Al-Haq, P. O. Box 1413, Ramallah
re your letter dated 28/9/1994

Annex X
(Al-Haq's translation)

In the Name of God the Compassionate, the Merciful

Palestinian Public Security
Directorate of Police

Ref: Q. Sh
Date: 20/10/1994

Dr. Hanan 'Ashrawi
Commissioner-General of the Palestinian Independent Commission
for Citizens' Rights

Greetings,

In response to your letter (ref. D/20/94) concerning the directive addressed to bus companies ordering them to refrain from transporting any group without written permit from the Director-General of Police, we inform you of the following:

1. This directive is based on Ordinance No. 17 of 1926, Chapter VI, Articles 35(a) and 53(b) repeated, which are still in force. This directive came as a result of repeated stone-throwing incidents and instigation of clashes with guards in front of Israeli settlements by passengers in buses transporting groups from various political factions, as well as an announcement by certain factions of their intention to organize a sit-in opposite Netsarim and Kfar Drom settlements.
2. In such cases the law is direct and clear in giving the Director-General of Police full authority to require the obtaining of an advance permit to enable the police to carry out its duty to prevent violations of the rights and freedoms of others, and to allow the applicants to exercise their right to freedom of safe travel, thus enhancing the establishment of a society based on the rule of law which guarantees the exercise by all parties of their rights.

Regards,

Brigadier-General Ghazi al-Jabali
Director-General of Police
(Signed)

Annex XI

AL-HAQ

Affiliate, International Commission of Jurists - Geneva

فروع لجنة الحقوق الدولية - حيفا



Ramallah, 15/2/1994

Mr. Ghazi al-Jabali
Director-General of Police / Gaza

Greetings,

We thank you for your response to our repeated interventions on various issues, which are of concern to us since they relate to the safeguarding of Palestinian human rights and the establishment of solid foundations for a democratic society.

Al-Haq is about to publish the enclosed study on the question of the right to peaceful assembly. This issue emerged after the publication of your directive prohibiting political assemblies without an advance permit. We provide you with this study before its publication in the hope that we will receive any additional comments which could shed more light on this problem. As already promised, we shall publish your previous correspondence in our study as well as any comments on the study with which you care to provide us. We would appreciate receiving your comments as soon as possible so as to enable us to proceed with publication.

Thank you again. We look forward to further cooperation in order to achieve our mutual goals. Until we hear from you.

Regards,

Fateh 'Azzam
Director, al-Haq
(Signed)

Annex XII

AL-HAQ

Al-Haq, International Commission of Jurists - Geneva

لجنة المحققين الدولية - جنيف



Ramallah: 22/3/1995

Mr. Ghazi al-Jabali
Director-General of Police/Gaza

Greetings,

We write to you again, further to our letter dated 15 February 1995. As we stated in the above-mentioned letter, al-Haq is about to publish a study on the question of the right to peaceful assembly. This issue emerged after the publication of your directive prohibiting political meetings without an advance permit and the issue of other related orders. We forwarded this study to you with our previous letter in the hope of receiving additional comments that would shed further light on this question.

As already promised, we shall publish your previous correspondence with us in this study and any comments which you care to make on this study. Since we intend that this study will go to press in the next few days, we hope that you will provide us with your reply or comments by facsimile by next Saturday, 25 March 1995, so that they can be included in the study.

Thank you again. We look forward to further cooperation in order to achieve our shared objectives. Until we hear from you,

Regards,

Fateh 'Azzam
Director, al-Haq
(Signed)

Annex XIII

AL-HAQ

Affiliate, International Commission of Jurists - Geneva

فروع لجنة المحققين الدولية - جنيف



Ramallah, 22/3/1995

Mr. Ghazi al-Jabali
Director-General of Police / Gaza
By Fax: 07-822335

Greetings,

Re your directive prohibiting the Gaza Center for Rights and Law
from conducting a seminar on the State Security Courts

Al-Haq is deeply concerned by the news of the refusal of permission to hold a seminar on the State Security Courts. The seminar was due to take place today in Gaza and had been organized by the Gaza Center for Rights and Law, a sister human rights organization which we hold in high esteem and great respect. Al-Haq is particularly concerned by your decision to refuse permission to hold the seminar since this decision has no legal basis, even though the Director of the Gaza Center for Rights and Law, Advocate Raji Sourani, has applied in writing for a permit to hold this seminar, upon your request.

In al-Haq's opinion, a permit should not be required from any security division for assemblies and seminars of a mere professional nature, such as the seminar which is the subject of this letter. In principle there is no difference between the banning of this seminar and the general prohibition on political assemblies which was introduced as a result of your directive issued on 9 September 1994, since the action which provoked this letter and the above-mentioned directive infringe on the human rights to freedom of assembly, freedom of expression and freedom of thought.

Al-Haq also regards the banning of this seminar as an unhelpful precedent for respect for freedom of expression and freedom of assembly in Palestinian society. It constitutes a grave impediment to the work of human rights organizations and other non-

governmental organizations. The subjection of the free exchange of opinion and debates of a professional nature on matters of national and social importance to censorship and restrictions by the security authorities impairs the process of reconstruction in which every citizen and Palestinian organization is entitled to participate.

As you are already aware, your directive issued on 9 September 1994 was the subject of several interventions by al-Haq. These interventions also dealt with other measures of similar effect. Moreover, al-Haq is about to publish in the next few days an analytical study of these directives, having already presented this study to you for comment.

We hope that you will rescind these directives in order to secure respect for the basic human rights of freedom of peaceful assembly and freedom of expression, instead of resorting to the tightening of security control to the extent of including academic debate. It is very important that the seminar is held on time in the presence of representatives of the executive authorities from either the Ministry of Justice or the Palestinian police, together with Palestinian human rights lawyers and representatives from human rights organizations, in order to enrich the seminar through lively debate in which there is full discussion of all views in order to arrive at the most appropriate conclusions for securing respect for the rights of Palestinians, including their right to security.

We write to you after examining in detail the correspondence exchanged between you and the Gaza Center for Rights and Law, in which the Director of the Center clearly indicated that both he and the Center hold the law in great respect and are keen to see the enhancement of respect for the law. The written application by the Director of the Center, Mr. Raji Sourani, requesting permission to hold the seminar is a positive step by him and an indication of his keenness to strengthen the basis of constructive cooperation between all parties, regardless of the legitimacy of the requested procedures.

We, at the same time, confirm that non-political meetings are excluded from the directive which you issued on 9 September 1994. In this context, we would like to state that we still regard the discussion between us concerning the issue of requiring a permit for the holding of political meetings as fruitful and we hope that your recent decision does not reflect your final position on the matter.

Regards,

Fateh 'Azzam
Director, al-Haq
(Signed)

cc: Freih Abu-Middein, Minister of Justice, Palestinian
National Authority
The Gaza Center for Rights and Law
The Palestinian Independent Commission for Citizens'
Rights.