



AL-HAQ

# Freedom of Opinion and Expression

Legislation, Practice, and the State of  
Emergency





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## Introduction

1. According to the United Nations General Assembly Resolution (“UNGA”) 67/19, dated 29 November 2012, The Status of the State of Palestine (“Palestine”) was elevated to a “non-member observer State status”. Consequently, the effect of this resolution applies to the Palestinian territory occupied in 1976 in its entirety. As a result, Palestine was enabled to accede to several international instruments, including core international human rights conventions and their optional protocols. Since April 2014, Palestine has acceded to seven conventions and eight optional protocols, thereby binding itself with additional national obligations within the framework of full respect, protection, and realisation of fundamental rights and freedoms enshrined in these instruments. In addition to national legislations, which provide further obligations to ensure respect for Palestinians’ rights and freedoms, including the right to freedom of opinion and expression – the core focus of this paper.
2. The situation of human rights in general, and the right to freedom of opinion and expression in particular, are closely linked to, and affected by, a set of underlying factors that the Palestinian people are facing in different aspects. Despite the multitude of these factors, the Israeli military occupation of the Palestinian territory since 1967 constitute the most prominent and dangerous factor in the daily life of the Palestinian people and their rights and freedoms. Another challenge is posed by the internal Palestinian political division, between the two dominant Palestinian political parties in the occupied Palestinian territory (“oPt”), which has been in place since 2007, the Palestinian National Liberation Movement (“Fatah”) in the West Bank, and the Islamic Resistance Movement (“Hamas”) in the Gaza Strip.
3. In the pursuit of its objectives of strengthening and promoting the principle of the rule of law and the respect for human rights in the oPt, Al-Haq seeks to monitor and document violations of Palestinian rights by the Israeli occupying authorities, as well as by official bodies

of the State of Palestine and other Palestinian parties acting as such. Al-Haq also monitors the extent to which Palestine is committed to its relevant international obligations, as part of its efforts to contribute to the building of a democratic state, in which the Palestinian people enjoy all their individual and collective civil, political, economic, social, and cultural rights. In the same vein, this paper presents what Al-Haq has monitored and documented of violations of the right to freedom of opinion and expression, whether by the official bodies of the state or other non-state actors acting in an official capacity, in 2020. These include all three state powers and relevant bodies and committees that belong to them, particularly security agencies in both the West Bank and the Gaza Strip.

4. This paper aims at presenting the fundamental legal basis established by core international human rights instruments to realise the right to freedom of opinion and expression in both ordinary situations and extraordinary emergency circumstances. Moreover, chapter 1 of this paper aims at providing a comprehensive understanding of the constitutional background relevant to that right. Chapter 2 focuses on highlighting the violations of this right that were monitored and documented in 2020, in light of the legal provisions applicable in the West Bank and Gaza Strip, in particular legal provisions that run counter to guarantees of freedom of opinion and expression. In addition to violation of these guarantees amid the outbreak of the coronavirus (COVID-19) pandemic. Chapter 3 proposes a number of recommendations to address the Palestinian context and ensure a clear and full enjoyment of freedom of opinion and expression. These should enable the Palestinian people to exercise that fundamental freedom on the ground. The enjoyment and promotion of freedom among the public should serve as the ultimate objective and permanent drive of the state's vision and performance of the right to freedom of opinion and expression at all legislative, political, and practical levels.
5. In the preparation of this paper, Al-Haq has relied on obtained first-hand information. To analyse the current context and identify manifestations and indicators of abuses, reference is made to information collected

by Al-Haq field researchers in the West Bank and Gaza Strip during the reporting period; 2020. To this avail, interviews were conducted directly with victims,<sup>1</sup> whose statements and testimonies are documented and verified to the extent possible.

6. Before turning to the content of this paper, including violations of the right to freedom of opinion and expression, a comprehensive definition of the concept and essence of this right must be laid out. Providing the basis for the documented abuses, the general framework of this right is set by the rules of International Human Rights Law and relevant core instruments, particularly the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR),<sup>2</sup> Article (19) of both instruments, and other relevant explanatory notes.
7. In reference to these benchmarks, mainly Article (19) of the ICCPR, the *right to freedom of opinion* is defined as the full individual potential to hold opinions without interference. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. This is a right to which the Covenant permits no derogation or exception.<sup>3</sup> On the other hand, *freedom of expression* reflects the right to seek, receive, and impart information and ideas of all kinds regardless of frontiers.<sup>4</sup> This right entails the expression and receipt of communications of every form of idea and opinion capable of transmission to others. It broadly includes political and religious discourse, commentary on one's own and on public affairs, canvassing, and discussion of human rights, journalism, cultural and artistic expression. While it is difficult

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1 To document violations, Al-Haq relies on direct encounters with victims, and sometimes with their families, for more accurate accounts. Of note, while Al-Haq generally holds face-to-face meetings with victims, some documentations were based on telephone or electronic interviews during the COVID-19 pandemic, adhering to preventive measures to reduce the spread of COVID-19.

2 International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article (49) (hereinafter ICCPR).

3 Para. (9), General comment No. (34), Article (19): Freedoms of opinion and expression, Human Rights Committee, 102nd Session, 11-19 July 2011, UN Doc. CCPR/C/GC/34 (Hereinafter, "General comment No. (34)").

4 Paras. (9) and (11), General comment No. (34).

to provide an exhaustive set of examples, it is impossible to give a restrictive enumeration of the means of expression. These involve old and new modes of expression in real, digital, and virtual domains, including spoken, written, and sign language, non-verbal expression, audio-visual means of expression, etc.<sup>5</sup>

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<sup>5</sup> Para. (12), General comment No. (34).



## 1. Right to Freedom of Opinion and Expression under Core International and National Human Rights Instruments

8. The foundations for the respect of freedom of opinion and expression are regulated under an extensive set of international and national instruments. This is also the case in the Palestine. Having acceded to core international human rights conventions, Palestine is now under the obligation of bringing its own regulations, policies, and practices in line with all provisions of these international instruments, at all times and over its entire territory. The Palestinian Amended Basic Law of 2003 continues to regulate the mutual relationship between the authority and the people at the national level. Providing the fundamental basis for the law-making process, the Basic Law prescribes superior and constitutional principles and norms that shall be respected, including in relation to ensuring public and personal rights and liberties. Such as freedom of opinion and expression. These are tailor made to attain justice and equality without discrimination.<sup>6</sup> Against this backdrop, this chapter presents the rules of core international and national human rights instructions on freedom of opinion and expression in, and binding on, the State of Palestine. Moreover, this chapter describes standards that shall be respected when freedom of expression is restricted in ordinary and extraordinary circumstances, providing a baseline and benchmark for the extent to which the State of Palestine complies with freedom of opinion and expression.

### 1.1 Core International Human Rights Conventions

9. Accession by the State of Palestine to core international human rights conventions without reservations has imposed obligations to fully realise all fundamental rights and freedoms enshrined in these instruments. Freedom of opinion and expression is among the most prominent rights addressed by the UDHR. The majority of human rights conventions ensure a mandatory status of this freedom. This

<sup>6</sup> Palestinian Amended Basic Law of 2003, Palestinian Official Gazette, Extraordinary Issue, 19 March 2003, p. 5 (in Arabic) (Hereinafter, "Basic Law").



section provides key provisions of core conventions, which are binding on the State of Palestine by virtue of accession. The section covers provisions on the necessity of protecting the right to freedom of opinion and expression. Moreover, it addresses the most prominent standards, which allow derogation from freedom of expression in both ordinary and extraordinary circumstances.

10. Article (19) of the ICCPR provides that everyone has the right to hold opinions without interference. The right to freedom of expression must be respected, including the freedom to seek, receive and impart information and ideas of all kinds and regardless of frontiers through any other media of one's choice. The International Convention on the Elimination of All Forms of Racial Discrimination provides that States Parties have the duty to undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law, notably in the enjoyment of the right to freedom of opinion and expression.<sup>7</sup> The Convention on the Rights of the Child obliges the State of Palestine to give due weight to the views of the child being in accordance with the age and maturity of the child. It shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child. The child shall also have the freedom to seek, receive, and impart information and ideas of all kinds through any other media of the child's choice.<sup>8</sup> In the same vein, the Convention on the Rights of Persons with Disabilities provides for the same standards for children with disabilities on an equal basis with other children. These will be provided with disability and age-appropriate assistance to realise that right.<sup>9</sup>

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7 Article (5)(d)(viii), International Convention on the Elimination of All Forms of Racial Discrimination, Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969.

8 Articles (12) and (13), Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990 (Hereinafter, "Convention on the Rights of the Child").

9 Article (7), Convention on the Rights of Persons with Disabilities, Adopted and opened for signature, ratification and accession on 30 March 2007 (Hereinafter, "Convention on the Rights of Persons with Disabilities").

11. In addition, the Convention on the Rights of Persons with Disabilities holds States Parties responsible for taking all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and access to information, including the freedom to seek, receive, and impart information and ideas on an equal basis with others and through all forms of communication of their choice. Information intended for the general public will also be provided to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost. Encouraged by the State, mass media will make their services accessible to persons with disabilities.<sup>10</sup>
12. All these and other core human rights conventions oblige States Parties to respect and ensure freedom of opinion and expression without discrimination for all individuals within their territory and subject to their jurisdiction through all possible avenues, including legislation and policies. Under their regulations, States Parties must ensure the provision of effective remedies for any persons, whose rights or freedoms are violated. By equitable access to judicial processes, States Parties will ensure that relevant judgements are put to effect.
13. All core international instruments mentioned above require full respect for freedom of opinion, considering it as a right that is subject to no exception or derogation. No person may be harassed on account of the opinions they hold. No effort, whatever form it may take, may be made to coerce a person to hold or not hold any opinion. Furthermore, freedom of opinion is twofold, positive and negative. While people have the opportunity to express their opinion, one can refrain from doing so as well. On the other hand, some of the aforementioned international instruments provide for possible restriction of freedom of expression on exceptional grounds and under clearly defined conditions.<sup>11</sup> Article 19(1) of ICCPR is the most focused authoritative reference on respect for and restrictions on freedom of opinion and expression, applicable to all segments of society: “(1) Everyone shall

<sup>10</sup> Article (21), Convention on the Rights of Persons with Disabilities.

<sup>11</sup> Article (19) (3) of the ICCPR, and Article (13) (2) of the Convention on the Rights of the Child, 1989.

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.”

14. Evidently, Article (19) of the ICCPR, particularly Paragraph (3), lays down the criteria and conditions for possible restrictions on freedom of expression. These provide a benchmark to measure how lawful any restriction imposed by States Parties to the ICCPR is on freedom of expression. Accordingly, Paragraph 3 prohibits any constraint on the freedom of expression unless it falls within the framework of three specified and strict conditions. In the first place, *legality*, which requires that a restriction be prescribed by law. Secondly, *necessity* entails that a restriction is imposed for “respect of the rights or reputations of others” or for “the protection of national security or of public order (*ordre public*), or of public health or morals” in a democratic society. Thirdly, *proportionality* stipulates that restrictive measures must be appropriate to achieve their protective function; they must be neither excessive nor expansive so as to jeopardise the “essence” of any human rights; and they must be the least intrusive instrument amongst those which might achieve their protective function.<sup>12</sup> These specified three requirements must be *collectively* fulfilled by any restriction imposed or applied by authorities on rights which, by definition, can be subject to restriction, such as the right to freedom of expression. Accordingly, these can be viewed as restrictions compatible with the purposes of Article (19) of the ICCPR. The said requirements are also universally known as the “*three-part test*”.

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12 Para. (21) and (22), General Comment No. (34).

15. In its General comment No. (34) on Article (19) of the ICCPR, the UN Human Rights Committee stresses that even if the three requirements are met, restrictions can only be used on exceptional grounds. The relationship between the right and the restriction and that between the norm and exception must not be reversed. While Article (19) (3) allows recourse to restrictions in line with the aforementioned strict conditions, the provisions of the ICCPR require that applicable restrictions be also entirely compatible with the provisions, purposes, and objectives of the ICCPR, in a manner not aimed at the destruction of other rights.<sup>13</sup> It is absolutely impermissible that laws prescribe restrictions or procedures that derogate from the rules of the ICCPR. If any, these must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. Moreover, laws must provide sufficient guidance to law enforcement personnel to enable them to ascertain what sorts of expression can be properly restricted and what sorts cannot. The law may not confer unfettered discretion for the restriction of freedom of expression on law enforcement personnel. Furthermore, the UN Human Rights Committee stressed that paragraph (3) may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets, and human rights. Further, the Committee emphasized that under no circumstances should assaulting persons, including by arbitrary detention, torture or threats to life, be considered a measure consistent with the provisions of Article 19 of the Civil and Political Covenant, including situations where journalists are subjected to threats, intimidation, and attacks because of their work activities.<sup>14</sup>
16. Article (19)(3)(a) of the ICCPR provides for lawful restriction of freedom of expression for “respect of the rights or reputations of others.” However, in its General comment No. )34(, the UN Human Rights Committee states that in political discourse and public debate circumstances concerning public figures in the political domain and

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13 Article (5) (1), the ICCPR.

14 Para. (23), General Comment No. (34).

public institutions, the value for the “uninhibited expression” should be particularly high.<sup>15</sup> Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the ICCPR. Moreover, all public figures, including those exercising the highest political authority, such as heads of States and governments, are legitimately subject to criticism and political opposition. Accordingly, Article (19) may not be cited to enact laws on such matters as, *lese majesty*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state, and the protection of the honour of public officials. States Parties may not enact regulations, which prohibit criticism of state institutions, administrative apparatus, and other official agencies. The Human Rights Committee urged that defamation laws be crafted with care to ensure that they comply with paragraph (3), and that they do not serve, in practice, to stifle freedom of expression. According to Article (19) of the ICCPR, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State Party to imprison a person for criminal defamation as such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.

17. While Article (19)(3)(b) of the ICCPR permits that restrictions to be imposed for “the protection of national security or of public order (*ordre public*), or of public health or morals”, in General comment No. (34), the Human Rights Committee emphasises that extreme care must be taken by States Parties to ensure that laws and provisions relating to national security, whether described as combating seditious laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of the three-part test. It is not compatible with paragraph (3), to invoke national security laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists,

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15 Para. (38), General Comment No. (34).

activists, human rights defenders, or others, for having disseminated such information. Pursuant to the explanation provided by General comment No. (34), when a State Party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualised fashion the precise nature of the threat, in addition to the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>16</sup> Additionally, in his report to the UN Human Rights Council on 23 April 2020, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr David Kaye, was of the view that vague laws with overbroad definitions and descriptions in fields like “national security”, and “public order maintenance” confer undue discretion on executive authorities, enabling them to violate individual rights while claiming adherence to the law. Those standards apply globally in the context of public health emergencies.<sup>17</sup>

18. In reference to Article (19) of the ICCPR, various forms and contents of mass media are viewed as modes of expression. States must completely adhere to the three requirements mentioned above when placing restrictions on any kind of media. Effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression. The penalisation of a media outlet, publishers, journalists, or cyberspace users, solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression. Such practices negate States’ respect for the provisions of Article (19) and restrictive requirements prescribed thereunder.
19. In this context, examples of restrictions on freedom of expression are provided and considered by UN committees as illegal and arbitrary.

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16 Para. (35), General Comment No. (34).

17 Para. (14), Disease pandemics and the freedom of opinion and expression, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Human Rights Council, Forty-fourth session, 15 June-3 July 2020, UN Doc. A/HRC/44/49 (Hereinafter, “Report of the Special Rapporteur on freedom of opinion and expression, 2020”).

For instance, in its General Comment No. (37) on the right of peaceful assembly, the Human Rights Committee provides that “[r]estrictions on peaceful assemblies must thus not be used, explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination.”<sup>18</sup> The Working Group on Arbitrary Detention regards deprivation of liberty as “arbitrary detention” when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by relevant domestic laws or international instruments, such as freedom of opinion and expression, for reasons of discrimination, particularly based on religion, political or other opinions, or can result in ignoring the equality of human rights.<sup>19</sup>

20. The State of Palestine is under the obligation to fully comply with the rights and freedoms, which it has undertaken by virtue of its accession to the ICCPR without reservations. This requires that freedom of expression be duly respected and, as mentioned above, can only be constrained in conformity with a strict and stringent three-part test. Still, Article (4)(1) of the ICCPR allows that in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the Covenant may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations, and do not involve discrimination, or contradict obligations, other than those it has exceptionally proclaimed it will derogate from on a temporary basis. Pursuant to Article (4)(3), any State Party to the ICCPR availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further

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18 Para. (49), General comment No. (37) (2020) on the right of peaceful assembly (Article 21), Human Rights Committee, 17 September 2020 (Hereinafter General comment No. (37)).

19 Report of the Working Group on Arbitrary Detention, Human Rights Council, Thirtieth session, 10 July 2015, UN Doc. (A/HCR/30/36), page. (34).

communication shall be made, through the same intermediary, on the date on which it terminates such derogation. While Article (4)(2) of the Covenant delineates the set of rights, from which no derogation may be made even during states of emergency. Freedom of expression is not among those restricted rights. In line with the conditions to be observed, these rights can be derogated on exceptional grounds if so, proclaimed by a State.

21. The provisions of “derogations during a state of emergency” under Article (4) of the ICCPR are different from the restrictions on freedom of expression allowed in ordinary circumstances under Article (19) of the Covenant. However, all measures of exceptional derogation during states of emergency must also be to the extent strictly required by the exigencies of the situation and be only linked to the proclaimed state of emergency, including in terms of the scope and geographical area affected by the proclamation of the state of emergency and relevant measures. The State should also observe the principle of proportionality, even in the case of proclaimed derogation. Moreover, the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation both proportionately and without overstatement. This condition requires that States Parties provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation.
22. When proclaiming a derogation from some provisions of the ICCPR, States may not under any circumstances resort to discrimination in the measures undertaken. Also, under no circumstances can States justify any action, by which they violate International Humanitarian Law and *jus cogens* norms of International Law, such as arbitrary deprivation of liberty, failure to ensure basic standards of a fair trial, and presumption of innocence. Most importantly, states must observe developments in International Law in relation to human rights and applicable international standards during states of emergency. In



all cases, States Parties to the ICCPR must provide remedies for any violation of the provisions of the Covenant by respective authorities, agencies, and persons,<sup>20</sup> including judicial remedies, guarantees of a fair trial, and holding to account persons responsible for violations.

## 1.2 Palestinian Amended Basic Law of 2003

23. Chapter II of the Palestinian Basic Law stresses the need for ensuring all public rights and freedoms. Article (10) of the Law provides that: “(1) Basic human rights and liberties shall be protected and respected. (2) The Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights.” Further, the Basic Law dedicates a specific constitutional provision, which consolidates full respect for the right to freedom of opinion and expression. Article (19) of the law prescribes that “[f]reedom of opinion may not be prejudiced. Every person shall have the right to express his opinion and to circulate it orally, in writing or in any form of expression or art, with due consideration to the provisions of the law.” This provision strictly prohibits interference with freedom of opinion and allows expression by all means, both old and new, definitely including digital means. Any restriction must strictly be in compliance with the law.
24. The Basic Law also provides in detail that means of information and publication, of various forms, are a “right for all”. These can only be subject to control and restriction in accordance with the law, including prescribed principles and procedures. To this avail, Article (27) provides: “(1) Establishment of newspapers and all media means is a right for all, guaranteed by this Basic Law. Their financing resources shall be subject to the scrutiny of the law. (2) Freedom of audio, visual, and written media, as well as the freedom to print, publish, distribute and transmit, together with the freedom of individuals working in this field, shall be guaranteed by this Basic Law and other related laws. (3) Censorship of the media shall be prohibited. No warning, suspension,

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<sup>20</sup> General comment No. (29): Article (4): Derogations during a State of Emergency, UN Human Rights Committee, 31 August 2001 (Hereinafter General comment No. (29)).

- confiscation, cancellation or restriction shall be imposed upon the media except by law, and pursuant to a judicial ruling.”
25. The Basic Law views any violation of public rights and freedoms, including freedom of opinion and expression, freedom of the press, and freedom of peaceful assembly that can be used as a means of collective expression, as a serious constitutional crime. Along this vein, Article 32 provides that “[a]ny violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage.”
  26. In this context, while the Basic Law includes provisions safeguarding public rights and freedoms and ensuring that these are in effect in all circumstances, Chapter VII of the law regulates the state of emergency. In Palestine, the state of emergency can be declared in circumstances where national security is threatened. In this case, the State can derogate specifically from, and control, certain rights. According to Article 1)(110() of the Basic Law, these circumstances include war, invasion, armed insurrection, or times of natural disaster. During a state of emergency, some individual rights can be restricted, when strictly necessary and to the extent required by the “declared emergency situation only”, without arbitrary or expansive restrictions. To this end, Article (111) of the Basic Law prescribes that “[i]t is not allowed to impose restrictions on fundamental rights and freedoms when declaring a state of emergency except to the extent necessary to fulfil the purpose stated in the decree declaring the state of emergency.”



## 2. Violations of Freedom of Opinion and Expression

27. Throughout 2020, Al-Haq monitored abuses of freedom of opinion and expression in Palestine. While some occurred in relatively ordinary circumstances, other violations were committed in the context of extraordinary circumstances, namely, the outbreak of COVID-19, which was proclaimed as a global pandemic by the World Health Organisation (WHO).<sup>21</sup> Subsequently, on 5 March 2020, Palestinian President Mahmoud Abbas declared a state of emergency throughout the Palestinian territory for a period of 30 days in order to prevent and confront the risk of the spread of the COVID-19 virus. The state of emergency continues to be unconstitutionally renewed and extended until the present day. COVID-19 has had adverse impacts on health, economic, and human rights situations throughout the world.<sup>22</sup> This paper demonstrates that, during the reporting period, the majority of abuses of citizens' freedom of opinion and expression across the West Bank and Gaza Strip were closely linked to two key factors: (1) public criticism of the governing authority's positions or performance in the West Bank and Gaza Strip in a variety of issues; and (2) citizens' political affiliation or expression of political orientation in support of, or their relationship with, the dominant party in either area. While these two factors are inherently connected to the essence of individuals' freedom of opinion and expression, the association between the influence of both factors is clearly reflected on a set of other rights and freedoms as well. As demonstrated in this section, public authorities and agencies continued to place restrictions on citizens' rights and freedoms, including arbitrary detention, disregard of guarantees of a fair trial, ill-treatment and torture, and deprivation of other rights in the context of discrimination based on opinion and expression. This was done by legalising overbroad restrictions at the domestic level or

21 WHO, "WHO Director-General's opening remarks at the media briefing on COVID-19, 11 March 2020", available at: <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>>.

22 Al-Haq, "Compliance of the Palestinian state of emergency with the Palestinian Basic Law and international human rights conventions to confront the spread of COVID-19", 22 November 2020, available at: <<https://www.alhaq.org/ar/publications/17471.html>> (in Arabic).

in practice.

28. The Palestinian Basic Law and aforesaid fundamental international instruments require that Palestine respect freedom of opinion and expression as well as freedom of the press and the media. The Palestinian National Policy Agenda 2017-2022 further views these freedoms as policy priorities of the State of Palestine. In particular, National Policy No. (4) looks for “Upholding Democratic Practices” in the State of Palestine. During a meeting in June 2019, the Prime Minister, Dr Mohammed Shtayyeh, undertook to promote these freedoms, stating: “We will remain true to authorship, freedom of the press, and freedom of expression. We will accept and act upon constructive criticism through policies and legislation, which will provide protection to citizens and journalists.”<sup>23</sup> Other official pledges were made, including by Government Spokesman, Dr Ibrahim Milhem. On 23 April 2020, in a press brief in follow up on COVID-19 developments, Milhem announced that the “state of emergency will not be used to infringe on any public rights. It will only be used to combat the virus without prejudice to the values of freedom and national dignity.”<sup>24</sup> However, not only did freedom of opinion and expression continue to be abused throughout 2020, but methods of abuse were aggravated and varied, including in the context of the public health emergency.
29. Following an introduction of the definition of the freedom of opinion and expression, and a brief overview covers essential key aspects of the Palestinian current context, this section presents the most relevant findings regarding violations of the freedom of opinion and expression by official agencies in the State of Palestine, including the Palestinian National Authority (PNA) in the West Bank and Hamas’ governing authority in the Gaza Strip. These violations are examined in two subsections: (1) a legislative setting inconsistent with the right to freedom of opinion and expression; and (2) practices contrary to

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23 MA’AN News Agency, “Shtayyeh: We will remain true to authorship, freedom of the press, and freedom of expression”, 23 June 2019, available at: <<https://www.maannews.net/news/987459.html>> (in Arabic).

24 Al-Araby al-Jadid, “The file of freedoms dominates questions during the Palestinian government’s press brief”, 23 April 2020, available at: <<https://bit.ly/3hyHaPH>> (in Arabic).

the essence of freedom of opinion and expression.

## 2.1 A Legislative Setting Inconsistent with the Right to Freedom of Opinion and Expression

30. The State of Palestine maintains a set of inherited legislations that are still in force within its territory. Many of these legislations are incompatible in terms of source, substance and form. For example, legislations that are in effect in the West Bank are different from those operative in the Gaza Strip. Moreover, the State of Palestine continues to be crippled by the dramatic impacts of the internal political divide on the legislative power. The Palestinian Legislative Council (PLC) has been inactive since 2007. In Gaza, the Reform and Change Bloc continues to convene unilaterally, passing laws that apply to the Gaza Strip only. Seizing full control over the law-making process in the West Bank, the executive power has enacted hundreds Law by Decrees, which are only effective in the West Bank. Later, the PLC was totally eliminated and dissolved under Declaratory Judgement No. 10/2018, rendered by the West Bank-based Supreme Constitutional Court (SCC) on 12 December 2018. Consequently, the West Bank and Gaza Strip have continued to be affected by legislative disunity, resulting in discrimination between citizens' legal statuses and enjoyment of rights and freedoms based on their area of residence within the single territory of the Palestinian state.
31. Palestine's supreme law, the Amended Basic Law of 2003, lays down common solid foundations of the Arab Palestinian people. It consolidates a set of established constitutional principles, providing a source of all legislative acts in effect in the Palestinian territory. These constitutional principles include non-discrimination between Palestinians before the law and courts as well as the respect for fundamental human rights and freedoms. Although the State of Palestine has acceded to a number of core international human rights instruments, including on the protection of freedom of opinion and expression.

32. Despite Palestine's accession to a number of international human rights conventions, including those concerned with the protection of freedom of opinion and expression, the legislative environment in force, including a number of its laws, still need to harmonize its substantive provisions, and the restrictions and procedures it contains with the principles contained in the basic national and international instruments and conventions, *i.e.*, the Palestinian Basic Law and the basic international human rights instruments.
33. A set of regulations in force in the West Bank and Gaza Strip contain provisions contrary to the essence of freedom of opinion and expression. These legislations criminalise practices that lie at the heart of freedom of expression. Such criminalisation has been introduced in overbroad terms without being linked to clearly defined legal provisions, according to which individuals could measure and assess their behaviour in the interest of the public interest. Furthermore, such legislations and regulations have been enacted in a way that allows the governing authority and law enforcement officials to abuse them in an arbitrary manner, rendering rights meaningless. Further, the criminalisation of practices concerning the exercise of freedoms has also been linked to severe penalties disproportionate to the nature of the individual practices, regardless of whether or not such practices constitute a breach of the restrictions on freedom of expression pursuant to the relevant core instruments. Along this vein, the following part discusses the most prominent legislations that were promulgated in 2020 or those that were approved earlier but continued to be in force during 2020. Such legislations have entrenched a legislative setting that violates freedom of opinion and expression in the State of Palestine.

- **Law by Decree No. (7) of 2020 Concerning the State of Emergency**

34. On 5 March 2020, Palestinian President Mahmoud Abbas issued forth a presidential Law by Decree, declaring the state of emergency throughout the oPt with the aim of confronting and preventing the outbreak of COVID-19. This was ensured by other regulations, which were set to govern many aspects of public life during the state of emergency. In force since declaration of the state of emergency as at the time of this publication, these regulations place serious restrictions on fundamental rights and freedoms, including the right to freedom of expression as well as digital rights and freedoms. Article (3)(3) of the Law by Decree No. (7) of 2020 Concerning the State of Emergency, promulgated on 22 March 2020,<sup>25</sup> provides that: “[a]ny bodies other than those legally authorised shall be prohibited from making any announcements or statements in relation to the state of emergency, disseminating news associated therewith, while not referring to an official source, in any form whatsoever, or by means of all print, audio and visual social media platforms. Each person who violates this shall be punished by confinement for a term of not more than a year and a fine of not less than two thousand and not more than five thousand Jordanian dinars or its equivalent in the legal currency of circulation.” Article (3)(7) prescribes that “[e]ach person who commits any crime against public order and community safety and stability during the state of emergency shall be punished by the maximum penalty prescribed by the law.”
35. In the absence of a Palestinian law on the right of access to information and participation of Palestinian official bodies in a clear government plan on several issues related to the state of emergency, the provisions of the Law by Decree above tighten the grip on and prejudice the right to freedom of expression and digital rights. This is in spite of the global pandemic, which requires that individuals have greater access to and deeper knowledge of relevant worldwide developments, given by experts and specialists everywhere. This is part of a wider culture

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25 Law by Decree No. (7) of 2020, Palestinian Official Gazette, Issue (21), 22 March 2020.

to understand a shared reality, access information on the widespread virus and proposed treatment, and overcome the pandemic. This information should be disseminated despite the fact it is not released by “legally authorised” bodies. The Law by Decree criminalises the publication of anything related to the state of emergency by all means, including traditional media and digital space, either by a natural or juridical person, and whether true or untrue, merely because they are not based on an official source.<sup>26</sup> Therefore, this regulation has been invoked for the prosecution and detention of individuals in the context of the COVID-19 pandemic.

36. As a consequence of this Law by Decree, new overbroad terms of criminalisation and punishment have been introduced. Too broad in content and ambiguous in scope, these terms are devoid of any measurable controls, guarantees, or standards; *e.g.*, “against public order” and “community safety and stability”. It is, therefore, untenable to identify the dividing line between lawful and criminalised expression under the provisions of this Law by Decree, which lacks minimum criteria of necessity and proportionality required by relevant international standards. Also, according to Article (111) of the Palestinian Basic Law, “[i]t is not allowed to impose restrictions on fundamental rights and freedoms when declaring a state of emergency except to the extent necessary to fulfil the purpose stated in the decree declaring the state of emergency.” The Law by Decree furnishes a pretext used to detain tens of citizens, who criticise the performance of public authorities during the pandemic.
37. With the ongoing declaration of the state of emergency throughout the oPt, this Law by Decree continues to be in force without due regard to the recommendations of UN experts. In particular, in his report on “Disease pandemics and the freedom of opinion and expression”, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stresses the need for “[s]trongly

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26 See Abdeen, Issam, “Digital rights in Palestine: between the emergency and COVID-19 pandemic”, 7amleh – Arab Center for Social Media Advancement, 7 May 2020, available at: <<https://7amleh.org/2020/05/07/alhqwq-qlrqmyh-fy-flstyn-byn-altware-wjaehh-kwrwna>> (in Arabic).



promoting and protecting, and refraining from interference with, the independent media’s role of informing the public and holding officials accountable for their statements and actions,”<sup>27</sup> in order to show respect for individuals’ dignity and rights. Exercising the right to freedom of opinion and expression and sharing information, including on public and political affairs, presumes free press and media outlets that are capable of commenting on public issues without control or prejudicial obstacles. The Special Rapporteur further stresses that “an open and secure Internet should be counted among the leading prerequisites for the enjoyment of the freedom of expression today.” It is now necessary to unequivocally condemn measures, that are in violation of international human rights law, aiming at or that intentionally prevent or disrupt access to or dissemination of information, which undermined the work of journalists in informing the public, including measures to unlawfully or arbitrarily block or take down media websites.<sup>28</sup>

- **Law by Decree No. (10) of 2018 Concerning Cybercrime**

38. Promulgated by President Abbas on 29 April 2018, the Law by Decree No. (10) of 2018 Concerning Cybercrime is effective in the West Bank only. It has opened the door wide open to criminalising expression in the digital space. The Cybercrime Law by Decree uses overbroad terms, which lack clear and precise definitions, such as “national security”, “public order”, and “public morals”. These terms are invoked by public authorities to criminalise expression on the internet. The enactment prescribes a multitude of harsh penalties, by which public authorities can arrest and prosecute digital activists and journalists against the background of their work and publication. It further places severe restrictions on freedom of expression in cyberspace. As a result of incriminating their content on overbroad grounds, websites are blocked and media outlets are dissolved.
39. The Law by Decree has received widespread criticism from Palestinian

27 Para. (63), Report of the Special Rapporteur on freedom of opinion and expression, 2020.

28 Para. (24), Report of the Special Rapporteur on freedom of opinion and expression, 2020.

civil society in view of stringent restrictions on the individual exercise of a range of rights and freedoms through electronic networks.<sup>29</sup> These legislative constraints pay scant attention to the requirements of necessity and proportionality in the context of imposing measures derogating from those rights, which are enshrined in the Basic Law as well as by the international instruments binding on the State of Palestine. The Law by Decree was also strongly criticised by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, who expressed deep concern that, in the absence of a Law on the Right of Access to Information, the Cybercrime Law by Decree can result in substantial censorship and self-censorship used by media outlets and individuals, particularly those who criticise the executive branch of government.<sup>30</sup>

40. In spite of the overall restrictions placed on freedom of expression in cyberspace, this section provides some examples of provisions of the Cybercrime Law by Decree, which largely contributes to criminalising online expression and breaching a set of other rights, particularly the right to privacy, guarantees of a fair trial, and right to liberty of a person.
41. Article (29) of the Cybercrime Law by Decree prescribes harsh penalties that are disproportionate to the right of juridical persons: “If a crime provided for under this Law by Decree is committed in its name or on its behalf, the juridical person shall be punished by a fine of not less than five thousand Jordanian dinars and not more than ten thousand Jordanian dinars. The court shall be entitled to deprive the juridical person of performing its activity for a maximum period of five years or to rule for its dissolution in the event the crime is punishable by confinement for a term of not less than one year, without prejudice to the criminal liability of the natural person affiliated therewith.”
42. Articles (32) and (33) of the Cybercrime Law by Decree allow the Public Prosecution or the officers tasked with judicial duties to obtain the

29 Al-Haq, “Al-Haq efforts in the face of the Cybercrime Law by Decree”, 1 March 2018, available at <<https://www.alhaq.org/ar/publications/7927.html>> (in Arabic).

30 Al-Haq, “Al-Haq’s position paper on the Cybercrime Law by Decree and blocked websites”, 23 October 2019, available at: <<https://www.alhaq.org/advocacy/16110.html>>.

devices, tools, means, electronic data or information, traffic data, data relating to communication traffic or users, or relevant subscriber's information with relevance to cybercrime, search persons, places and means of information technology, permit the seizure and restraint of the information system either wholly or partly or any means of information technology, copies of data, etc.<sup>31</sup> It is not required that this measure be implemented on the grounds of a decision from the competent court, taking into account necessary and proportionate application to individual rights, the Basic Law,<sup>32</sup> and UN standards under Article (19) of the ICCPR (see previous chapter above).

43. Further, Article (39) of the Law by Decree provides: "(1) The competent authorities of investigation and seizure, in the event they monitor hosted electronic websites, which broadcast either inside or outside the State, posting any expressions, figures, images, films, propaganda materials or others which may threaten national security, public order or public morals, shall be entitled to submit a report thereon to the Attorney General or one of his assistants and request permission to block the broadcast of the electronic website(s) or block some of their links. (2) The Attorney General or one of his assistants shall submit the application for permission to the Magistrate Court within 24 hours, enclosed with a notice of his opinion. The Court shall render its decision on the application on the same day it is brought before it, stating either acceptance or rejection, provided that the duration of the blockage does not exceed six months, unless the duration is extended in accordance with the procedures provided for under this Article." This article was referenced by the Ramallah Magistrate Court. Based on an application by the Attorney General, on 17 October 2019, the Court rendered a decision without summoning the parties, ruling for blocking 59 websites at once. Blocked to date, the majority of these were critical of the executive authority performance and public affairs.
44. In addition, Article (45) of the Cybercrime Law by Decree provides that "[e]ach person who perpetrates an act that constitutes a crime

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31 *Ibid.*

32 Article (27), Palestinian Basic Law.

under any effective piece of legislation using the electronic network or a means of information technology, or is involved as an accomplice, abettor or accessory to its perpetration, shall be liable to the same penalty which is prescribed for such crime under that piece of legislation.” This article has served as a reference to introduce many loosely defined terms under domestic legislation in effect, such as the Penal Law No. (16) of 1960 (e.g., crimes of undermining the “solemnity of the State” and “weakening the national sentiment”). These and other overbroad terms have been cited in the judicial prosecution and punishment of activists, journalists, and others who have expressed opinions in the media and online. Many of these still stand trial on counts of cybercrimes.<sup>33</sup>

- **Law No. (9) of 1995 on Printed Materials and Publication**

45. Promulgated by the late President Yasser Arafat on 25 June 1995, this is one of the oldest Palestinian laws in force in both the West Bank and the Gaza Strip. This law regulates legal aspects of periodical and non-periodical paper printed materials, including newspapers, books, journals, etc. It also governs issues related to publishers, distributors, the press, print news agencies, etc. However, the law does not regulate any digital issues, but is limited to the print press and media.
46. Some provisions of the Law on Printed Materials and Publication highlight freedom of opinion and expression, freedom of the press, and media freedoms. In particular, Article (2) admits that “[t]he press and printing shall be free and the freedom of opinion shall be safeguarded to each Palestinian, who shall be entitled to express his opinion freely in speech, writing, photography and drawing in the means of expression and media.” Consistent with constitutional norms, Article (4)(d) emphasises freedom of the press and protection of information sources, news, and other material. However, the law restricts the exercise of freedom of opinion and expression as well as media freedoms. It contains many proscriptions on publication, using loosely defined and overbroad provisions that cannot be quantified. It

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33 *Ibid.*

also puts in place measures, controlling and restricting print presses and publishers. To this avail, Article (7) prohibits the publication of “anything that contradicts the principles of freedom, national responsibility, [and] human rights”. It also proscribes printed materials that target children or adolescents, but violate Palestinian morals, values and traditions. The intentions or limits of these prohibited acts are never identified. Additionally, enumerating prohibited publications, Article (37) rules out the publication of “any confidential information on the police and public security forces” or articles that “jeopardise national unity”, or “disseminate grudges, dissension and aversion, and arouse sectarianism amongst members of society”. Still, the law fails to determine such perceptions as confidential information, ultimately providing overbroad and vague prohibitions, which public authorities can use to place significant restrictions on freedom of opinion and expression as well as media freedoms.<sup>34</sup>

47. In relation to procedural restrictions on printing and publication, the law vests the Ministry of Information (*i.e.*, the Executive Authority) with broad control powers. Relevant agencies are obliged to obtain a licence from the Ministry in order to issue, sell, or import printed materials or establish print presses or publishing houses. In case any person impinges on the law, all copies of the printed material published on a particular day will be seized on the basis of “an administrative decision” made by the competent authority.<sup>35</sup> In addition to running counter to relevant international standards, this practice infringes on constitutional principles, which require that any restriction or seizure be based on a “judicial ruling”.<sup>36</sup>

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34 Abdeen, Issam, “Legal analysis paper on violations of freedom of opinion and expression and media freedoms across the Palestinian National Authority-controlled territory”, Al-Haq, 26 November 2012, available at: <<https://www.alhaq.org/ar/publications/7947.html>> (in Arabic).

35 Article (47), Law No. 9 of 1995 on Printed Materials and Publication, Palestinian Official Gazette, Issue (6), 29 August 1995, p. 11 (in Arabic).

36 UN Human Rights Council, 33rd session, 27 June 2016, UN Doc (A/HRC/32/L.20).

- **Penal Law No. (16) of 1960**

48. Published in the Jordanian Office Gazette on 1 May 1960, this outdated law is still in effect in the West Bank only, since the Jordanian rule period. It is prejudicial to the right to freedom of opinion and expression, among many other rights and freedoms. Criminalisation and penal provisions are at odds with many penal legislation developments in democracies across the globe. Provisions are not in harmony with the superior Palestinian legislation, namely, the Amended Basic Law of 2003, as well as the myriad of international standards and core human rights conventions, to which the State of Palestine acceded. These include the ICCPR and other instruments, which require respect for freedom of opinion and expression. Still, the Penal Law continues to be in effect, albeit with some minor amendments. To the present day, it has the final say on criminalisation and punishment, containing arbitrary provisions when it comes to publication and expression.
49. An examination from the lens of international human rights developments and best practices demonstrates that the Penal Law is substantially in contrariety with the needed promotion of freedom of opinion and expression. It involves overbroad and expansive provisions, furnishing an opportunity to public authorities to criminalise simple acts of expression required by a democratic society that shows respect for pluralistic thinking, politics, and denominations. Such a society offers the potential to broaden intellectual and innovative horizons and enhance the development of all members of society. Criminalisation provisions under the Penal Law prescribe excessive penalties. Turning a deaf ear to the international principle, which prohibits imprisonment in cases of publication, fines and confinement are prescribed for cases of opinion and publication. The law does not consider that confinement is the most serious stage of investigation because it affects the right to liberty of person. Philosophically, confinement should only be inflicted in case the accused poses a serious threat to public security or safety, or when released, it is feared that their life is put at risk or substantial evident is lost. In such case, the accused should be held in

- custody.<sup>37</sup> This highlights the fact that authorities unjustifiably detain accused persons on account of cases of expression and publication. Subsequently, this part provides an overview of the provisions of the Penal Law, which reflect a legislative environment that is incompatible with the standards of freedom of opinion and expression and allow overbroad, extensive, and extreme restriction of personal freedoms.
50. According to Articles (130) and (131), respectively, temporary hard labour is prescribed against any person who “weakens national sentiment or stirs racist or sectarian differences”, as well as any person who “disseminates news that undermines the nation’s morale, knowing that they are false”. Article (131) further prescribes the penalty of confinement for a term of not less than three months against any person who propagates such news, believing that such news is truthful. Article (132) provides a penalty of six months and a fine of not more than fifty Jordanian dinars against any person “who disseminates false news that undermine solemnity of the State while they are abroad”. It prescribes confinement for a term of not less than one year if the false news is “directed against the King, Crown Prince, or a regent” (*i.e.*, the President and higher authorities in the State of Palestine). The law leaves the door wide open to State agencies to imprison activists, human rights defenders, and journalists within the framework of the aforementioned overbroad terms (*e.g.*, “weakening of national sentiment”, “news that undermine the nation’s morale”, and “the solemnity of the State”).
  51. Additionally, Article (150) of the 1960 Penal Law criminalises “[a]ny writing or speech aims at or results in stirring sectarian or racial prejudices or the incitement of conflict between different sects or the nation’s elements,” prescribing a penalty of confinement for a term ranging from six months to six years and a fine of not more fifty dinars. This is one of the most common articles invoked against journalists and opinion activists. Articles (188-199) of the law also address the crimes of libel and slander. According to Article (191), a person who

37 Al Mezan Centre for Human Rights, «Position paper on electronic legislation and compliance with public rights and freedoms», 12 September 2017 (in Arabic).

“commits libel against” the public authority and public employees while they are on duty or because of their function by virtue of their work will be punished by confinement for a term ranging from three months to two years. Article (193) punishes “slander” by confinement for a term ranging from one month to six months or by a fine from ten to fifty dinars if it is directed against persons mentioned under Article (191). This includes slander made in person or in absentia, or spread or published through printed materials and other means of publication. Pursuant to Article (195), any person who “insults” the King (PNA President) or members of the Public Prosecution or sends, or compels a third party to send or direct to them any written or verbal message, an image, or a comic which might undermine their dignity, or place such message, image, or drawing in a manner that suggests it would undermine their dignity, and “any person who disseminates or works towards disseminating the above among the people”. Still, Article (198) of the law provides that “the publication of any material that constitutes libel or slander is deemed to be illegal unless: (1) the subject of the libel or slander is true and its publication serves public interest.” Provisions on libel and slander are also invoked by the authorities to criminalise activists and journalists on grounds of expression of their opinions.

52. The foregoing reflects extremely obscure criminalisation provisions, which prescribe the harshest penalties. At the same time, the law does not put in place controls and parameters, which draw a dividing line with objective criticism that serves the public interest and that which is meant to undermine the dignity of the President or public authority representatives. The latter is purely personal, remote from public affairs, and departs from informed criticism.



- **Penal Law No. (74) of 1936**

53. Published in the Palestinian Official Gazette on 14 December 1936 and dating back to the British Mandate period, the Penal Law No. (74) of 1936 continues to be in force in the Gaza Strip to this day. Albeit different from the Jordanian Penal Law in some aspects, both laws share the use of loosely defined and overbroad terms. These terms criminalise and prescribe aggravated penalties against the exercise of some fundamental rights and freedoms, including the right to freedom of expression and peaceful assembly. Under the Penal Law No. (74) of 1936, the most expansive provisions, which incriminate essential practices of freedom of opinion and expression, include the following:
54. Article (149) of the law provides that “[a]ny person who (a) publishes any print, writing, picture or effigy calculated or tending to outrage the religious feelings or belief of other persons; (b) utters in a public place and in the hearing of another person any word or sound calculated or tending to outrage the religious feelings or belief of such other person; is guilty of a misdemeanour and is liable to imprisonment for one year.”
55. Under Chapter (20) of the Law, Articles (201-209) provide for acts, which constitute “libel”, “slander”, and “defamation”, but lack clearly defined controls or criteria in terms of introducing the concept. These are excessively arbitrary in relation to penalties prescribed against practices, which fall within the scope of opinion and publication. Article (201) defines the “misdemeanour of libel” as “[a]ny person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of a misdemeanour. Such misdemeanour is termed libel.” Article (202) criminalises and defines the “misdemeanour of slander” as “[a]ny person who unlawfully publishes any defamatory matter concerning another person by spoken words-with intent to defame that other person, is guilty of a misdemeanour and is liable to imprisonment for one year. Such misdemeanour is termed slander.” Article (203) further

contains a serious provision, criminalising criticism and commentary on public affairs, considering this as punishable “slander”: “Matter is defamatory which imputes to a person any crime or misconduct in any public office or which is likely to injure him in his occupation, calling or office, or to expose him to general hatred, contempt or ridicule.” According to Article (203), “[i]t is not necessary for libel or slander that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning, and its application to the person alleged to be defamed, can be collected either from the alleged libel or slander itself or from any extrinsic circumstances, or partly by the one and partly by the other means.” On the other hand, Article (205) views that “[a]ny publication of defamatory matter concerning a person is unlawful, within the meaning of this chapter, unless [...] the matter is true and it was for the public benefit that it should be published.

56. Amending the Panel Law No. (74) of 1936, Law No. (3) of 2009 was approved by the Gaza-based PLC Change and Reform Bloc. The amendment includes Article (262) *bis*, which introduces the charge of “abuse of technology”. Paragraph (c) prescribes the penalty of “confinement” for a term of not more than one year against “any person who deliberately abuses the devices of telephone lines and Internet or any other means of technology to promote, transmit, print, or copy permissive materials, or disturbs others, or directs obscene or indecent language, or their conversation involves incitement to immorality or debauchery.”<sup>38</sup>

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38 Al Mezan Centre for Human Rights, «Position paper on electronic legislation and compliance with public rights and freedoms», 12 September 2017, available at: <<http://www.mezan.org/uploads/files/150519725368.pdf>> (in Arabic).

- **Revolutionary Penal Law of the Palestine Liberation Organisation of 1979**

57. According to Article (8) of the Revolutionary Penal Law of the Palestine Liberation Organisation (PLO) of 1979, the item of penal legislation is applicable to military personnel, including officers, soldiers, students of revolutionary schools, and others associated with revolutionary action. It is deemed to be in force in the entire territory of the State of Palestine.
58. The law contains criminalisation and penal provisions that regulate functions of those falling within revolutionary groups (military personnel). However, some provisions impinge on the freedom of opinion and expression of that personnel. Using unquantifiable overbroad terms, the law criminalises and prescribes serious and disproportionate penalties against practices closely linked to the human right to freedom of expression. According to the law, any person who disseminates by speech or writing or by means of signs or in any other form “news”, or “used expressions” which may cause undue terror or despair during the belligerent operations will be punished with hard labour.<sup>39</sup> It also prescribes punishment of confinement for six months against any person who “despises a friendly state or its army or flag or national emblem in public, and performs the act of slander, libel or contempt in public against the president of a friendly state or any of its ministers or political representatives.”<sup>40</sup> Also, each writing and each speech or act that is intended or results in the arousing of sectarian or racial feuds or promote the conflict between categories of the Revolution shall be punishable by confinement for at least six months and with a fine that does not exceed fifty pounds.<sup>41</sup> Any person who performs propaganda that aims to weaken the national sentiment or arouses racial, doctrinal or regional feuds shall be punished with temporary hard labour.<sup>42</sup> To be punished with the death penalty or

39 Article (146/b) and (c) of the PLO Revolutionary Penal Law of 1979.

40 Article (163), op. cit.

41 Article (177), op. cit.

42 Article (164), op. cit.

with a lesser penalty shall be any person who commits a crime of those provided for by the Revolutionary Penal Law which undermines the reputation and solemn status of the Palestinian Revolution by instigating the public against it.<sup>43</sup> Furthermore, any person who commits crimes that “undermine the revolutionary unity or disturb the serenity among members of the revolution” shall be punished with the death penalty.<sup>44</sup>

59. In the chapter entitled “Offences against the Public Authority”, the law prescribes the penalty of confinement performs the act of libel, slander or contempt against “the Higher Commander, the revolutionary courts or entities, military forces, or any struggler or member of the Revolution during the performance of his service or due to what he conducted by virtue of it.”<sup>45</sup> Any person who tears apart or disdains the revolutionary flag or emblem shall be punished with confinement for a minimum term of six months.<sup>46</sup> Any person who tears apart, distorts or damages deliberately a revolutionary announcement or document that was posted or about to be posted on a building or public place in the implementation of the provisions of any piece of legislation in contempt of the authority or in protest against any of its acts shall be punished by confinement for a term of at least one month.<sup>47</sup>
60. This set of criminalisation and penal provisions is in contradiction with the essence of fundamental rights and freedoms, the protection of which is guaranteed by the Basic Law and international conventions. These have solidified the idea of a police state in both legislation and practice. They have placed restrictions, instilled fear, and entrenched self-control among individuals and of the governing authority, undermining the exercise of freedoms which individuals are born with and ought to enjoy wherever they are.

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43 Article (165), *op. cit.*

44 Article (176/4), *op. cit.*

45 Articles (262-267), *op. cit.*

46 Article (267), *op. cit.*

47 Article (270), *op. cit.*

## 2.2 Practices in Conflict with the Essence of Freedom of Opinion and Expression

61. This section highlights key practices of the governing authorities in the West Bank and Gaza Strip, involving abuses of citizens' right to freedom of opinion and expression in 2020. For a full understanding of their implications and how appropriate they are to freedom of opinion and expression, this section makes a mention of and describes the idea of these violations. It unveils the restrictions and risks they pose to freedom of opinion and expression, showing how admissible and compliant the practices they entail with human rights requirements and standards under the core national and international instruments investigated above. The presentation covers the most prominent views of international experts, specialised UN working groups, and relevant best practices in interaction with these manifestations and practices at the international level, demonstrating how they have been addressed by these actors in the context of global developments during the COVID-19 pandemic. Those practices are also described in the Palestinian setting in 2020. The review is substantiated with some documented sworn affidavits of victims or quotes from these affidavits. Key findings of practices in violation of freedom of opinion and expression include (1) detention on account of exercising freedom of opinion and expression; (2) suppression and dispersal of peaceful assemblies; (3) restrictions on journalism, the media, and digital space; and (4) undermining judges' right to freedom of expression.

### 2.2.1 Detention on Account of Exercising Freedom of Opinion and Expression

62. The right to liberty and security of a person is among the most fundamental rights endowed on all members of the human family. As the nature of this right admits the idea of restriction, it permits that individual be sometimes deprived of his/her liberty. However, this must be in line with the principles laid down by the instruments and standards, which set forth such limits, including the UDHR and ICCPR. Constraints will be implemented in accordance with the applicable

criminal laws, as necessary and proportionate as possible, and for the protection of the person in question against any serious harm or prevention of the injury of others. In this context, the ICCPR puts forward a set of applicable standards for the restriction of freedom. Any restriction in contrariety with these standards constitutes “arbitrary detention”. Along this vein, deprivation of liberty should be on such grounds and in accordance with the procedures established by law, and based on a criminal charge. The accused person should be informed formally and promptly of any charges against them. Meantime, all guarantees of a fair trial must be ensured. Proceedings should take place before a court, in order that the court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. Any detained person should be released unless their detention is lawful, necessary, and proportionate to the grave nature of the charges imputed to them.

63. According to the UN Working Group on Arbitrary Detention, arbitrary detention involves the detention of persons for exercising their inherently lawful rights, such as freedom of opinion and expression, peaceful assembly, etc. Detention is arbitrary also when persons are detained in defiance of respect for guarantees of a fair trial, dignity and other rights during arrest and detention. When they are detained in a discriminatory manner against the background of their intellectual affiliation, political views, or general positions on performance and policies of the governing authority in disregard of the principle of equality of human rights. Examples include the detention of human rights defenders, journalists, media representatives, opinion and political activists, and others on the ground of exercising freedom of opinion and expression by any means.<sup>48</sup>
64. In 2020, the WHO announced COVID-19 as a global pandemic, stressing the need for compliance will all preventive measures to contain the outbreak and ward off threats to public health. In this context, the public was instructed to refrain from being present in potentially overcrowded places and apply physical distancing measures. UN High

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48 *Ibid.*

Commissioner for Human Rights, Michelle Bachelet, urged authorities to take urgent action to protect the health and safety of people in detention and other closed facilities, as part of overall efforts to contain the COVID-19 pandemic. The High Commissioner urged governments and relevant authorities to work quickly to reduce the number of people in detention, noting that several countries have already undertaken some positive actions. Authorities should examine ways to release those particularly vulnerable to COVID-19, among them older detainees and those who are sick, as well as low-risk offenders. Bachelet stressed that “[n]ow, more than ever, governments should release every person detained without sufficient legal basis, including political prisoners and others detained simply for expressing critical or dissenting views.” Measures taken amid a health crisis should not undermine the fundamental rights of detained people, including their rights to adequate food and water. Safeguards against the ill-treatment of people in custody, including access to a lawyer and doctor, should also be fully respected. Moreover, Bachelet warned that he is “deeply concerned that some countries are threatening to impose prison sentences for those who fail to obey. This is likely to exacerbate the grave situation in prisons and do little to halt the disease’s spread”<sup>49</sup>

65. In over a decade, the State of Palestine has seen growing security control and large-scale detention of activists, journalists, and opponents of the governing authority. The spread of the COVID-19 pandemic, including health emergency threat, has not precluded ongoing arbitrary detention on account of freedom of opinion and expression. Such practices were based on the legislation in force in an oppressive manner, or through the imposition of other legislation that restricts expression, or through practice that does not take into account the legislation and public policies announced in any case.
66. At the same time, the President declared a state of emergency throughout the Palestinian territory. A variety of preventive measures

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49 Office of the United Nations High Commissioner for Human Rights, “Urgent action needed to prevent COVID-19 “rampaging through places of detention” – Bachelet”, 25 March 2020, available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>>.

have been taken to address COVID-19 risks to all aspects of public life. These included curfews across the West Bank and, subsequently in the Gaza Strip.<sup>50</sup> The Executive issued forth decisions and instructions, including new penalties. Of these, freedom-restricting penalties have been prescribed against any person who violates the decisions, instructions, measures, and procedures undertaken by relevant authorities to achieve the objectives of the state of emergency. To this avail, Article (3) of the Law by Decree No. (7) of 2020 Concerning the State of Emergency further sets out “seven criminalisation provisions”, by which a person is put in “custody” during the state of emergency “for a term of not more than one year” or “by the maximum penalty prescribed by the law”, without prejudice to any heavier penalty prescribed by another law.<sup>51</sup> This would lead inevitably to an increasing number of people in detention in spite of the fact they do not pose a threat to society. Contrary to preventive measures, detention centres will be overcrowded. It is impossible that such a situation is inconsistent with the goal announced by the decree on the declaration of the state of emergency, namely, to “confront and prevent the outbreak of COVID-19”. These measures are in themselves in conflict with the purpose of declaring the state of emergency and international instructions aiming at reducing the spread of the pandemic.

67. The nature of penalties prescribed under Article (3) of the Law by Decree No. (7) of 2020 Concerning the State of Emergency, namely confinement, are at odds with the public health requirements and instructions during the COVID-19 pandemic. Article (3)(3) of the Law by Decree allows for a large-scale and inevitable potential to detain citizens for exercising freedom of opinion, free journalism, and publication on any social media platforms in the context of sharing “any announcements or statements in relation to the state of emergency, disseminating news associated therewith, while not referring to an official source, in any form whatsoever, or by means of all print,

50 Gaza-based Ministry of Interior and National Security, “Ministry of Interior: Extension of the curfew in Gaza and Northern Gaza” until further instructions”, 31 August 2020, available at: <<https://bit.ly/2UDFOVN>>.

51 See p. 21 above.



audio and visual social media platforms.” Using loosely defined and overbroad terms, Article (3)(7) of the said regulation criminalises and prescribes penalties against these activities in contravention of freedom of expression: “Each person who commits any crime against public order and community safety and stability during the state of emergency shall be punished by the maximum penalty prescribed by the law.” This has strictly contributed to formalising the already serious penalty of confinement during the pandemic.

68. In its report to the Human Rights Council, dated 24 July 2020,<sup>52</sup> the UN Working Group on Arbitrary Detention indicates that it is inadmissible to use the powers given during public health emergency to curtail the freedom of particular individuals or groups or silence journalists, human rights defenders, members of the opposition, clergymen, and other persons for expressing their opposition or criticising the authority, its performance, or the information it makes available during the emergency. However, a scrutiny of the Palestinian context in 2020 shows that law enforcement officials in both the West Bank and Gaza Strip have used many powers vested in them to crack down on the exercise of rights and freedoms, including freedom of expression. Arbitrary detention is the most salient practice, by which the governing authority has suppressed citizens’ freedom of opinion and expression.
69. The Executive Authority and relevant official agencies have incessantly persecuted citizens on the ground of freedom of opinion and expression throughout 2020. Based on the analysis of the context of detention for expression, Al-Haq notes that security agencies in the West Bank and Gaza Strip have opted for a particular course of action towards individuals, who have been a victim of detention. Although they cannot be certainly identified, these individuals include two clearly defined main groups. Firstly, both in ordinary and in extraordinary (pandemic-related) circumstances, individuals criticised the governing authority and official agencies’ approach, position, and formal performance of

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<sup>52</sup> Report of the Working Group on Arbitrary Detention, Human Rights Council, Forty-fifth session, 14 September–2 October 2020, 24 July 2020, UN Doc. A/HRC/45/16, Annex 2, p. 37.

public administration, rights, freedoms, and other issues of interest to Palestinian society. In 2020, security agencies assaulted the freedom of dozens of journalists, opinion activists, human rights defenders, and community members who complained of deteriorating economic and human rights situations during the COVID-19 pandemic. Violations also affected persons who voiced opposition to politicising civil service, widespread corruption, and lack of transparency among civil servants. Secondly, persons expressed political views in opposition to the ruling political party (political opponents) or in affiliation with the party in control of either the West Bank or the Gaza Strip. In the past, the PNA security forces assailed dozens of persons, whose practices or orientations suggested that they were loyal to political figures or parties opposing or dissenting from the dominating party in the West Bank, namely Fatah. These measures also affected anyone who apparently dealt with, supported, or paid allegiance to persons who were politically against the existing political regime, or political activists who were loyal supporters of the dominating party in the Gaza Strip, *i.e.*, Hamas. or persons who embraced religious-political orientations, who were considered to be extreme or in support of radical political-religious ideology. On the other end, in the Gaza Strip, Hamas's agencies cracked down on those who expressed rejection of Hamas administration, announced their affiliation with Fatah, or received salaries for holding office in Fatah, including during the period leading up to the internal Palestinian political divide in 2007.

70. Also, based on Al-Haq documentation, citizens were targeted by summons service or arbitrary detention on account of exercising freedom of expression. In this vein, overall control was imposed on the Palestinian public, media outlets, the internet, and social media networks. Control affected any person who posted publications or comments, or participated or was even present in solidarity marches or peaceful assemblies, suggesting to the governing authorities that they fell within the two groups mentioned above. In addition, in the West Bank and Gaza Strip, the authorities kept a constant eye on particular persons, who were believed to be members of either group. These were summoned, arrested, or detained as a consequence

of expression of opinion that was “unwelcome” by the governing authority.

71. Government agencies which committed the reported abuses mainly involved law enforcement bodies, including some judges, prosecutors, and security personnel. Although it is difficult to draw up a list, security agencies emerged clearly and repeatedly in Al-Haq documentation of detention for freedom of opinion and expression during 2020. In the West Bank, relevant PNA security agencies included Preventive Security, General Intelligence, and Police. In the Gaza Strip, Hamas’s security actors featured the Internal Security, Police, Military Intelligence, among others. These security agencies summoned, arrested, or detained dozens of citizens against the backdrop of exercising freedom of opinion and expression.
72. Detained on arbitrary grounds for freedom of opinion and expression, many victims were subjected to several other violations, together with encroachments on their right to freedom of opinion and expression and personal freedom. According to Al-Haq documentation, in both the West Bank and the Gaza Strip, while they were being summoned, arrested, or detained, citizens were assaulted by security agencies, with violations affecting their right to guarantees of a fair trial. Dozens of citizens were summoned, arrested, and/or detained without arrest warrants duly issued by competent bodies. For instance, while some were summoned by telephone, other citizens (or their families) were notified of reporting to a security agency. Others were immediately arrested without any prior warning. Dozens of citizens were also detained without being notified of the reason for detention or of charges. Alternatively, citizens were detained by security agencies for more than 24 hours, without notification of the Public Prosecution. Many citizens were also detained on orders from “governors”, placing them outside the jurisdiction of the Public Prosecution and judicial system. Moreover, Al-Haq monitored cases, where victims were kept in detention despite the fact that court decisions had already been rendered, ordering their release. Combined, these practices are in contravention to constitutional norms and relevant international

instruments. They are also in violation of applicable penal procedure laws in the West Bank and Gaza strip.

73. Additionally, dozens of detained persons were subjected to physical and psychological violence during arrest and detention, undermining their human dignity. Of these, many detainees experienced ill-treatment and torture while being interrogated about practices, which were closely related to the essence of the right to freedom of expression and freedom of the press. A number of victims were detained in unsanitary, improper, or inhuman conditions, including during the COVID-19 pandemic. Worldwide, detained persons are among the most vulnerable to contracting this disease. The majority of detained persons were exposed to coercion by security agencies. Besides violating their privacy, security personnel accessed personal information and social media sites belonging to detained persons. Others were forced to remove posts, in which they expressed their views on social media, including Facebook. Homes of many detainees were searched without search warrants duly issued by relevant bodies. A number of activists and journalists reported that security agencies had seized their personal belongings, such as mobile telephones, photographic and journalistic equipment, including cameras, laptops, etc. Based on Al-Haq documentation, security agencies and interrogators forced activists, journalists, and others to sign pledges, stating that they would not criticise the governing authority or express opposing opinions, as a prerequisite for release from detention.
74. Although it falls within the ambit of admissible powers of the Public Prosecution, pre-trial detention is the most serious proceeding in the process of investigation. It affects the right of the accused to personal freedom and presumption of innocence. As a merely precautionary measure, it is prohibited that pre-trial detention is deemed or dealt with as a penalty in the legal sense. The Public Prosecution is entitled to apply pre-trial detention with a view to protecting public interest and investigation into serious crimes, in which release of perpetrators puts at risk public security and safety of society, causes the loss of evidence, or

exerts an undue influence on witnesses.<sup>53</sup> The Public Prosecution needs to use this right in line with clear justifications and specific, proportionate controls, which place with as limited restriction as possible on personal freedom in order to fulfil the purpose of detention.<sup>54</sup>

75. According to Al-Haq documentation, in 2020, the Public Prosecution detained opinion activists, including university students, human rights defenders, and media representatives in the West Bank and Gaza Strip.

53 In force in the West Bank and Gaza Strip, the Penal Procedure Law No. (3) of 2001 regulates the initiation of penal lawsuits. According to the provisions of this law, the right to file and conduct a penal lawsuit is vested exclusively in the Public Prosecution. The action may not be suspended, waived or abandoned, nor may it be delayed or settled out of court except in those cases where the law provides otherwise. The members of the Public Prosecution shall exercise judicial powers and supervise officers invested with judicial powers each within the circuit of his/her jurisdiction. Judicial officers shall undertake to seek out and investigate crimes and their perpetrators and to gather the evidence necessary for the investigation in the trial. If, on the basis of the evidence-gathering minutes, the Public Prosecution believes a case involving an offence or a misdemeanour is ready for judicial review, it issues an arrest warrant against the accused person and institutes the penal action. If there is sufficient evidence to charge a person with a felony or with a misdemeanour that is punishable by imprisonment for a term of more than six months, the judicial officer may ask the Public Prosecution to issue an arrest warrant against such person. This demonstrates that the Public Prosecution is given adequate powers to assess the situation in case a charge is in place. To this avail, the accused person is arrested if the charge is so serious that it commands such arrest. Otherwise, the accused is left free in line with conditions and procedures set by the law. The Penal Procedure Law also provides that the deputy prosecutor is entitled to issue a writ of summons ordering the accused to appear and submit to an investigation. If the accused does not appear, or if it is feared that he will flee, the deputy prosecutor may issue a writ of attachment ordering the accused to be brought by force. The deputy prosecutor shall immediately interrogate an accused against whom a writ of summons has been issued. As to an accused against whom a writ of attachment was issued, the deputy prosecutor must interrogate him within twenty-four hours from the date of his arrest. This proves the philosophy behind the Penal Procedure Law, seeking to maintain public interest and protect society from a potential danger. It ensures that detention of an accused person is not extended on arbitrary ground for interrogation, violating legal procedures and accused person's right to personal freedom. Even if a legal provision is in place, extension is only permitted to the extent necessary and proportionate inasmuch as the Public Prosecution is a fair and decent adversary party to the penal action. The Public Prosecution's role mainly revolves around detection of truth. After interrogating the accused, it has the power to release or detain him by a decision from court, in accordance with the law, and if the procedures of the investigation entail the detention of the arrested. All the more so, if it finds after conclusion of the investigation that the accused person's conduct does not constitute an action that is punishable by law, the Public Prosecution issues a reasoned decision to dismiss the case and orders the release of the accused if he is detained.

54 Abdeen, Issam, "Legal analysis paper on violations of freedom of opinion and expression and media freedoms across the Palestinian National Authority-controlled territory". Al-Haq, 26 November 2012, available at: <<https://www.alhaq.org/ar/publications/7947.html>> (in Arabic).

Detention was extended by judges of competent courts on account of practices that fell within the framework of freedom of opinion and expression. These practices were considered to be offences in reference to overbroad and loosely defined legal provisions, including “undermining solemnity of the State”, “weakening the nation’s morale”, “impairing national sentiments”, being in conflict with “national security”, “public order and morals”, “stirring up sectarian strife”, “libel and slander against public authorities”, and “libel against dignitaries”, as provided under effective laws.<sup>55</sup> Al-Haq also documented many cases, where the detention of those activists was extended by the Magistrate Court judges up to the maximum period (15 days for the first time), which was further renewable pending further investigation. This is in spite of the fact that no evidence emerged during evidence-gathering or investigation. Evidence would have provided adequate grounds to charge detained persons with acts, which may have constituted offences punishable by law. The said procedure is incongruent with the standards and philosophy of detention. Still, these persons were detained and interrogated on cases of opinion, publication, and expression on social media networks or media outlets, participation in peaceful assemblies, or engagement in other forms of expression. This is proof of the Executive Authority’s hegemony (through security agencies) on the justice sector. As a punishment, pre-trial detention was used against criticism of or opposition to the governing authority’s positions. In many cases, this measure threatened independence of the judiciary, Public Prosecution representatives, and judges, further entrenching an authoritarian police state, including all respective agencies, and hindering respect for freedom of opinion and expression.

76. This section presents some sworn affidavits that Al-Haq documented for victims of summonses, arrest, and/or arbitrary detention carried out on basis of their exercise of freedom of opinion and expression during 2020:

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55 For further information, see p. 25, 28, and 30 above.

**\* Citizen A. B., a 34-year-old resident of Jabalya refugee camp, Northern Gaza, a caricaturist, and activist of the “We Want to Live” youth movement. This movement seeks to exert pressure on the Palestinian government in the West Bank and Gaza Strip to improve living conditions in Gaza. A. B. reported that he was summoned, arbitrarily detained, and interrogated by the Internal Security Agency on account of Facebook posts in January 2020.**

“About a week ago, I published on my Facebook page several posts and caricatures, criticising the Great Return March (GRM) demonstrations, which were halted by a decision from the Higher National Commission for the Great Return March and Breaking the Siege. The Commission also announced a new form of the GRM. I also had other posts, criticising the flooding of vast areas across the Gaza Strip with rainwater in winter. Municipalities failed to find radical solutions for flooded streets, roads, and some citizens’ homes. Consequently, I received a summons written by the Internal Security agency, ordering me to give myself up at the agency premises in Beit Lahiya. When I turned myself in, officers confiscated my mobile phone and ID card and forced me into a small cell. With only a chair inside, the cell had a surface area of 1.5x0.5 square metres. They left me sitting in the cell for an hour and a half. Then, I was interrogated about the posts and caricatures I had published on my page. I was questioned if I received calls from abroad, the Israeli occupying authorities, or PNA agencies in Ramallah. I denied that, however. I was interrogated for two hours. I was detained from 9:00 am until 2:00 pm on the same day in the cold weather. I felt my feet freezing. To be released, the interrogator forced me to sign a written pledge, stating that ‘I would not criticise the government and officials in the Gaza Strip, or publish any posts or images on Facebook, criticising the Gaza government.’”<sup>56</sup>

<sup>56</sup> Non-withheld written sworn affidavits, documented on 25 January 2020 by Al-Haq field researcher Mohammed Abu Rahmah. On file with Al-Haq, Ref. No. P5/2020.

**\* A. K., a 26-year-old resident of the village of Bir Nabala, Jerusalem Governorate, dentist, and member of Hizb al-Tahrir (Liberation Party), stated that, in April 2020, he was arrested by the Preventive Security Agency for sharing a post on his Facebook page. The post read as follows: “Why don’t they make every effort to find solutions and open mosques? #mosques\_are\_a\_priority\_open\_them\_with\_precautions.”**

“At about 11 am, four Preventive Security officers came to my house. They did not present a search or arrest warrant, nor did they inform me of the charge imputed to me. They searched the house and arrested me, stating: “We are in a state of emergency. We arrest whoever we want without an arrest warrant.” Then, they took me to the Preventive Security offices in the Al-Balou’ area, Al-Bireh city. I was held in a very dirty cell. I was taken to interrogation at 12:30 am. My rights were not read out to me. I was interrogated in the presence of a person, who introduced himself as the Legal Advisor to the agency. He presented a file, including pictures which he said were posted by me on Facebook, concerning the government, the authority, and the COVID-19 situation. I was questioned about these pictures. “You are inciting people to break the quarantine and open mosques,” he said. I replied that I called for opening mosques after medical precautions would be taken and that my posts on the Facebook page were ordinary and did not harm anyone. I was interrogated until 2:00 am. In the end, the interrogator requested that I sign a pledge, stating that I would not post anything on Facebook, but I refused.

Two days following detention, in a meeting with the prosecutor, he charged me with “insulting the authorities, committing the act of libel against dignitaries, and offending the authority.” When I denied the charge, he extended my detention for 24 hours. I was brought back to the cell at the Preventive Security premises in Beituniya.”<sup>57</sup>

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57 Non-withheld written sworn affidavits, documented on 4 May 2020 by Al-Haq field researcher Omran al-Risheq. On file with Al-Haq, under the title Report on the arrest of a citizens by the Preventive Security for Facebook posts.



**\* T. J., 39-years-old journalist, academic, and media representative of Fatah, reported that, in June 2020, the Internal Security Agency in the town of Beit Lahiya, Gaza Strip, summoned and detained him on several occasions on account of affiliation with Fatah and expression of political views on the internet.**

“I was summoned to the Internal Security premises in Beit Lahiya. At around 9:30 pm, I turned myself in. As soon as I arrived at the premises, my mobile telephone and personal belongings were seized. I was held in a cell, with a surface area of some 3x3 square metres. There were seven detained persons, including Fatah leading activists and members in the Northern Gaza region in the cell. These were summoned for participation in a Fatah peaceful assembly on 11 June 2020. During the assembly, they laid a wreath on the grave of the late Fatah leader Jamal Abu al-Jidyan, who was killed by armed members of Hamas in 2007. They also published posts on social media networks on the anniversary of Hamas’ takeover of power in the Gaza Strip since 2007.

While I was in detention, I was questioned about an interview I conducted with a Fatah activist in the Gaza Strip as part of my Ph.D. thesis. During the interrogation, they ordered me to disclose my Facebook address and password. The interrogator searched my mobile telephone and Facebook account and inquired about my articles, posts, and comments on social media sites. He also questioned about my organisational activity in the Fatah and my media coverage of the movement’s activities and events. I was released on the same day. Summonses and interrogations recurred several times. Each time, I was interrogated for several hours and then released, pledging that I come back again at the time they set for me.”<sup>58</sup>

58 Non-withheld written sworn affidavit, documented on 24 June 2020 by Al-Haq field researcher Mohammed Abu Rahmah. On file with Al-Haq, Ref. No. P74/2020.

**Al-Haq also monitored, documented, and collated information from several sources. In this context, A. M. a 36-year-old resident of the city of Rafah, a former security officer, and currently a popular artist, was tried before a military court for exercising freedom of expression.**

“In January 2020, newspapers, media outlets, and digital media reported that the Gaza Standing Military Court rendered a jail sentence against A. M., a popular artist and former member of Hamas security agencies in the Gaza Strip, before he could perform controversial folklore songs and comedy video shows, in which he criticised Hamas. He was convicted of several charges and sentenced to one and half years in prison. Charges involved “countering public policy”, “insulting religious sentiment”, and “misconduct”. These were associated with the videos he posted, criticising Hamas. That was the fourth detention. Earlier, A. M. was detained twice in 2016 by the Internal Security Agency, which interrogated and tortured him. On the third occasion, he was detained by the Military Police. All detentions were on account of the right to freedom of expression and publication.”<sup>59</sup>

59 Al-Ayn News Agency, “A popular artist in Hamas prisons threatens: Freedom or strike”, 13 January 2020, available at <https://al-ain.com/article/adel-mashoukhi-hamas-hunger-freedom> (in Arabic).

## 2.2.2 Suppression of Peaceful Assemblies as a Restriction on Freedom of Expression

77. Freedoms of opinion and expression forms a basis for the full enjoyment of a wide range of other human rights, including the right to freedom of peaceful assembly.<sup>60</sup> The latter reflects a collective expression of opinion by persons with shared ideas, visions, and positions, which they express in a variety of forms anywhere: outdoors, indoors, or on the Internet. These forms of expression can be static (*e.g.*, solidarity marches, peaceful protests, and sit-ins), mobile (*e.g.*, marches and processions), or involve modes of expression of common positions by relevant parties.<sup>61</sup>
78. According to Article (21) of the ICCPR, respect for and protection of the right of peaceful assembly entails a realisation of a stand-alone fundamental right.<sup>62</sup> It is also an indicator of how respectful public authorities are of freedom of expression as well. By equitable respect for this right for all segments of society and ensuring pluralism and non-discrimination, authorities ensure that everyone, including minorities and the most disadvantaged groups, can express and voice their opinions. It contributes to laying a critical foundation for social dialogue, public opinion mobilisation, and awareness-raising of general and special challenges to the community. It further promotes political participation, policy, decision-making, and public strategy processes. Respect for the right of peaceful assembly offers the prospect of dialogue between civil society, political leaders, and government. As a benchmark of democratic performance in society, the right of peaceful assembly is a key element in the maintenance, development, and respect for minority rights and identities. It also supports the development, progress, and welfare of society. Enjoyment of the right to freedom of peaceful assembly demonstrates the overall success of the key and decisive implementation of the 2030 Agenda for

60 Para. (4), General comment No. (34).

61 Abdeen, Issam and Nasser al-Rayyes, "Manual of the Palestinian Police and human rights", Al-Haq, 21 December 2013, available at <<https://www.alhaq.org/ar/publications/7932.html>> (in Arabic).

62 Article (21) of the ICCPR.

Sustainable Development,<sup>63</sup> including Sustainable Development Goal 16: Promote just, peaceful and inclusive societies.

79. The ICCPR requires that States Parties recognise the right of peaceful assembly,<sup>64</sup> for all persons present on their territories,<sup>65</sup> including citizens and foreign nationals alike. No restrictions may be placed on the exercise of peaceful assembly except under specific, stringent conditions. Like conditions on derogation from freedom of expression under Article (19)(3) of the ICCPR, no restrictions may be imposed on the exercise of the right of peaceful assembly other than those placed 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.<sup>66</sup>
80. With advanced technology and widespread digital developments, freedom of peaceful assembly for expressive purposes has been possible on the Internet, including the vast digital space. This is furnished by public and private groups on various social media platforms, such as Facebook, Instagram, Twitter, among many others. Hashtags allow the gathering of individuals in a single, large-scale campaign from across the world. With these multiple means, it is no longer required that persons be physically present in a particular geographical area in order to consider gathering as a “peaceful assembly”.
81. According to General comment No. (37) on Article (21), the right of peaceful assembly, issued by the Human Rights Committee on 17 September 2020, no matter how the context, implications, and venues of assembly change are, the act of peaceful assembly for non-violent

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63 Paras. (101) and (102), Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, Thirty-eighth session, 18 June-6 July 2018, 26 July 2018, UN Doc. A/HRC/38/34.

64 The term “peaceful” should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties. See Para.1.3, Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Peaceful Assembly, Second Edition, 2012.

65 Para. (5), General comment No. (37).

66 Article (21), ICCPR.

expression of opinion or position on a particular issue or exchange of ideas continues to enjoy the protection provided by Article (21) of the ICCPR.

82. It is important to investigate the extent to which a peaceful assembly enjoys legal protection on the ground in line with the ICCPR standards, while stressing the importance of avoiding restrictive interventions. In this vein, the limits of violence that deprive an assembly of its peaceful character and legal protection for participants should be made clear. “Violence” in this context typically entails the use by participants of physical force that is likely to result in injury or death, or serious damage to property. Mere disruption of vehicular or pedestrian movement or daily activities does not amount to violence. If an assembly is peaceful, the fact that not all the domestic legal requirements pertaining to the assembly (*e.g.*, notification of authorities) have been met by the organisers or participants does not, on its own, place the participants outside the scope of the protection of Article (21). Civil disobedience or direct-action campaigns are in principle covered by the protection of Article (21), provided they are non-violent.<sup>67</sup> Moreover, isolated acts of violence by some participants should not be attributed to other participants. Some participants or parts of an assembly may thus be covered by Article (21), while others in the same assembly are not.
83. Generally speaking, the obligation to respect and ensure peaceful assemblies imposes essentially negative and positive duties on States. States have the negative duty of no unwarranted interference with participants in peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block or disrupt, assemblies without compelling justification, and not to sanction participants without a legitimate cause. Moreover, States Parties have the positive duty to facilitate peaceful assemblies, and to make it possible for participants to achieve their legitimate objectives. Thus, States must promote an enabling environment for the exercise of the right of peaceful assembly and put into place a legal and institutional framework within which the right can be exercised effectively. States must not deal with assemblies

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67 Para. (16), General comment No. (37).

in a discriminatory manner, for example on the basis of nationality, race, ethnicity, age, political opinion, religion, belief, minority status, disability, sexual orientation or gender identity.<sup>68</sup> Where needed, States must also protect participants against possible abuses by non-State actors, such as interference or violence by other members of the public, counter-demonstrators, others. States Parties must moreover ensure independent and transparent oversight of all bodies involved in managing peaceful assemblies, including through timely access to judicial remedies in case of [alleged/potential] violations of the right.

84. Applying the aforementioned international standards of peaceful assembly to the general context and performance of the State of Palestine in 2020 shows that law enforcement personnel, security personnel, in particular, curtailed citizens' right of expression in many cases across the West Bank and Gaza Strip. Through the peaceful assembly, these citizens expressed common positions even before the outbreak of the COVID-19 pandemic and declaration of the state of emergency throughout the Palestinian territory. Moreover, Al-Haq documentation demonstrated an increasing number of abuses of freedom of peaceful assembly during the state of emergency in 2020.
85. Generally, the internal Palestinian political divide and factional persecutions were part and parcel of the public authorities' approach to the rights to freedom of opinion and expression and to freedom of peaceful assembly. Both provided a key motive to oppress these freedoms in the West Bank and Gaza Strip. Moreover, security agencies quelled with significant force demonstrations organised by the Liberation Party and dispersed assemblies of occasions celebrated by Hamas or its allies, including the reception of prisoners released from Israeli prisons. Security agencies also confiscated Hamas flags hoisted by demonstrators during assemblies. These and other practices were indicative of persecution targeting members of the opposition or the opposition or other political party. Likewise, in the Gaza Strip, security agencies clamped down on Fatah supporters and those believed to be affiliated to and collaborators with Fatah leaders. In addition to the

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68 Paras. (22) and (23), General comment No. (37).

divide and political partisanship, authorities cracked down on protests, in which citizens expressed criticism of government performance or rejection of government positions and decisions in both areas. For example, security agencies repressed protestors who complained about the high cost of living and harsh economic conditions before and during the COVID-19 pandemic. Oppression also affected citizens, who attempted to protest against corruption and call for enforcing laws and holding to account persons implicated in corrupt practices. Al-Haq documented the suppression of demonstrations organised by the Liberation Party in protest against the government position and accession to the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). Authorities also clamped down on protests against government decisions and procedures of dealing with the COVID-19 pandemic, such as the conversion of some places into mandatory quarantine centres.

86. In 2020, violations of the right of peaceful assembly took on several forms. Most notably, excessive measures were imposed on this right without a lawful, necessary, or proportionate justification. Public authorities continued to stipulate a “notification” for peaceful assemblies, as provided under the Law on Public Gatherings No. (12) of 1998 and its Regulation issued by Decision No. (1) of 2000 of the Minister of Interior. Contrary to the essence of the law, notification was viewed as a “permission”, by which public authorities’ “approval” should be obtained for a gathering to be held. Planning and preparations of peaceful assemblies (both in real and virtual worlds) continued to be under surveillance. Oftentimes, public authorities intervened and prevented the organisation of peaceful assemblies. The excessive and unnecessary force was also used to suppress other assemblies. For instance, while assaulting demonstrations, security personnel pepper-sprayed and fired tear gas and stun grenades on participants.
87. Also, in 2020, violations of freedoms of expression and peaceful assembly were intertwined with the violation of other rights and freedoms. In the majority of cases documented by Al-Haq, security agencies abused citizens’ right to physical safety and violated the

prohibition of ill-treatment. In the West Bank and Gaza Strip, security personnel launched large-scale attacks on protestors, including by beating, clubbing with batons, and verbal assaults. Vicious violations also affected protestors' right to liberty and security of person, as well as guarantees of a fair trial, including during arrest and detention. On several occasions, dozens of protestors were summoned, interrogated, arrested, and detained on arbitrary grounds for participation in peaceful assemblies. Other persons were indiscriminately arrested for their mere presence in an area and at a time intended for organising a peaceful assembly. The right to dignity and humane treatment was extensively abused. A number of participants in peaceful assemblies were subjected to torture and inhuman treatment, detained in unsanitary, improper, or inhuman conditions, or put at risk of contracting COVID-19 while being arrested or detained, particularly during the health-threatening pandemic. Moreover, most basic preventive measures, including facemasks and sanitisers, were not made available. The right to property and right to privacy were also prejudiced. Particularly in detention, protestors had their mobile telephones confiscated and broken into. These and other measures and practices constituted a breach of a wide range of rights. They were designed to deter participants in protests, as well as society at large, from exercising the right to freedom of peaceful assembly to express their opinions in the future.

88. In the West Bank and Gaza Strip, most security agencies took part in suppressing freedom of expression, either individually or through "joint security forces". Meantime, a prominent role was played by the police, including the General Investigations Department and Special Police force, as well as by the Preventive Security, General Intelligence, and Military Intelligence, in cracking down on peaceful assemblies in the West Bank. In the Gaza Strip, most violations on peaceful assemblies were committed by the Internal Security and Police agencies of Hamas. However, peaceful assemblies were predominantly suppressed by "joint security forces" in both the West Bank and the Gaza Strip. These forces brought together most of the aforementioned agencies at the same time. According to Al-



Haq documentation, Palestinian governorates which recurrently saw a clampdown on peaceful assemblies included Jenin, Ramallah and El-Bireh, Hebron and Tubas in the West Bank, as well as Northern Gaza, Central Gaza and Rafah in the Gaza Strip.

89. Notably, pursuant to Article (4)(3) of the ICCPR, the State of Palestine informed States Parties, through the intermediary of the UN Secretary-General, of the provisions of Article (12) on the right to freedom of movement and Article (21) on the right of peaceful assembly from which it has derogated following declaration of the state of emergency throughout the oPt in response to the COVID-19 pandemic.<sup>69</sup> Nonetheless, the State of Palestine has failed to implement Article (4) in line with the specific conditions, which allow such derogation. It has not maintained the standards of proportionality, non-discrimination, and necessity in the context of the measures taken during the period of derogation. On the contrary, these measures undermined other rights enshrined in the ICCPR, including personal freedom, human dignity, physical safety, etc. At the same time, the aforementioned measures have not reduced the spread of COVID-19, the reason for which the temporary derogation from the right to freedom of peaceful assembly was allegedly actuated.
90. This section presents some sworn affidavits Al-Haq documented for violations of the right to freedom of peaceful assembly during 2020. These abuses were committed as a mean to curtail freedom of expression before and during the COVID-19 pandemic outbreak, in both the West Bank and the Gaza Strip.

**\* W. A., 55-year-old and a resident of the Jenin governorate, reported that members of a Palestinian joint security force dispersed a peaceful assembly, assaulted and detained participants. The assembly was called by the Liberation Party in protest against the United States peace plan (so-called Deal of the Century) in February 2020.<sup>70</sup>**

<sup>69</sup> Article (4) of the ICCPR is addressed in detail above, p. 12 and 13.

<sup>70</sup> Non-withheld written sworn affidavit, documented on 17 February 2020 by Al-Haq field researcher Tareq al-Haj Mahmoud. On file with Al-Haq, Ref. No. 17/2020.

“On 15 February 2020, we, members of the Liberation Party, organised a peaceful assembly in protest against the Deal of the Century in front of the Jenin Small Mosque in the centre of Jenin city. We had submitted an official notice to the Police Director in the city, expressing our desire to hold the assembly on that day, but we received no reply. Meantime, we were surprised by a massive deployment of members of different Palestinian security agencies. These included armed uniformed Special Police personnel as well as non-uniformed Preventive Security, Intelligence, and Criminal Investigations officers. When the assembly started at about 12:30 pm, security personnel grabbed many Liberation Party flags from participants, including children. During the last minutes of the assembly, a number of security officers mounted the vehicle with loudspeakers. A number of Liberation Party speakers were on that vehicle. Officers pepper-sprayed, pushed away, and beat citizens on various parts of their bodies. They also fired stun grenades and tear gas canisters on and dispersed participants in the assembly. Dozens of protestors suffocated as a result of tear gas inhalation. The attack lasted for some 20 minutes. Then, Preventive Security and Police personnel detained dozens of participants, particularly members and activists of the Liberation Party.”

**\* F. B., a 46-year-old resident of the Ramallah governorate, stated that the Palestinian Police detained and put him on trial for “intention” to participate in a peaceful assembly, which protested against corruption and called for holding corrupt individuals to account. Organised in the Al-Manarah roundabout square in July 2020, the assembly was called on social media sites by five Palestinian movements, including the Palestinian Movement against Corruption. F. B. is an activist of the latter.<sup>71</sup>**

“At about 5:20 pm on 19 July 2020, I was walking along the Rukab Street towards the Al-Manarah roundabout square, where a peaceful assembly was about to set out to demand that corruption files be

71 Non-withheld written sworn affidavit, documented on 11 August 2020 by Al-Haq field researcher Umran al-Risheq. On file with Al-Haq, Ref. No. 121/2020.

detected in accordance with the law. In the meantime, I was surprised by members of different security agencies, including masked Special Police and National Security Forces personnel closing the area. In addition to installing metal barriers, they formed a human barricade and prevented passers-by from accessing the area. I took footage of the incident on my mobile phone. Two non-uniformed security officers, including one carrying a pistol, called my name! “Hand in your mobile phone and ID and come with us”, they said. They took and forced me into a Special Police van, where I saw 23 detained persons. These were guarded by five Special Police officers. Originally with a capacity for 12 persons only, the van was overcrowded. Security personnel were masked and we could only see their eyes. Detained persons did not wear masks, nor were we given any. COVID-19 preventive measures were not observed.

Not all detained persons were activists. There were among us passers-by, who were only arrested because they were on the street. We were transported to the Al-Balou’ Police Directorate in El-Bireh, where I was interrogated about my presence on the street and whether I wished to participate in the assembly. I was also questioned about my activism. Later, a Police officer came in and said: “Frankly, we will detain those persons who, according to information from security agencies, are associated with movements. The rest will leave.” While I was detained, I was not tested for COVID-19 at all. In the Police centre, I was held in a small room with a surface area of just (2x3 square metres) together with seven detained persons. There were only four old, shabby, and malodorous mattresses. The room and toilet were infested with mosquitos and cockroaches. On the next day, I was relocated to the court complex and held with another 22 detainees in a small room (2x3 square metres). In disregard of social distancing rules to prevent the spread of COVID-19, facemasks were not provided to us! Then, I was presented to the general prosecution representative, that read out the charge of “unlawful gathering in breach of health protocols” to me. He extended my detention for a period of 48 hours pending further investigation. On 28 July 2020, I was released on bail.”

**\* A. H., a 68-year-old resident of the Rafah governorate, stated that Special Police personnel used excessive force and carried out mass arrests while dispersing citizens, who protested against the Ministry of Health decision to convert two schools of the Ministry of Education into quarantine centres in March 2020.<sup>72</sup>**

“On 15 March 2020, the Palestinian Ministry of Health (MoH) was preparing the Marmarah and Ghassan Kanafani schools in the town of Al-Nasser, Rafah governorate. Both schools were to be set up as mandatory quarantine centres for persons returning to the Gaza Strip via the Rafah border crossing. This was a preventive measure against COVID-19. Hundreds of the town residents, including youth, men, women and children, gathered in front of the schools in protest against the MoH decision. The schools were in close proximity to citizens’ homes. Meantime, a number of protestors burned wheel tyres and displayed banners, expressing their rejection of the MoH decision. A large Special Police force arrived on some 16 Police vehicles. Accompanied by non-uniformed security officers, Police personnel were in official uniform and carried weapons and batons. They dispersed by force, chased, and beat protestors with batons and rifle butts. In addition to arresting a number of protestors, Police personnel opened fire in the air. They also raided a number of homes, including my brother’s, and beat inhabitants with batons and rifle butts. They assaulted women and children. I heard them shouting obscenities at citizens. They also arrested about 54 citizens from their homes, including 15 children. Police attacks resulted in the injury of some 12 citizens, including a child, who sustained bone fractures and contusions all over their bodies.”

72 Non-withheld written sworn affidavit, documented on 16 March 2020 by Al-Haq field researcher Tareq Zaqqout. On file with Al-Haq, Ref. No. P37/2020.

### 2.2.3 Restrictions on Journalism, the Media, and Digital Space

91. The right of access to public information and expression through all means of print, visual and audio media, including newspapers, electronic sites, and social media networks, is an inherent human right, deriving from the right to freedom of expression. Expression in cyberspace and on free media outlets enables interested audiences to access information anywhere through a vast space that transcends all geographical boundaries: within and among different countries around the globe. Access to information contributes to crystallising and developing ideas for a more comprehensive and deeper understanding of facts and relations. Authenticated information helps to build and change viewpoints of both individuals and communities, allowing room for an open, informed, and resourceful dialogue. This is of critical importance to develop clear ideas, positions, and attitudes on political, social, and economic events, particularly in decision-making processes.<sup>73</sup> Accordingly, independent, free, and pluralistic media outlets are key to establishing good governance, based on the principles of transparency and community political participation. It enables people, of all authority and power in any democratic State, to be partners in the democratic process across communities.
92. To ensure that they achieve desired goals, relevant international instruments and standards stress the need to respect, protect, and promote the independence of journalism and media outlets. A free flow of information should be safeguarded, without hindrance, threat, intimidation, or sanctions. Media outlets and their content will be free from interference or restriction, including control, deletion of content, blocked access, or any unlawful, unnecessary, or disproportionate intervention of whatever form. The rights of media representatives and audiences may not be infringed. Journalists may not be subjected to unwarranted detention or invasion of their privacy. Furthermore, that element of the right of freedom of expression that embraces

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73 UN, "World Press Freedom Day", 3 May 2020, available at: <<https://www.un.org/ar/observances/press-freedom-day/background>> (in Arabic).

the limited journalistic privilege not to disclose information sources should be recognised and respected.<sup>74</sup>

93. Assaults on the media and journalism are not limited to violations of freedom of opinion and expression. Most significantly, a set of other abuses involve encroachment on the privacy of, and discrimination against, media representatives and journalists on the basis of political opinion and intellectual orientation in opposition to the governing regime, as expressed in the content of their work. Additionally, media workers and journalists are subjected to threat, violence, harassment, persecution, and intimidation. In its Resolution 39/6 on “The safety of journalists”, the Human Rights Council also recognised that the work of journalists often puts them at specific risk of intimidation, threats, harassment and violence, including the targeting of their family members, which often deters journalists from continuing their work or encourages self-censorship, consequently depriving society of important information.
94. Notably, free journalism and media need to be protected and promoted as a means for reaching out to the public and enabling access to information. The blossoming of these means is not limited to protecting journalists, information providers and users. It also involves the protection of the sources of this information. An enabling environment should be created to consolidate media work, including during pandemics. Journalists need to be enabled to maintain their work by holding open conferences allowing access for the media to cover events, and providing journalists with the needed equipment, such as facemasks, to ensure continued functions and avoid impact on their and others’ health. Journalists should not be subjected to security-related prosecutions or freedom restrictions against the backdrop of their media work.
95. To achieve desired goals of the media, an extended number of experts, specialists, and international standards have converged on the necessity that States respect principles of human rights in dealing with

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74 Para. (45), General comment No. (34).

the media. This should take into account equality, non-discrimination, and respect for freedom of opinion and expression. In this context, the ‘Camden Principles on Freedom of Expression and Equality’ stress the importance for all States to have in place a public policy and regulatory framework for the media,<sup>75</sup> including new media, which promotes pluralism and equality. The framework should respect the fundamental principle that any regulation of the media should only be undertaken by bodies that are independent of the government, which are publicly accountable and which operate transparently. This will observe freedom of expression, pluralism, and equality among all groups of society without discrimination. The framework should promote the right of different communities to freely access and use media and information and communications technologies for the production and circulation of their own content, as well as for the reception of content produced by others, regardless of frontiers. States should ensure that there is no discrimination in relation to the right to establish newspapers, radio and television outlets, and other communications systems. States should also allocate sufficient ‘space’ to broadcasting uses on different communications platforms to ensure that, as a whole, the broadcasting services will reflect the diverse society and their opinions.

96. In its General comment No. (34), the Human Rights Committee also provides that as a means to protect the rights of media users, including members of ethnic and linguistic minorities, to receive a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media. The Camden Principles on Freedom of Expression and Equality emphasise the need to make an equitable allocation of resources, including broadcasting frequencies, among public service, commercial and community media, so that together they represent the full range of cultures, communities and opinions in society. Effective measures will be put in place to prevent undue concentration of media ownership.

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75 Article (19), Camden Principles on Freedom of Expression and Equality, Principle 5, 30 April 2009, available at: <<https://www.article19.org/wp-content/uploads/2009/04/Camden-Principles-ENGLISH-web.pdf>>.

97. Recently, during the COVID-19 outbreak, in his report on “Disease pandemics and the freedom of opinion and expression”, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, highlights the critical importance of access to information and independent media in the face of pandemic challenges. The free flow of information, unhindered by threats and intimidation and penalties, protects life and health and enables and promotes critical social, economic, political and other policy discussions and decision-making.<sup>76</sup>
98. Along the same vein, Kaye condemned unequivocally measures in violation of international human rights law aiming to or that intentionally prevented or disrupted access to or dissemination of information online and offline. Those that undermined the work of journalists in informing the public, including measures to unlawfully or arbitrarily block or take down media websites, such as denial of service attacks. Kaye also called upon all States to cease and refrain from those measures, which caused irreparable harm to efforts at building inclusive and peaceful knowledge societies and democracies.<sup>77</sup>
99. In the “Joint Declaration on Freedom of Expression and Responses to Conflict Situations”, a number of international and regional observers pointed to the fact that filtering of content on the Internet, using communications ‘kill switches’ (*i.e.*, shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law.<sup>78</sup> Notably, nowadays the majority of services are operated through e-platforms. Blocking these platforms not only restricts expression, but also inhibits other rights.
100. Casting light on violations of media, journalism and digital expression

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76 Report of the Special Rapporteur on freedom of opinion and expression, 2020.

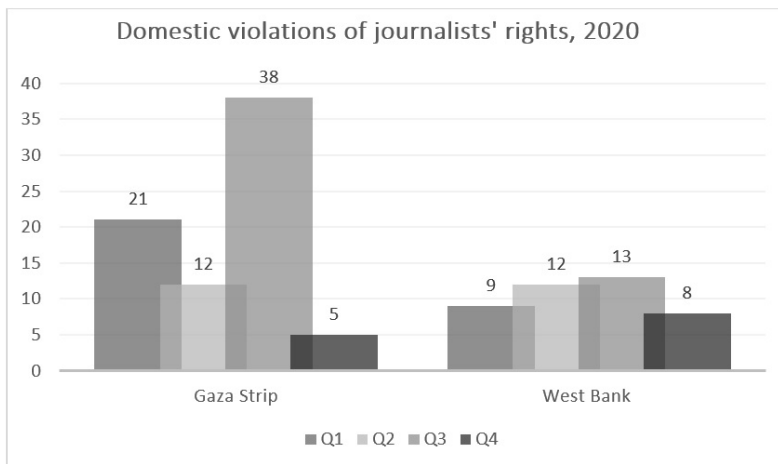
77 Para. (24), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 2020.

78 Para. (4/c), Organization for Security and Co-operation in Europe (OSCE), “Joint Declaration on Freedom of Expression and Responses to Conflict Situations”, 4 May 2015, available at: <<https://www.osce.org/files/f/documents/a/0/154846.pdf>>.



in the State of Palestine, Al-Haq documentation shows that public authorities and security agencies impinged on independent journalism and clearly sought to establish control over and silence journalists, media workers, free media, and social media outlets. This was evident in the authorities' practices in both the West Bank and the Gaza Strip.

101. Although Al-Haq did not document all abuses of the right to freedom of opinion and expression in the State of Palestine in 2020, 37 violations were monitored, affecting activists, journalists, media representatives, and citizens. In its 2020 report, the Freedoms Committee of the Palestinian Journalists' Syndicate stated that violations of journalists' rights continued to a large extent. While PNA security agencies committed a total of 42 violations in the West Bank, Hamas's security personnel were involved in 76 abuses. The chart below shows the temporal distribution of these infringements.<sup>79</sup>



102. The Palestinian Centre for Development and Media Freedoms (MADA) also documented 96 violations of media freedoms by Palestinian agencies in 2020. Of these, 37 abuses were committed by the PNA in the West Bank and 59 by Hamas in Gaza. In both areas, violations

<sup>79</sup> Palestinian Journalists' Syndicate, Report of the Freedoms Committee 2020, p. 6 (in Arabic).

had 11 patterns, mainly, summons service and interrogation 37, arrest and detention 17, and denial of media coverage and removal of media content 13.<sup>80</sup>

103. Al-Haq documented violations of media freedoms and journalism, including digital rights, in 2020. Documentation demonstrated frequent patterns of similar abuses in the West Bank and Gaza Strip. These featured attacks on media outlets, journalists, media workers, and public audiences who received and interacted with information content.

104. Most notably, violations derived from the “licensing system” imposed on the media and radio stations in accordance with the Decision of the Council of Ministers No. (182) of 2004 on the Regulation on the Licensing of Radio, Television, Satellite and Wireless Stations. In practice, this regulation has always been associated with the “security clearance” condition, which requires that prior approval be obtained from security agencies for licencing media outlets. This practice goes on in spite of the fact that the Council of Ministers decided, in its Session No. (133), on 24 April 2012, to remove the requirement for security clearance. The condition continues to be in force, controlling licences of media institutions. It negatively reflects on citizens’ enjoyment of rights, including the rights to work, decent pay, scholarships, etc., without discrimination on the basis of freedom of opinion and expression. The “security clearance” condition also threatens the constitutional principle of equality and non-discrimination among citizens. It is in violation of Article (27)(3) of the Basic Law, which prohibits censorship of the media. No warning, suspension, confiscation, cancellation or restriction shall be imposed upon the media except by law, and pursuant to a judicial ruling.<sup>81</sup> This measure consolidated a policing approach to dealing with rights and freedoms.

80 Palestinian Centre for Development and Media Freedoms (MADA), ‘Violations of Media Freedoms in Palestine: Annual Report 2020’, available at: <<https://www.madacenter.org/files/Violations%20Annual%20Report%202020-%20arabic.pdf>> (in Arabic).

81 Palestinian Human Rights Organisations Council (PHROC), PHROC comments on the Higher Council for the Media, 21 January 2016, available at: <<https://www.alhaq.org/ar/palestinian-human-rights-organizations-council/2393.html>> (in Arabic).

105. In the same vein, many other practices involved serious violations of freedom of opinion as well as other fundamental rights and freedoms. Based on the Law by Decree No. (10) of 2018 on Cybercrime in the West Bank and Law No. (3) of 2009 on the Misuse of Technology, Amending the Penal Law No. (74) of 1936 in the Gaza Strip, websites continue to be blocked, violating principles of freedom of opinion and expression. Both regulations allow to try and confine journalists and other citizens on a case of opinion, publication, and journalistic work.<sup>82</sup>
106. According to Al-Haq documentation, security agencies interfered with a placed pressure on media outlets and journalists to delete already broadcast video interviews in whole or in part. In advance, security agencies interfered with agendas of some interviews, ordering media outlets not to host some guests on media shows. Attempts were made to manipulate the planned content and discussion of media interviews and shows as official bodies, particularly security services, wished to block expected public criticism of PA, official bodies, public personnel's positions or attitudes on public issues. This was clearly demonstrated by issues that caused an upheaval in the Palestinian public arena in 2020.
107. In 2020, tens of violations were documented. These affected journalists and the general public, who expressed their views through the media, including digital and social media outlets, and criticised or opposed various positions of public authorities. In the majority of cases, journalists, political activists, human rights defenders, and other citizens who expressed their opinion in the media, were summoned, detained, and/or interrogated on grounds of journalism and publication. These were put on trial on charges of "insulting" official figures, "stirring sectarian differences", "downgrading public policies", "offending religious sentiments", or other loosely defined and overbroad terms that restricted freedom of expression in contravention to controls laid down by the Basic Law and international standards.

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82 Nahed Abu Tueima, a journalist, shared a post on interference with the list of guests to the "Kilimtein u bas" (Just a Couple Words) show, broadcast on Ma'an satellite channel. See Nahed Abu Tueima, <<https://www.facebook.com/nahed.abotueima>>, 28 August 2020.

108. Some journalists were detained or harassed while they were reporting events, allegedly for lacking an “authorisation” of media coverage or other legally baseless justifications. In connection with publication and media work, in many cases, arbitrary detention involved violence, ill-treatment, torture, and an affront to human dignity. Privacy was violated by hacking personal accounts, including those related to journalistic work, as well as professional websites and webpages. Documentation also monitored many cases, which involved the confiscation of personal properties without any legal basis. This included seizure and hacking of mobile telephones, computers belonging to journalists or relevant media institutions, in contravention to the most basic principles of the right of privacy.
109. This section presents some testimonies from sworn affidavits taken by Al-Haq in 2020 on violations of the rights of journalists and media workers.

**\* Al-Haq documented a complaint by A. R., a 21-year-old journalist from the Ramallah governorate. A. R. was subjected to pressure by Palestinian security agencies on account of delivering media content on a Palestinian media network. Both A. R. and the media outlet were forced to delete that content in November 2020. Below is a summary of the incident:**

“The journalist presents a news programme broadcasted live on air by a Palestinian media network. In the opening remarks to an episode, she went over the idea of refusing the resumption of security contacts and coordination between the PNA and Israeli occupying authorities in the context of ongoing Israeli violations of Palestinian rights, including the killing of Palestinian prisoner Kamal Abu Wa’ar. As usual, the media network posted the episode on its website. A. R. also posted her opening statement on her Instagram account.

Consequently, the Palestinian Preventive Security, General Intelligence, and Director of Institutional Security contacted the board chairman of the media network, where A. R. is employed. The board chairman was inquired about the introduction to the programme in question. Later,

the whole episode was removed from the website. By other means, A. R. herself was under pressure by security agencies, which ultimately led her to delete the opening remarks from her personal page as well.

According to A. R., this experience constituted an indirect threat to her work as a journalist and activist. It could result in some sort of self-censorship over the journalistic work she delivered, as well as avoid participation in political activities, which she used to take part in, in fear of being targeted by security agencies.<sup>83</sup>

**A. T., a 38-year-old resident of the Nablus governorate, actor, director, and programme producer at the An-Najah Media Centre of the An-Najah National University, reported that the Preventive Security agency detained him on arbitrary grounds for 36 days and placed him in solitary confinement for 27 days in the Preventive Security agency section at Al-Juneid prison, west of Nablus city, during August and September 2020. He was interrogated on account of freedom of opinion and expression, acting career, and director of TV programmes. He was charged with “libel against public authorities”, “stirring sectarian feuds”, and publishing information material that would undermine “public stability”.**

“At about 10:00 pm on Monday, 17 August 2020, after I left my workplace, I was waiting for a taxi to take me home. Meantime, I was surprised by two persons in plain clothes, who approached me. “We want you to come with us for half an hour to the Preventive Security premises in the At-Tur neighbourhood, south of Nablus city,” one said. In just a moment, a civilian car arrived quickly. They ordered me to get in the car, without informing me of the reason or presenting a summons, arrest warrant, or an identification document of the Preventive Security agency. I was taken to the Preventive Security premises. There, my personal belongings were taken from me. A military officer asked for my mobile phone number, and I gave it to him. He then asked for the passcode of my mobile phone, but I refused to give it to him. At that time, an officer

83 Non-withheld written sworn affidavit, documented on 18 November 2020 by Al-Haq field researcher Umran al-Risheq. On file with Al-Haq, Ref. No. P165/2020.

shouted loud at me: “Where do you think you are? Darling, you are at a security agency. We take your passcode and strip you naked if we want to.” I was held in a cell, which had a surface area of (1x2.5 square metres), with no mattress, blanket, or ventilation. I requested that I take my Relaxon medicine, which was in my bag, because I suffered from a spasm in my chest. My request was rejected, however. Later, I was taken to the interrogation room and questioned about my work as a TV show producer and director. I was also asked about my personal details and some of my family members. I stayed in the solitary confinement cell until Monday morning, 18 August 2020. I had nothing but water. On that day, I was relocated to the Public Prosecution offices in Nablus city.

During a meeting with the general prosecution, my detention was extended for 24 hours, without imputing any charge against me. I was held in the same solitary confinement cell. I had shortness of breath because of the detention conditions in the cell. While I was lying on the ground and in pain, an officer sarcastically said to me: “Do you want us to let you go?” I told him I wanted to see a doctor immediately. “Don’t play these games,” he replied. They closed the cell door and I continued to suffer, without any help from them. When I felt suffocated, I knocked on the door several times and passed out. Later, I found myself in the corridor of cells on the upper floor of the premises. A military officer was dragging me on the ground, while others splashed water on my face. Then, they forced me into the interrogation room. The officer who had mocked me was there. I was subjected to obscene verbal abuse. They told me that the service at the Preventive Security premises was “five stars” and that their treatment was better than that in the Al-Juneid prison. In spite of my pain and bodily weakness, that officer ordered me to stand against a wall in the room, lift up my arms, and turn my face against the wall. Then, they took me to the Medical Services at the Al-Juneid prison. There, the doctor made the order to take me to the emergency section of the Al-Watani Hospital in Nablus city. Test results showed that I suffered from severe pneumonia and cardiac arrhythmias (irregularities in the heart rate and rhythm). While I was at the Al-Watani Hospital, a doctor informed the military officer, who accompanied me, that it was preferable that I remain at the hospital for

observation, but he refused. He said it was impossible. Then, I was taken back to detention in a solitary confinement cell in the Al-Juneid prison. The cell was dirty and malodorous. Once again, I had pneumonia while I was held in that cell. During my detention in the Al-Juneid prison, I was interrogated about my work abroad and whether my work and TV shows had a connection with Mohammed Dahlan, former Fatah leading activist, or with Hamas. I stressed that these shows were completely funded by satellite stations that produced them, such as the Jordanian Ro'ya and London-based Al-Araby TV stations. Then, this round of interrogation came to an end.

On the morning of 19 August 2020, I was presented to the Public Prosecution in the Nablus city, and then brought before the Nablus Magistrate Court. The Public Prosecution requested that my detention be extended for a period of 15 days, pending further investigation. However, having reviewed my medical report, the judge said: "Detention of the accused is extended for a period of one week only in view of his health condition. His condition will be closely followed up and he will be presented to the doctor when necessary." Then, I was brought back to the solitary confinement cell in the Al-Juneid prison. During the week of detention, most interrogation sessions were held late at night. These mainly addressed my work on TV shows and career, supporters and financiers of these shows, and whether external agencies were behind these shows. After each interrogation session, I was taken back to the solitary confinement cell.

When I met with the Public Prosecution again, I found out that they had made a decision to decode the passcodes on my electronic devices at a computer lab. These were hacked and access was made to my Facebook page, chats, email, WhatsApp account without my approval or consultation. The Public Prosecution questioned me for almost two hours. The interrogation revolved around the content of my files, private chats, work on TV shows recorded on electronic devices and mobile phone, which had been confiscated. The prosecutor also interrogated me in detail about my work on TV shows abroad and whether I had a connection with the Lebanese Hizbullah party, Hamas movement,

or politician Mohammed Dahlan. In spite of this interrogation, the prosecutor could not impute a charge or inform me of the reason for my detention. Later, when I was brought before the Nablus Magistrate Court, the Public Prosecution applied for extending my detention for another 15 days for further investigations. In view of the serious charge which I had not been aware of until that session, and although the defence counsel requested that I be released, the judge decided to extend my detention for a period of one week to complete the investigation. Then, I was taken back to the same solitary confinement cell. The Public Prosecution questioned me once more about a printed version of my WhatsApp chats, as well as about my activities and work as a journalist and artist in the *Zinco* show and other TV programmes. I was also interrogated about shows that I produced and posted on Facebook, featuring a simulation of the Palestinian reality and criticism of politicians.

On the scheduled date of the court session, my detention was extended for another five days. Then, they took me back to the Al-Juneid prison, but I was not interrogated. One day before I was brought to the court, on 20 September 2020, I managed to talk to my defence counsel for the first time since I was arrested and interrogated, since the defence counsel was prevented from visiting me at the place of detention.

On 21 September 2020, I was presented to the prosecutor at the Public Prosecution Office in Nablus city. Charges were made against me and I heard them for the “first time” since I was held in custody! These were “libel against the authority”, “stirring sectarian differences”, and “publishing information materials which may undermine public stability”. I was transferred to the court, which read out the indictment for the first time. The judge asked me if it was valid, but I denied it. He decided to release on a bail of 5,000 Jordanian dinars at the request of the defence counsel. I was released at 7:00 pm on that day.<sup>84</sup>

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84 Non-withheld written sworn affidavit, documented on 24 September 2020 by Al-Haq field researcher Mohammed Al-Ra'i. On file with Al-Haq, Ref. No. P145/2020.



## 2.2.4 Undermining Judges' Right to Freedom of Expression

110. The right to freedom of expression is one of the most prominent human rights. It ensures participation in a wide range of public affairs.<sup>85</sup> While international standards acknowledge that the right to freedom of expression is universal, in case of derogation, States are obliged to apply the strict three-part test to gauge how lawful, necessary, and proportionate derogation is with the interest, which it will protect.
111. Judges have the right to exercise freedom of expression on an equal footing with other citizens, both on the Internet and beyond. However, as judiciary personnel, judges are under additional more stringent constraints on their freedom of expression. This is aimed to maintain the “dignity of the judicial office” they hold and ensure “impartiality and independence” of the judicial authority. While these restrictions can be viewed as necessary to safeguard the aforesaid goals, they must also ensure “proper balance” between the professional duties and responsibilities of judges, the legitimate interest of the authorities, and essence of fundamental rights and freedoms enjoyed by judges themselves. These further restrictions may not render rights void of their essence and overall content.
112. Political rights are closely linked to the exercise of freedom of expression. However, apart from the right to vote, the fact that judges express political views or participate in political activities gives rise to a dilemma that obscures how to distinguish between proper and improper political participation. This involves the impact of political participation on community trust in judges' impartiality, independence, or non-affiliation to a particular political party. The Bangalore Principles of Judicial Conduct set guiding principles to draw a balanced distinction and help judges to make decisions on their own conduct. The Bangalore Principles lists a number of activities that

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85 Para. (31), Independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers, Human Rights Council, Forty-first session, 24 June-12 July 2019, 29 April 2019, UN Doc. A/HRC/41/48. (Hereinafter “Report of the Special Rapporteur on the independence of judges and lawyers, 2019”).

are incompatible with judicial office and provides that, as a general principle, judges should not be involved in public controversies. It also identifies a number of situations in which a judge may properly speak out about matters that are politically sensitive.<sup>86</sup>

113. According to these standards, despite the fact that a judge holds a judicial office does not make him/her abandon any prior political beliefs or interest in political issues, expression of these matters by affiliation to a particular political party, engagement in its political activities, or making a final word on that party in any way, including through peaceful assembly or on social media networks, is prohibited. If a judge appears to be partial, public confidence in the judiciary is eroded and calls into question judicial independence. Therefore, as put by experts and specialists, in order to preserve public confidence in the judicial system, it is widely accepted that judges should show restraint in the exercise of public political activity. It is necessary for judges to refrain from any political activity that may compromise their independence or jeopardize the appearance of impartiality.<sup>87</sup>

114. According to the Bangalore Principles, in general terms, judges are allowed to make comments in defence of fundamental human rights and the rule of law or to participate in activities or debates concerning national judicial policy or the administration of justice in the country. Judges should also be consulted and play an active part in the preparation of legislation concerning their status and, more generally, the functioning of the judicial system. This is emphasised by the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, in his 2019 report to the UN Human Rights Council.<sup>88</sup> Principle 9 of the Bangalore Principles of Judicial Conduct further highlights that a judge may form or join associations of judges or participate in other

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86 Para. (13), *op. cit.*

87 Para. (55), Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, September 2007, available at: <[https://www.unodc.org/documents/corruption/publications\\_unodc\\_commentary-e.pdf](https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf)>. Also see, Para. (66), Report of the Special Rapporteur on the independence of judges and lawyers, 2019.

88 Paras. (13) and (69), Report of the Special Rapporteur on the independence of judges and lawyers, 2019.

organisations representing the interests of judges.<sup>89</sup>

115. The UN Basic Principles on the Independence of the Judiciary stress that members of the judiciary are entitled to freedom of expression; provided, however, that in exercising such right, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.<sup>90</sup> Principle 8 of the Bangalore Principles of Judicial Conduct emphasise that this right should be exercised in compliance with the law, standards, and recognised professional ethics. While judges are committed to these additional conditions and standards when they exercise freedom of expression, they may sometimes be subject to disciplinary action in case of violation. For example, judges may be suspended temporarily or removed from judicial office in line with legal norms and procedures in a “democratic society”. This is in tandem with judicial caveats which require the maintenance of public interest.

116. Against this background, relevant international standards on the judiciary stress the importance that states give greater attention and caution when they adopt legislation and codes of conduct for the judiciary, as well as when these are implemented on the ground by administrative and judicial bodies. Those instruments will be confined to the purposes required by the appropriate balance between judges’ rights and the public interest. Improper, prejudicial measures that keep the precise targets from being met should not be resorted to. The Special Rapporteur on the independence of judges and lawyers has addressed several cases where disciplinary measures imposed on judges appeared to be expedient to punish the judge for the opinions expressed or the action taken in the exercise of his or her profession. In some circumstances, the severity of the sanction also had a “chilling effect” on other members of the judiciary or public prosecution, who were discouraged from expressing critical views out of fear of being

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89 Para. (15), Report of the Special Rapporteur on the independence of judges and lawyers, 2019.

90 Para. (8), Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

subjected to punitive measures.<sup>91</sup> In this context, the European Court of Human Rights ruled that any interference with the judge's right to freedom of expression requires strict control given the necessity for the respect of the principles of separation of power and independence of the Judicial Authority.<sup>92</sup>

117. In Palestine, 2020 saw serious developments in the Judicial Authority. Of these, created by the PNA President under Law by Decree No. (17) of 2019 on the Establishment of a Transitional High Judicial Council (THJC), the THJC mandate was extended, continuing to tighten the grip of the Executive over the judiciary. Recommended by the THJC, The Palestinian President also promulgated many presidential decrees, which provided for seconding 20 judges to carry out legal functions at state institutions, forcing dozens of young, highly productive and competent judges to early retirement without any due causes. This was in complete disregard of the provisions of the Judicial Authority Law No. (1) of 2002, which regulates conditions and controls of the secondment and retirement of judges. It further gravely violated supreme constitutional norms, including the principles of the rule of law, separation of powers, and judicial independence.

118. During the reporting period, judges' right to freedom of expression was violated in the context of continued Executive control over the THJC. Al-Haq monitored Palestinian judges' challenge against a wide range of developments relating to the independence of the Judicial Authority, including serious constitutional violations of their right to freedom of opinion and expression. Most notably, abuses of freedom of expression were closely linked to the THJC chairman's performance, statements, and decisions. The THJC was established in contravention of the Palestinian Basic Law and Judicial Authority Law.<sup>93</sup> The THJC chairman's actions constituted a clear and flagrant encroachment

91 Para. (7), Report of the Special Rapporteur on the independence of judges and lawyers, 2019.

92 Paras. (117) and (175), European Court of Human Rights, Case of Baka v. Hungary (Application no. 20261/12), 23 June 2016.

93 Al-Haq, "Al-Haq expresses disappointment at the Palestinian President's Office for disregarding civil society demands for judicial reform and published Al-Haq letter to the President", 13 January 2021, available at: <<https://www.alhaq.org/ar/advocacy/17760.html>> (in Arabic).

on judges' right to freedom of expression and prevented them from expressing their views on public issues in the media and on social media sites. For example, titled "Posting on Social Media Sites", Circular 1758/20 issued by the THJC chairman on 11 June 2020 implied further silencing of judges, prescribing severe restrictions over Palestinian, regional, and international standards on judicial independence. The circular provided that, *inter alia*, judges of regular courts should not "address the situation of public authorities in Palestine on pain of liability." In 2020, the THJC continued to prosecute judges on account of exercising freedom of expression. Along this vein, judges were referred to be investigated and disciplined against the background of publishing articles in the media and on social media platforms, addressing issues that literally fall within the ambit of their inherent right to the expression of opinions on Palestinian public affairs.<sup>94</sup>

119. Moreover, during the reporting period, violations affected judges' right to peaceful assembly, which they resorted to as a means to express refusal of the continued clampdown on the principle of judicial independence. On 7 September 2020, a peaceful assembly called for by the Gathering of Free Judges was suppressed in front of the High Judicial Council offices (court complex) in the city of Ramallah. The assembly was held in conjunction with a High Court session to hear an objection filed by a number of judges against two presidential decrees (26/2020 and 33/2020), passed by the Palestinian President on 25 June and 19 August 2020 respectively. Based on a recommendation of the THJC, these decrees provided for seconding judges to non-judicial offices. On that day, security agencies set up checkpoints at all entrances to the court complex and prevented judges from attending the court session. A "Security officer" announced that the court session was adjourned. Security personnel also examined ID cards of any person who attempted to access the court complex, including judges, lawyers, and citizens. Representatives of media outlets and human rights organizations were also denied access to the court

94 Al-Haq, "Putting judges on trial for expression of opinion is in violation of the law and international standards", 5 November 2019, available at: <<https://www.alhaq.org/ar/advocacy/16161.html>> (in Arabic).

complex. This reflected the consolidated security (Executive) control over judges, lawyers, and citizens' rights to freedom of peaceful assembly and expression.

120. Infringements on judges' rights are nothing new. In 2019, the THJC made a decision to refer Dr Ahmed al-Ashqar, a judge, to a disciplinary council on account of publishing an article in the media, expressing views with relevance to public issues. In a majority vote on the Disciplinary Action No. 3/2019, the High Court concluded that institution of the disciplinary action against Judge Al-Ashqar was irrelevant, as the opinion he expressed in his article did not transgress public freedoms ensured by the Palestinian Basic Law for Palestinian citizens, particularly the right to freedom of opinion and expression under Article 19 of the same law.<sup>95</sup> Also, in 2019, Dr Ayman Thaher, a judge, was referred to investigation on grounds of publishing a post on his Facebook account. This reflects a violation of freedom of expression, enshrined in the Amended Basic Law, in international human rights conventions and standards, and code of judicial conduct, all of which safeguard judges' right to freedom of opinion and expression.

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95 Wattan News Agency, "Wattan releases the decision of the Disciplinary Council of Judges against Judge Ahmed al-Ashqar on account of publishing an article on Wattan", 21 February 2020, available at: <<https://www.wattan.net/ar/news/302492.html>> (in Arabic).



### 3. Recommendations

121. To ensure the full realisation of freedom of opinion and expression in reference to the relevant core international human rights instruments, which the State of Palestine acceded to, and Palestinian Basic Law, below is a set of recommendations to be observed by the State of Palestine:

1. Address all root causes that preclude the full realisation of the Palestinian people's rights and freedoms, particularly the right to freedom of opinion and expression. In addition to putting an end to the internal Palestinian political divide, an enabling environment will be created for holding legislative, presidential, and Palestinian National Council elections in the context of an integral democratic process. While upholding all civil, political, and other rights, throughout stages and requirements of the elections, attention should be paid to ensuring respect for community diversity, political pluralism, and rights of the youth and women, including persons with disabilities. While results must be implemented, regular elections should be held to restore consolidated institutional functions and democratic environment on the entire territory of the State of Palestine.
2. Provide a comprehensive and detailed review of all legal provisions of the current Palestinian legislative framework. Given that Palestine non-member observer State status in the United Nations, these should be reviewed from the perspective of core international human rights principles as well as relevant legal standards and norms, which Palestinian regulations need to respect. All legislative acts shall be processed by the Legislative Authority, which possesses inherent law-making power. Legislation should be in the hands of a unified Palestinian parliament in both the West Bank and the Gaza Strip, with members elected democratically in consistence with the Basic Law and rights of all persons, including minorities.

3. Open a serious, real, comprehensive, and urgent investigation into all violations of Palestinian human rights, including those committed on account of public exercise of freedom of opinion and expression. All individuals found to have perpetrated to been involved in these violations, whatever their professional, political, social, economic or any other status, must be held to account, ensuring justice and reparations for victims. An effective, reliable, permanent, accessible complaints and accountability system needs to be in place, obliging law enforcement officials to respect citizens' rights, while at the same time building citizens' trust and confidence in these officials and in state functions. This should pave the way to genuine realisation of the principle of the rule of law. Transitional justice should provide the grounds for a state governed by justice, law, and respect for rights and decent living.
4. Publish the core international conventions, which the State of Palestine has acceded to, in the Official Gazette. The State of Palestine should also seek to accede to other relevant instruments and conventions and ensure all necessary actions for full and effective implementation on the ground. In addition to raising awareness of their content and value, these instruments should be promoted by all means, including the media. This should thwart any passive stereotypes and make Palestinians feel the added value of accession with reservations.
5. Be permanently open take pre-emptive action to interacting with international and regional developments in relation to human rights standards in both ordinary and extraordinary circumstances. An organised approach should be developed to ensure that specialised bodies and society from across the spectrum rapidly assimilate and respond to changes and development. An ongoing sensitisation to promote the Palestinian people's trust and confidence in human rights, is needed for a better quality of life at all level in the State of Palestine.
6. Implement all recommendations of UN committees, experts, and specialists on respect for freedom of opinion and expression.



These must be consolidated on the ground and in regulation of the digital space too. The State of Palestine should put in place all conclusive recommendations of international treaty bodies' committees, which provided periodical reviews of Palestine's reports on relevant treaties. These include, *inter alia*, recommendations of the Committee on Elimination of Discrimination against Women (2018), Committee on the Elimination of Racial Discrimination (2019), and Committee on the Rights of the Child (2020). Recommendations address issues with relevance to freedom of expression, particularly approval of a law on right of access to information and need for the Cybercrime Law by Decree to maintain respect for the right to freedom of opinion and expression.

7. Encourage the role of free and diversified press and media. The state should also respect the working methods, sources, rights, and privacy of journalists and opinion activists.
8. Ensure full and permanent openness between the authority and the people in all fields and at all levels. Palestinians of all ages, backgrounds, and geographical areas, should have access to information from different sources and share it freely and openly. Palestinians should be engaged in and motivated to participate in Palestinian civil and political life to the fullest. Additionally, respect should be shown to individuals who express their opinion, comment on, and criticise various public issues. This is needed to create an informed society that is open to thought, innovation, entrepreneurship, and development in all areas. It is also of critical importance to enhance a public sense of citizenship, affiliation, belief in one homeland, and that they are indeed the "source of powers". Citizens' opinions feed into and help the authority to appreciate public agonies, needs, priorities, and aspirations, enabling the state to play its rightful role and to be viewed as a state of law for everyone.



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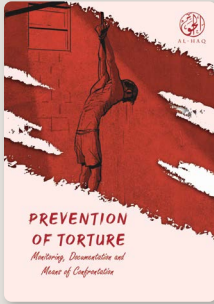
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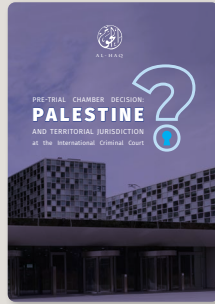
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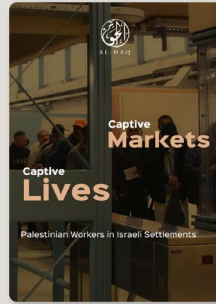
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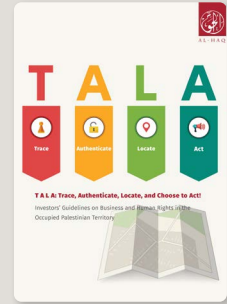
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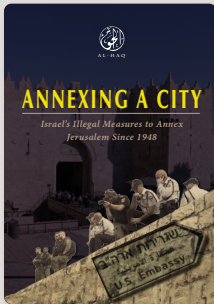
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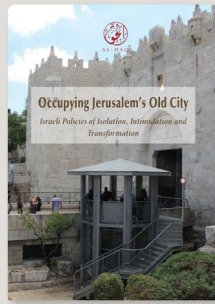
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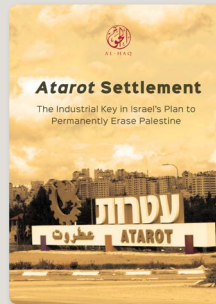
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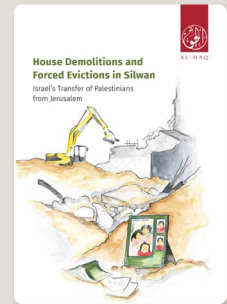
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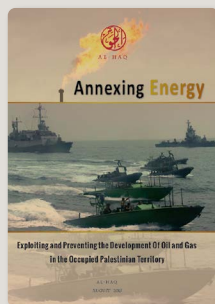
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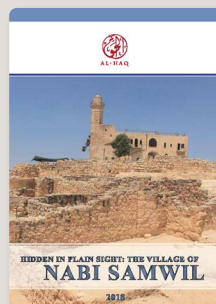
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AL - HAQ

### **About Al-Haq**

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah in the Occupied Palestinian Territory (OPT). Established in 1979 to protect and promote human rights and the rule of law in the OPT, the organisation has special consultative status with the United Nations Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. Al-Haq conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. Al-Haq has a specialised international law library for the use of its staff and the local community.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), ESCR-Net - The International Network for Economic, Social and Cultural Rights, the Palestinian Human Rights Organizations Council (PHROC), and the Palestinian NGO Network (PNGO). In 2018, Al-Haq was a co-recipient of the French Republic Human Rights Award, whereas in 2019, Al-Haq was the recipient of the Human Rights and Business Award. In 2020, Al-Haq received the Gwynne Skinner Human Rights Award presented by the International Corporate Accountability Roundtable (ICAR) for its outstanding work in the field of corporate accountability.

