



HIDDEN INJUSTICES

**A REVIEW OF PA & HAMAS HUMAN RIGHTS
VIOLATIONS IN THE WEST BANK AND GAZA**



JERUSALEM
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CORPORATION FOR THE BENEFIT OF THE PUBLIC

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Executive Summary.....	4
Introduction	5
International Human Rights Law.....	6
The PA and Hamas	8
Chronology of West Bank and Gaza Control.....	8
Status of PA and Hamas in the International Framework	11
Separation of Powers.....	14
Internal Conflicts and Rifts.....	16
Human Rights Violations.....	17
Arbitrary Imprisonment	17
Torture and Degrading Treatment.....	17
Freedom of Opinion and Expression.....	19
Freedom of the Press	21
Freedom of Religion and the Rights of Minorities.....	23
Women’s Rights	24
The Rights of Children	25
International Funding of the PA.....	26
EU Funding of the PA	28
US Funding of the PA	32
The PA's Funding of Terrorism.....	33
Celebration of Terrorism in the PA Media.....	34
Financial Corruption within the PA.....	36
USAID Funding of Propagandist Education.....	36
Conclusion.....	37
Figure 1: Areas A, B, and C from 1995 Oslo Accords	9
Figure 2: 2006 PA Legislative Council Electoral Results.....	10
Figure 3: Deaths and Death Sentences	18
Figure 4: Total Official Humanitarian Aid to Palestinians, 2001-2010.....	28
Figure 5: US Bilateral Assistance to PA, FY2005-FY2013	32

EXECUTIVE SUMMARY

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood,” states Article I of the Universal Declaration of Human Rights, a document that in 1948 became the cornerstone of international human rights law whose mission of protecting human rights lives on today.¹

The Oslo Accords (1993 - 1995) established the Palestinian Authority (PA) as a semi-autonomous governing authority. In the West Bank, the PA controls a specific territory, government mechanisms and key institutions such as courts, prisons, public administration services, educational institutions, welfare and health, and security forces, among others.

Within the United Nations, the PA and Hamas are considered non-state actors for the purposes of international law and therefore cannot be a party to international treaties. Although international human rights law applies to both state and non-state actors, non-state actors are unable to become party to the international treaties as states. Within the existing international judicial system, it is difficult to prevent or punish violations by such parties. Though the PA has stated its intention to comply with international human rights law, this compliance can only be enforced through strong mechanisms of accountability.

The Palestinian Basic Law incorporates and affirms international principles on human rights. Even so, under the PA government, the human rights violations of arbitrary imprisonment, torture, and degrading treatment are regular occurrences and the freedom of opinion and expression, freedom of the press, freedom of religion and the rights of minorities, women's rights, and the rights of children are routinely impaired.

The political, international, and effective status of the PA and Hamas as non-state players with regard to international human rights treaties places special responsibility on foreign aid providers to the PA to uphold the authority of the Universal Declaration of Human Rights. The Jerusalem Institute of Justice calls on the United States and the European Union as major providers of foreign aid to the Palestinian Authority to stand up against assaults on human life by calling for human rights reforms within the PA. Failure to make foreign aid contingent upon compliance with respect for human life and all other human rights renders those providing aid as complicit in and even enabling the continued violations of human rights. Our recommendations include the establishment of an adequate separation of powers within the PA to decentralize power and prevent corrupt internal practices such as nepotism and misappropriation of funds. This and other reforms would increase the integrity of institutions founded to protect the rights of the Palestinian people, most urgently the right to human life.

¹ Universal Declaration of Human Rights (1948), at <http://www.un.org/en/documents/udhr/>, accessed Aug 8, 2012.

INTRODUCTION

The Jerusalem Institute of Justice (JIJ) values life as the most basic human right. Any assault on the right of an individual to life is the most extreme violation of human rights. Governments across the globe must cooperate to create environments that promote basic human rights such as education and freedom of expression and diminish hate speech and other factors that contribute to violence and hate crimes.

In this report, JIJ examines the Palestinian governing authorities through the lens of international human rights standards, reporting the foremost violations of human rights committed by them against Palestinians, distinguishing between the Palestinian Authority (PA) in the West Bank and Hamas in the Gaza Strip (Gaza).

In considering the human rights conditions in the West Bank and the Gaza, we must first recognize that the situation exceptionally complex. The failure of the public to acknowledge certain dimensions of the situation in Israel and the West Bank and Gaza fosters a limited understanding of its complexities and keeps the governmental authorities in the West Bank and the Gaza Strip from being held responsible. International decision-makers must not only consider the relationship between the major parties—Israel and the Palestinian governing authorities—but must also consider the implications of internal politics, cultural diversities, and religious pluralism within each system of government. With the information contained in this report, JIJ urges the international community to hold these governing bodies accountable for respecting and protecting the rights of those under their governance.

This report contains personal interviews with representatives of local and international human rights organizations that are active in the West Bank and Gaza (hereinafter: the Representatives of Human Rights Organizations, the Human Rights Organizations Representatives, and/or the Representatives). Out of concern for the safety of the representatives who were interviewed for this report, the Jerusalem Institute of Justice has removed their names and other information from this document that these representatives may continue their humanitarian work without hindrance.

Local and international human rights organizations operating in the West Bank and Gaza Strip serve as the main source of information shaping international public perception of the state of human rights in the respective territories. Because of global interest in the Israeli-Palestinian conflict and the peace process, the scope of information disseminated by these groups is largely limited to the wrongs committed by Israelis against Palestinians or vice versa. The organizations frequently impugn Israel, directly and indirectly, for human rights violations against Palestinians. Though the organizations are aware of human rights violations committed by the Palestinians government authorities against Palestinians, violations of this nature are not the organizations' primary focus and thus are not reported. They assert that the PA does not possess the means to develop a functional governmental infrastructure or to establish law and order due to

continuous Israeli intervention in the West Bank and Gaza.² Even so, representatives from within these organizations are concerned about the international community's unattended lack of awareness of the human rights violations committed by the Palestinian government authorities.³

JJJ does not present information here as a denial of human rights violations committed within Israel, as material is readily available on the subject. Instead, JJJ seeks to call the attention of international bodies providing financial support to the PA—namely, the US Congress and the European Parliament—to human rights violations committed by Palestinian governmental authorities and to challenge oversimplified or distorted understandings of the situation in the West Bank and the Gaza Strip by presenting objective facts and perspectives from the grassroots level.

INTERNATIONAL HUMAN RIGHTS LAW

The Universal Declaration of Human Rights (UDHR or the Declaration) is the cornerstone of international human rights law. After the end of World War II, a period of egregious violence against humanity, representatives from around the world convened to articulate a standard of human rights and establish a framework for international human rights law. The Universal Declaration of Human Rights emerged from this convention and was adopted by the United Nations General Assembly in 1948. The Declaration became the founding document of the international community on human rights and civil liberties, prohibiting any entity from obstructing human rights without reason.⁴ Its founders acknowledge human rights as inherent to all persons by nature of their existence and view infringement upon any person's human rights as a violation against all persons.⁵

The Universal Declaration of Human Rights stipulates that all human beings everywhere have the right to life, liberty, and security of person; the right to an education; freedom from torture or cruel, inhumane treatment or punishment; freedom to peaceably assemble; and freedom of thought, conscience, and religion. Article 2(b) declares "no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other

² Interview dated Aug. 23, 2011, with "H.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with H."); Interview dated Aug. 17, 2011 with "Y.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with Y."); Interviews dated Aug. 7 and 23, 2011 with "G.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with G."); Interviews dated Aug. 8 and Sep. 9, 2011 with "M.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with M."); Interviews dated Aug. 9 and 25, and Sep. 15, 2011 with "S.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with S.").

³ Interviews dated Aug. 28 and Sep. 14, 2011 with "B.", a representative of a human rights organization in the Territories. (Hereinafter: the "Interview with B.").

⁴ Universal Declaration of Human Rights (1948), *supra* note 1.

⁵ Robby Sibbal, INTERNATIONAL LAW 167-169 (2003).

limitation of sovereignty." The United Nations insisted that every possible measure be taken to distribute and explain the text of the Declaration "without distinction based on the political status of countries or territories."⁶

The principles of the Declaration and its content are used as the basis of international law as "a common standard of achievement for all peoples and all nations."⁷ The Declaration is, in legal terms, a non-binding recommendation; it is thus a tool of persuasion, not coercion, for applying diplomatic and moral pressure upon governments who violate its articles. Because the document is not legally binding, its effectiveness depends on how firmly the members of the global community take ownership in upholding the cause of human rights as reflected in the Declaration.

Most nations across the globe value human rights; where nations differ is how they interpret and prioritize human rights among other concerns. For Islamic nations, holiness before Allah is more important than the rights of individuals. Saudi Arabia did not sign the United Nations' Universal Declaration of Human Rights, stating that it violated Islamic law. Moreover, in 1981 and 1984, a representative from post-Islamic Revolution Iran said the Declaration was a "secular understanding of the Judeo-Christian tradition" and would violate Islamic law if implemented by Muslims.⁸ In 1990, Islamic nations created the Cairo Declaration of Human Rights in Islam (Islamic Declaration) as an alternative to the 1948 Universal Declaration. The Islamic Declaration is perceived as a proper reflection of Allah's "binding divine commands."⁹

The Islamic Declaration qualifies and limits individual human rights granted by the UDHR. The document reads, "All human beings are Allah's subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds" (Article 1b), and "All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah" (Article 24). Freedom of opinion and expression is allowed under the Islamic Declaration so long as such expression does not contradict *Sharia*. Under *Sharia*, criticism of the Prophet Muhammad is blasphemous and is punishable by death. The Declaration's final article reads, "The Islamic *Sharia* is the only source of reference for the explanation or clarification of any of the articles of this Declaration" (Article 25).¹⁰

⁶ United Nations General Assembly Resolution 217 D (III) of Dec. 10, 1948 on "Publicity to be given to the Universal Declaration of Human Rights."

⁷ Universal Declaration of Human Rights, *supra* note 1.

⁸ David Littman, "Universal Human Rights and Human Rights in Islam," *Midstream*, Feb 1999, at <http://www.dhimmi.org/Islam.html>, accessed on Aug 14, 2012.

⁹ "Cairo Declaration on Human Rights in Islam," U.N. GAOR, World Conf. on Human Rights, Aug 5, 1990, at <http://www1.umn.edu/humanrts/instree/cairodeclaration.html>, accessed on Aug 11, 2012.

¹⁰ *Id.*

In 2004, the League of Arab States—whose members include the West Bank and Gaza Strip—adopted the Arab Charter on Human Rights (Arab Charter). The Arab Charter avows to affirm the principles of both the UN Universal Declaration of Human Rights and the Cairo Declaration on Human Rights in Islam. The Charter reads, “All forms of racism, Zionism and foreign occupation and domination constitute an impediment to human dignity and a major barrier to the exercise of the fundamental rights of peoples; all such practices must be condemned and efforts must be deployed for their elimination.”¹¹ This condemnatory language led the UN High Commissioner for Human Rights Louise Arbour to issue a disclaimer upon the ratification of the charter in 2008 stating the following: “Throughout the development of the Arab Charter, my office shared concerns with the drafters about the incompatibility of some of its provisions with international norms and standards. These concerns included the approach to death penalty for children and the rights of women and non-citizens.” She also noted that the Arab Charter’s rejection of Zionism contradicts the United Nations’ position that Zionism is not racism or racial discrimination.¹²

THE PA AND HAMAS

Chronology of West Bank and Gaza Control

Today, the geographical area of West Bank and the Gaza Strip covers between 2.9 to 3.8 million people (between 1.4 to 2.3 million in the West Bank and 1.5 million in the Gaza Strip),¹³ and the Sunni Muslim majority is strong at 98%.¹⁴ Residents of the West Bank have experienced a number of shifts in power within the local government. Since the mid-20th century, administrative and governmental responsibilities within Palestinian affairs in the West Bank and Gaza have been divided and transferred among several different organizations. A review of 20th century gives crucial background highlighting the present day political context—the Palestinian Authority government in the West Bank and the Hamas government in the Gaza Strip—sustaining the human rights conditions.

According to the UN Partition Plan of 1947, the West Bank was to be included in a future Arab state. The plan was subsequently rejected by the Palestinians and led to

¹¹ League of Arab States, Arab Charter on Human Rights,” May 22, 2004, reprinted in 12 INT’L HUM. RTS. REP. 893 (2005), University of Minnesota Human Rights Library, at <http://www1.umn.edu/humanrts/instree/loas2005.html?msource=UNWDEC19001&tr=y&auid=3337655>, accessed on Aug 10, 2012.

¹² “Statement by UN High Commissioner for Human Rights on the Entry into Force of the Arab Charter on Human Rights,” *UN High Commissioner for Human Rights*, Press Release, Jan. 30, 2008, at <http://www.unhcr.ch/hurricane/hurricane.nsf/0/6C211162E43235FAC12573E00056E19D?opendocument>, accessed on Aug 10, 2012.

¹³ Palestinian Central Bureau of Statistics and the Begin - Sadat Center for Strategic Studies report different figures.

¹⁴ “International Religious Freedom Report for 2011,” *US State Department*, at http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dynamic_load_id=192889#wrapper, accessed Aug 12, 2012.

the 1948 War. During the 1948 war, Jordan conquered the West Bank, annexing it three years later. In the wake of 1948, Palestinians organizing liberation movements, forming Fatah in 1959 as an independent Palestinian movement among others. In 1964, the Palestinian Liberation Organization (PLO) was established as an umbrella organization for the national Palestinian movements. Shortly thereafter, the Fatah movement joined the PLO and immediately enjoyed power and influence.

During the 1967 War, Israel conquered the West Bank and East Jerusalem from Jordan, annexing only East Jerusalem and instituting military rule in the West Bank. In 1969, the head of Fatah Yasser Arafat became the PLO leader through an election, deepening Fatah's strong presence in the PLO. In 1987, the Muslim Brotherhood established Hamas in the Gaza Strip. The next year, the king of Jordan renounced any affiliation between Jordan and the West Bank, thus denouncing any future Jordanian claims to the territory. Support for Hamas continued to grow while support for Fatah weakened during the intense period of violent conflict from 1987 to 1993 between Israelis and Palestinians known as the First Intifada.

Upon the end of the First Intifada, the Oslo Accords (1993-1995) established the PA government. Under the Oslo Accords, the PLO became recognized by Israel as an organization representing the Palestinian people, and the Palestinian Authority led by Yasser Arafat was established as a semi-autonomous entity in the West Bank and Gaza. Fatah became the leading party within the PA government, and many of its members were given positions within the PA security or civil services. The Israeli military government granted Fatah and the PA authority to manage the civil life of the Palestinian residents. However, the Israeli Defense Forces (IDF) held formal sovereignty. The Oslo Accords divided the West Bank into three sub-areas as the first step of a phased process of transferring control of the West Bank from the IDF to the PA.



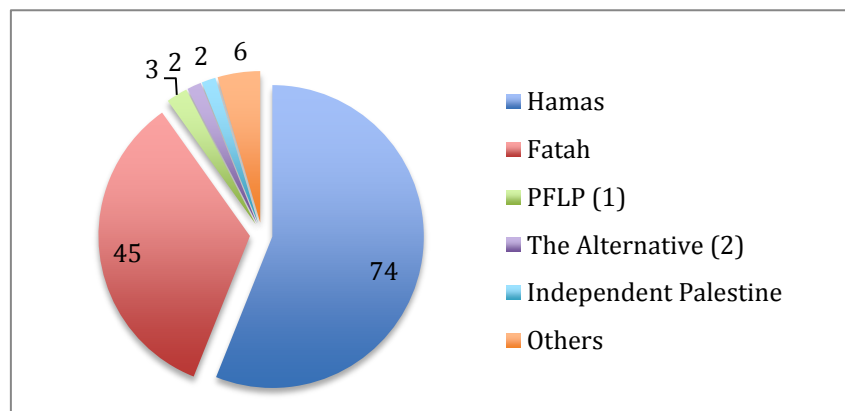
Area A (initially 2.7% of the area) came under complete PA control in civil and security matters; Area B (initially 25.1% of the area) came under Palestinian civil control and joint security control by Israel and the PA; and Area C (initially 72.2% of the area), remained under complete Israeli control.¹⁵ Although Israel gradually transferred control of the West Bank to the PA after signing the Oslo

¹⁵ Haim Gvirtzman, "Maps of Israeli Interests in Judea and Samaria Determining the Extent of the Additional Withdrawals," at <http://www.biu.ac.il/Besa/books/maps.htm>, accessed Aug 11, 2012.

Accords, Israel froze the transfer process in 2000 as a result of the Second Intifada. The Second Intifada led to a blurring of the boundaries between Areas A, B and C and a restriction of PA control of Areas A and B. In 2010, the United Nations reported that Areas A and B together make up 38% of the land area in the West Bank, and Area C consists of the remaining 62%.¹⁶ IDF presence is still felt in each of the West Bank sub-areas.

Beginning in 2000, Fatah experienced a period of trouble. The organization's power and stability faltered as a result of the Second Intifada in 2000, the death of its leader Yasser Arafat in 2004, and the transition from the leadership of Arafat to the leadership of Abu Mazen, also known as Mahmoud Abbas. This period saw a heightening of criticism towards the PA and Fatah government for corruption, lack of vision, lack of viable social and political programs, negligence, and its inability to manage the lives of its residents efficiently. The Palestinian public's faith in the Fatah leadership diminished while expressed support for Hamas grew. Hamas was perceived as a religious group that stood passionately against secular and corrupt government. On January 25, 2006, the general elections for party representation within the PA's legislative body, the Palestinian Legislative Council (PLC), were held. Hamas won the elections and was granted 74 seats out of 132 total, while Fatah received only 45 seats. The representatives of Hamas formed the government, which was headed by its leader Ismail Haniyeh.

Figure 2: 2006 PA Legislative Council Electoral Results



¹ Popular Front for the Liberation of Palestine, aka Martyr Abu Ali Mustafa;

² Coalition of the Democratic Front for the Liberation of Palestine, the Palestinian People's Party, the Palestine Democratic Union, and independents.

Members of the Palestinian Legislative Council agreed to establish a national unity government after the economic and diplomatic crisis that ensued after the June 2005 kidnapping of soldier Gilad Shalit provoked Israel to arrest members of the PLC. Before the government was established as planned, violent clashes broke out between Fatah and Hamas, resulting in an armed conflict in December 2006.

¹⁶ "Area C Humanitarian Response Plan Fact Sheet," August 2010, *UN Office for the Coordination of Humanitarian Affairs*, at <http://unispal.un.org/UNISPAL.NSF/0/59AE27FDECB034BD85257793004D5541>, accessed Aug 11, 2012.

Another agreement to form a joint government of Fatah and Hamas was signed in March 2007; nevertheless, the Fatah-Hamas clashes resumed in May 2007 and became more severe. Hamas began to win control over the Gaza Strip from Fatah and completed its takeover of control by June 2007 as the Fatah government fell. Shortly following this event came PA President Abu Mazen's announcement of the dissolution of the unity government led by Ismail Haniyeh, the leader of Hamas. Mazen appointed Salam Fayyad as the new Prime Minister of the PA. Though Hamas claimed that these decisions were not legally valid because they did not receive the approval of the Palestinian Legislative Council, the international community accepted the new government as presented by Abu Mazen.

In the years following the Hamas takeover of the Gaza Strip, there were several mediation attempts between Hamas and the PLO with the purpose of reuniting the West Bank and the Gaza Strip under one political unit. However, these attempts have encountered difficulties in light of the deep distrust and conflicting interests between both parties. On May 4, 2011, a reconciliation agreement between Hamas and Fatah was signed that guarantees the future establishment of a joint government. Despite the signing of the agreement, many remain skeptical regarding the actual possibility of unity and do not foresee great change.

Until the dissolution of the Palestinian unity government in 2007, the two geographies of the West Bank and the Gaza Strip were collectively considered "the Territories." The term "the Territories," formerly referring to both the West Bank and Gaza, now only refers to the West Bank. The West Bank and Gaza differ by system of government, political ideology, degree of autonomy, and approach to protecting human rights.

Status of PA and Hamas in the International Framework

In the West Bank, the PA controls a specific territory, government mechanisms and key institutions such as courts, prisons, public administration services, educational institutions, welfare and health, and security forces, among others. Around 120 countries recognize the PA as a state; however, within the United Nations, the PA is considered a "quasi-state player" for the purposes of international law and therefore cannot be a party to international treaties. The Universal Declaration of Human Rights is the foundation for subsequent human rights treaties adopted by the international community.¹⁷ These treaties address the obligations of sovereign nation states only and thus do not address the responsibilities of non-state actors such as the Palestinian Authority in the West Bank and the Hamas government in the Gaza Strip to protect human rights. The international legal system recognizes the potential of non-state actors to infringe on human rights as proscribed in the UDHR and subsequent treaties and accordingly has obliged both state and non-state actors

¹⁷ The International Covenant on Civil and Political Rights (1966); The International Convention on Economic, Social and Cultural Rights (1966); The International Convention on the Elimination of All Forms of Racial Discrimination (1965); The Convention on the Elimination of All Forms of Discrimination against Women (1979); The Convention against Torture and Cruel, Inhuman or Degrading Treatment (1984); The Convention on the Rights of the Child (1989).

to respect the principles of international human rights law and international humanitarian law.¹⁸ Although international human rights law applies to both state and non-state actors, non-state actors are unable to become party to the international treaties as states.¹⁹ Within the existing international judicial system, it is difficult to prevent or punish violations by such parties. The PA has stated its intention to comply with international human rights law, yet international human rights law can only be enforced through the creation of strong mechanisms of accountability.

The PLO and the PA have undertaken initiatives to protect human rights over the years.²⁰ The UN General Assembly granted the PLO "observer" status as the representatives of all Palestinians in 1974²¹. Additionally, the leaders of the PLO have been granted participation in UN Security Council deliberations since 1976. With the Oslo Accords, the PA was recognized as a legal, sovereign, or "quasi-sovereign" entity directly representing the Palestinian people in the West Bank and Gaza Strip. Later, in 1998, the name under which the "observer" status was registered was changed from the PLO Observer to Palestine Observer.²²

The PA has made a commitment to international human rights organizations and has submitted several declarations made by Yasser Arafat and other PLO delegates recognizing its obligation to adhere to international norms of human rights and to adopt them in internal Palestinian law.²³ In addition, the PLO has released public statements declaring its intention to comply with the human rights norms.²⁴ The UN awarded the Palestine Observer additional permissions including the right to participate in the general discussion held at the beginning of each session of the General Assembly, the right to respond at the General Assembly, and the right to raise points for discussion on Palestinian and Middle East issues.²⁵

On the issue of human rights, the Oslo Accords required that Israeli and Palestinian parties line up to meet the standards of the "acceptable international norms and principles of human rights and the rule of the law." The Oslo Accords also required the PA to pass Basic Laws in order to guide the government in the interim. The PA

¹⁸ Emeka Duruigbo, *Corporate Accountability and Liability for International Human Rights Abuses: Recent Changes and Recurring Challenges*, 6 NW. U. J. Int'l Hum. Rts. (2008) 222; John H. Knox, *Horizontal Human Rights Law*, 102 Am. J. Int'l L. 1 (2008); David Kinley & Junko Tadaki, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, 44 VA. J. INT'L L. 931,934–35 (2004); Theodor Meron, *HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW* (Oxford University Press 1989).

¹⁹ A. Clapham, *HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS* (2006).

²⁰ Irwin Cotler, "Palestinian Undertakings to Respect Human Rights - Basic Sources," *The Palestinian Human Rights Monitoring Group*, May 1997, at <http://www.phrmg.org/monitor1997/may97-1.htm>, accessed Aug 8, 2012.

²¹ A-RES-3237 (XXIX) UN General Assembly Resolution, Nov. 22, 1974.

²² A-RES-43-177 UN General Assembly Resolution, Dec. 15, 1988.

²³ Cotler, *supra* note 20.

²⁴ *Id.*

²⁵ A/RES/52/252 UN General Assembly Resolution, July 7, 1998.

subsequently legislated Palestinian Basic Law, which serves as the basis of the constitution for the future Palestinian state. The Palestinian Basic Law incorporates and affirms international principles on human rights, including the rule of law; equality before the law without discrimination; respect for basic human rights and joining international human rights treaties; prohibition on arbitrary detention or imprisonment; maintaining due process; prohibition of torture, cruelty, and confession under duress; freedom of religion; freedom of opinion and expression; freedom of movement; right to property; right to education; freedom of occupation; freedom of association; freedom of the press; and right of access to the courts.²⁶

Palestinian Basic Law establishes a democratic form of government that is based on the principles of the rule of the law, separation of powers, partisan and political pluralism. Though the ideology reflected in Palestinian Basic Law is inherently secular, liberal, and parliamentary, Islam shapes the protection of various rights of the Palestinians under the PA. The law declares the Palestinians to be part of the Arab world and the principles of Islamic *Sharia* law as the main source of legislation.²⁷

Hamas's presence in the Gaza Strip deepens the influence of Islam directly in the Gaza Strip and indirectly in the West Bank.²⁸ Founded in 1988, Hamas's charter articulates a fundamentalist Islamic and national ideology that heavily relies on Islamic religious texts. In contrast with the secular ideologies of the PLO and Fatah, Hamas was the first Palestinian national organization to combine national identity with religious identity. Hamas describes the *Qur'an* as its sole constitution and Islam as the ultimate religion. While Hamas does acts of charity and seeks to avoid dishonoring the commandments of other religions, the organization takes up a militant position that justifies the use of force and violence in achieving its ideological goals. Although Article 31 of the Hamas Charter states that Hamas is a humanistic movement that preserves human rights and guarantees freedom of religion, Article 13 of the Charter expresses reservations regarding initiatives, proposals and international conferences, and Article 27 of the Charter withdraws support of any type of liberal secular ideology.²⁹

While Hamas has the defining characteristics of a national liberation movement, it also meets the international law definition of a terrorist organization. The UN does not recognize the organization, and countries around the world do not recognize its

²⁶ "The Amended Palestinian Basic Law" (2003), at <http://www.palestinianbasiclaw.org/2003-amended-basic-law>, accessed Aug 8, 2012. (Hereinafter: the "Palestinian Basic Law").

²⁷ *Id.*

²⁸ "Internal Palestinian Issues – Islamization," *Palestinian Media Watch* (PMW), at <http://www.pmw.org.il/main.aspx?fi=737>, accessed Aug 8, 2012; Jonathan Schanzer, "The Talibanization of Gaza: A Liability for the Muslim Brotherhood," *Hudson Institute's Center on Islam, Democracy and the Future of the Muslim World*, Aug. 19, 2009, at <http://www.currenttrends.org/research/detail/the-talibanization-of-gaza-a-liability-for-the-muslim-brotherhood>, accessed Aug 8, 2012.

²⁹ "Hamas Charter" (1988), at Yale Law School Lillian Goldman Law Library http://avalon.law.yale.edu/20th_century/hamas.asp, accessed Aug 8, 2012.

rule in Gaza. Hamas is recognized as a "non-state player" for purposes of international law, same as the PA. Hamas has never joined an international treaty and has not committed to international principles of human rights protection or humanitarian law. The Hamas Charter is the only legal document that binds Hamas. Since Hamas has not committed itself to the principles of international law, it can be charged to uphold only customary norms.

Separation of Powers

A basic separation of powers is vital to the integrity of a sovereign or a quasi-sovereign government, including a democratic government. The extent to which a government has an effective structural separation of powers is a key consideration in evaluating how well institutions protect human, civil and political rights. Decentralizing power into a network of accountability establishes a system of mutual control and supervision by one power of the other, allowing the reduction of political corruption and the violation of human and civil rights.

In terms of separation of powers within the PA government, it is doubtful that adequate separation of powers exists. Within the PA system of government, a semi-presidential republic, the President heads the system as the top-most official within the political structure. He is elected directly by the people and appoints the Prime Minister following an approval by the parliament. The powers of the President are limited to foreign relations and security, while the Prime Minister governs all areas of domestic policy.

Palestinian Basic Law theoretically requires the government to be held accountable to the President and to the Palestinian Legislative Council.³⁰ In practice, however, the PA's power is concentrated in the hands of an executive government authority without effective parliamentary supervision by the Legislative Council or judicial and public examination. According to M. and S., political corruption is widespread. S. observed that the interest motivating the PA officials is protecting and furthering their own positions instead of the general good.

The human rights organization representatives interviewed suggested there is no independent legislative procedure within the Palestinian system of governance.³¹ They noted that, even if legislative initiatives are introduced, they are delayed or stagnated due to internal rifts. In practice, the passage of legislation is dependent upon the President's authority to publish emergency decisions that are regarded as laws. Drafts of bills on civil matters that the government ministries want to promote are formulated by legal advisers in the government offices and are forwarded to the President to be published as laws on his behalf.³²

³⁰ "The Amended Palestinian Basic Law," *supra* note 26.

³¹ Interview with Y., Interview with S., *supra* note 2; Interview with B., *supra* note 3.

³² Ephraim Lavie, "The Palestinian Authority's Challenge: Building a Lack of Governmental Legitimacy", 14 Strategic Assessment 59-70 (2011).

George Washington University Professor and Palestinian political expert Nathan J. Brown argues that current Palestinian Authority Prime Minister Salam Fayyad is not building the structure of the Palestinian State but has only prevented the total collapse of the existing structure. He concludes there is no separation of powers within the PA. Palestinian journalist and researcher Haled Abu Toameh likewise noted that “the Palestinian authority has failed to provide its constituents” with a democratic political system and an independent judiciary system.³³

Amnesty International asserts there is no independent jurisdiction within the Palestinian justice system.³⁴ However, in official reports on the West Bank and Gaza Strip, the US State Department has noted the PA’s general respect for judicial independence as well as the limitations of the Palestinian police forces and judicial system to carry on duties such as the transfer of detainees and the gathering of evidence due to Israeli restrictions on movement.³⁵ The US State Department has also noted unconfirmed reports of attempts of various Palestinian factions to influence judicial decisions in the West Bank.³⁶ The human rights organization representatives cited the intervention of the Israeli military judicial system as a root cause of the PA’s lack of an independent judicial system, because Israel intervention leaves the Palestinian system without power.

Regardless of Israeli interventions, there are structural components compromising the integrity of the PA judicial system. There is a strong presence of nepotism, advancement on the basis of connections, and the appointment of relatives to power within the judicial system. This diminishes the freedom of government officials to criticize the PA or, in many cases, to enforce court orders,³⁷ which are often violated due to lack of perceived authority of the justice system.

Evidence suggests the executive branch of the PA has benefited from the existence of the Israeli-Palestinian conflict. The PA’s executive branch has established many large security services, accounting for one-third of the PA’s budget at the expense of health, education and welfare budgets. This includes six different security branches that are each divided into sub-units, each branch having its own roles and orders. Coordination among the forces is not always appropriately defined. These forces, including the intelligence and the counter security forces, aid the executive branch by screening candidates for positions in the public sector based on political

³³ Khaled Abu Toameh, “No Democracy for Palestine,” *Gatestone Institute*, Aug. 30, 2011, at <http://www.stonegateinstitute.org/2389/palestine-democracy>, accessed Aug 8, 2012

³⁴ “Annual Report: Palestinian Authority 2011,” *Amnesty International*, at <http://www.amnestyusa.org/research/reports/annual-report-palestinian-authority-2011>, accessed Aug 8, 2012 (Hereinafter: “Amnesty Report”).

³⁵ Interview with M., *supra* note 2.

³⁶ “2010 Human Rights Report”, *US State Department*, at <http://www.state.gov/j/drl/rls/hrrpt/2010/index.htm>, accessed Aug 8, 2012 (Hereinafter: “The US State Department Report”).

³⁷ Khaled Abu Toameh, “No Democracy for Palestine,” *Gatestone Institute*, Aug. 30, 2011, at <http://www.stonegateinstitute.org/2389/palestine-democracy>, accessed Aug 8, 2012.

characteristics.³⁸ Since the labor market in the PA contains jobs under the auspices of the government, nepotism and the promotion of personal interests has become a widespread phenomena.³⁹

Internal Conflicts and Rifts

The majority of the representatives of the human rights groups identified the conflict between Fatah and Hamas as the greatest cause of human rights violations committed by Palestinians in the West Bank and Gaza.⁴⁰ There is general non-cooperation between the Palestinian parties as well as intra-partisan conflicts and rifts outside of Fatah-Hamas relations as well.⁴¹ Other parties in the PA include the Popular Front for the Liberation of Palestine (PFLP), the Democratic Front for the Liberation of Palestine (DFLP), the Palestinian People's Party (PPP), the Palestine Liberation Front (PLF) and the Third Way. Though political pluralism is not inherently destructive, the internal conflicts within the PA are severe and are conducive to violence. It has been suggested that the primary unifier of Palestinian factions is shared opposition to Israel.⁴²

The representatives of human rights organizations noted the heavy influence of the tribal and clan structure in the West Bank and Gaza in addition to divided loyalties to political and ideological factions.⁴³ Palestinian society as a whole is very traditional, and Palestinians are not one singular group but have a range of devotions based on the villages and cities, geographic origins, families, tribal clans, and other communities to which they belong. Professor Dror Ze'evi, founder of the Crown Center for Middle East Studies, noted, "Hamas in Gaza and the PA in the West Bank will not take any action on public or political issues without informing or consulting the local tribes."⁴⁴ The International Crisis Group (ICG), a non-profit organization led by Former UN High Commissioner for Human Rights Louise Arbour, also acknowledged the power of tribes and families, especially in the Gaza Strip where, on the one hand, there is tension between the different clans and on the other hand, each of them constitutes a threat to Hamas. This traditional culture is conducive to diffusing the national unity of the Palestinian society. According to ICG's 2007 report, several strong families have established armed units to protect their

³⁸ Interview with Dr. Mamdukh Al-Acr, *Ha'aretz*, Feb. 3, 2011.

³⁹ Amnesty Report, *supra* note 34.

⁴⁰ Interview with M., Interview with I., *supra* note 2; Interview with B., *supra* note 3.

⁴¹ Interview with C., Interview with H., and Interview with D., *supra* note 2.

⁴² Khaled Abu Thoameh, "Palestinians Busy Fighting each Other: Not Ready for Statehood," *Gatestone Institute*, June 21, 2011, at <http://www.stonegateinstitute.org/2214/palestinians-fighting-eachother-statehood>, accessed Aug 8, 2012; Khaled Abu Thoameh, "Are the Palestinians Ready for Statehood?" *Gatestone Institute*, Mar. 22, 2011, at <http://www.stonegateinstitute.org/1981/palestinians-ready-for-statehood>, accessed Aug 8 2012.

⁴³ Interview with S., Interview with G., *supra* note 2. Interview with B., *supra* note 3.

⁴⁴ Dror Ze'evi, "Clans and Militias in Palestinian Politics," 26 Brandeis University Crown Center for Middle East Studies: Middle East Brief (2008), at <http://www.brandeis.edu/crown/publication/meb/MEB26a.pdf>, accessed June 2012.

territories.⁴⁵ The internal power struggle between the different national movements and parties and among various Islamic national organizations, as well as the clan and family division, make it difficult to establish an appropriate infrastructure that supports a stable government and society.

HUMAN RIGHTS VIOLATIONS

The degree of the observance of human rights by the Palestinian authorities should be examined according to the benchmark for human rights and freedoms set by the Universal Declaration of Human Rights. Below are the foremost current violations of basic human rights in the West Bank and Gaza by the Palestinian government authorities. Under customary international law, these governments are responsible for preventing such violations.

1. *Arbitrary Imprisonment*

Article 9 of the Declaration of Human Rights prohibits arbitrary imprisonment of any individual. The Amended Palestinian Basic Law upholds this protection of rights by guaranteeing personal liberty and prohibiting encroachment on any grounds or pretexts. The Law additionally stipulates that arrest, detention, or restriction of freedom is prohibited unless carried out under a court order in accordance with the provisions of the Law.

Arbitrary arrests and imprisonment routinely occur both in the West Bank and in the Gaza Strip.⁴⁶ A Palestinian man from Jericho, West Bank, recounted to JIJ that the Palestinian Authority imprisoned members of Hamas on the day of PA elections as a means of suppressing political opposition. In 2012, the Independent Commission for Human Rights (ICHR) received a total of complaints of 1,000 arbitrary arrests in the West Bank and more than 750 in Gaza.⁴⁷ Although most of the cases were and are connected to the conflict between Fatah and Hamas, many cases involved the political arrests of reporters, teachers, university professors, students, mosque imams and other persons who opposed the reigning government.

2. *Torture and Degrading Treatment*

Article 5 of the Declaration of Human Rights declares that no person shall be subjected to torture, or cruel, inhuman or degrading punishment or treatment. Amnesty International, Human Rights Watch and the US State Department along

⁴⁵ "Inside Gaza: The Challenge of Clans and Families," International Crisis Group, at <http://www.crisisgroup.org/en/regions/middle-east-north-africa/israel-palestine/071-inside-gaza-the-challenge-of-clans-and-families.aspx>, accessed Aug 8, 2012.

⁴⁶ Interview with I., Interview with G., Interview with S., Interview with M., *supra* note 2; Interview with B., *supra* note 3. Also, Amnesty Report, *supra* note 34; "World Report 2011," *Human Rights Watch* (Hereinafter: "HRW Report").

⁴⁷ "Palestinian Authority" *Amnesty International*, at <http://www.amnesty.org/en/region/palestinian-authority/report-2012#section-19-3>, accessed March 26 1, 2013.

with the representatives from human rights organizations report that torture and cruel punishment occur on a regular basis in both the West Bank and the Gaza Strip, often resulting in death.⁴⁸ In 2012, the Independent Commission for Human Rights (ICHR) received 120 complaints of torture against the security forces in the West Bank and over 100 against the security forces in the Gaza Strip. The ICHR is barred from visiting detention centers in Gaza, and the governing authorities failed to respond to the ICHR's request for investigation into deaths of five prisoners while they were held in detention, so the actual number of torture cases may be higher.⁴⁹

During the course of the Fatah-Hamas conflict, there was an extensive use of torture by both parties.⁵⁰ In the West Bank, increasing failure to investigate these events by the PA's security authorities is allowing for a culture of leniency towards those who wrongfully employ torture. Meanwhile in Gaza, Hamas makes frequent use of torture and degrading treatment as punishment of crimes that are defined as morality crimes. Human Rights Watch describes the cases of torture as often involving beatings with sticks or electric cables, tying a detainee's arms behind his back and suspending him off the ground so his shoulders become dislocated, forcing detainees to sit or stand in uncomfortable positions for prolonged periods, and occasionally staging mock executions.⁵¹ In addition, authorities in the Gaza Strip regularly carry out executions without the approval of the PA's President, as required by the Palestinian Basic Law.⁵² On November 20, 2012 Palestinian gunmen in Gaza shot and killed six collaborators with Israel whom they had "caught red handed" according to security forces. The body of one of the alleged collaborators was chained to a motorcycle and dragged through the main streets of Gaza.⁵³

Figure 3: Deaths and Death Sentences

Source: Palestinian Human Rights Monitoring Group (PHRMG)⁵⁴

Deaths in Palestinian custody ¹	49
Death sentences for collaboration with Israel ²	30
Death sentence for selling property to Israel ³	1

⁴⁸ Interview with I., Interview with G., Interview with S., Interview with M., *supra* note 2; Interview with B., *supra* note 3. Amnesty Report, *supra* note 34; US State Department Report, *supra* note 36; "West Bank: Reports of Torture in Palestinian Detention," *Human Rights Watch*, Oct. 20, 2010, at <http://www.hrw.org/en/news/2010/10/20/west-bank-reports-torture-palestinian-detention>, accessed Aug 8, 2012.

⁴⁹ "Palestinian Authority" *Amnesty International*, at <http://www.amnesty.org/en/region/palestinian-authority/report-2012#section-19-3>, accessed March 26 1, 2013.

⁵⁰ Amnesty Report, *supra* note 34; HRW Report, *supra* note 48.

⁵¹ "Abusive System: Failures of Criminal Justice in Gaza," Human Rights Watch, http://www.hrw.org/sites/default/files/reports/iop1012ForUpload_0.pdf, accessed Nov 1, 2012.

⁵² Amnesty Report, *supra* note 34; HRW Report, *supra* note 48.

⁵³ "Ma'an News Agency", *Gunmen kill 6 alleged collaborators in Gaza*, at <http://www.ma'annews.net/eng/ViewDetails.aspx?ID=540228> accessed March 20, 2013

⁵⁴ Palestinian Human Rights Monitoring Group, <http://www.phrmg.org>.

¹ As recorded by PHRMG, 1994 - 2009.

² 30% of total sentences issued and recorded by PHRMG.

³ Sentence not carried out, according to PA officials.

In one account of torture from April 2009, Internal Security officials in Gaza held Mohammed Baraka Abdel-Aziz Abu-Moailek incommunicado for more than 50 days after his arrest on suspicion of collaboration with Israel. Mr. Baraka Abdel-Aziz Abu-Moailek stated he was tortured with electric shocks, beaten on the soles of his feet, burned with cigarettes, and threatened with death to force him to confess. He remained on trial and in detention indefinitely.⁵⁵

In another account in September 2010, Ahmed Salhab, a 42-year-old mechanic from Hebron, was arrested and detained until October 16, first in Hebron and then in Jericho. On October 16, Preventive Security officials transferred him to a hospital in Hebron suffering from injury to previously torn spinal discs and severe mental distress resulting from torture in custody. Similarly, on September 16, 2010, a second man who wished to remain anonymous, was arrested and held first in the Preventive Security detention facility in Hebron and then in Jericho, where he was tortured for 10 days. Both were accused of having ties to Hamas.⁵⁶

Human Rights Watch interviewed a lawyer in Gaza who was tortured in April 2011 after Hamas civil police and police detectives arrested him without a warrant. In the investigation room, Hamas forces cursed him and beat him, called him an unbeliever, tied him to a bed, and beat him on the feet with a rubber hose for an hour. Later, the lawyer was forced to put his legs in buckets of water, to move them as if he were riding a bicycle, and to drink bleach. When he received medical attention, the doctor hit him and threatened him. He told a prosecutor looking into the charges against him, "I have been beaten more than any donkey in Palestine."⁵⁷

The systematic use of torture and other abuse by Palestinian government authorities toward Palestinian detainees and prisoners violates international human rights and shows lack of regard for those human rights. Such tactics motivated civil Palestinian organizations to appeal to the European Union in September 2010 urging the EU to re-examine its relations with the PA in view of its treatment of the human rights of its residents.⁵⁸

3. *Freedom of Opinion and Expression*

According to Article 19 of the Declaration of Human Rights, every person has the right to the freedom of opinion and expression, and according to Article 27, every person has the right to the freedom of the arts and the sciences. Yet the

⁵⁵ Amnesty Report, *supra* note 34.

⁵⁶ "West Bank: Reports of Torture in Palestinian Detention," *Human Rights Watch*, *supra* note 48.

⁵⁷ "Abusive System: Failures of Criminal Justice in Gaza," *Human Rights Watch*, *supra* note 51.

⁵⁸ Abstract of 2010 Report, *The Independent Commission for Human Rights*, at <http://ichr.ps/pdfs/exs2011.pdf>, accessed June 2012.

representatives of human rights organizations reported the Palestinian government authorities restrict the freedom of opinion and expression both in the West Bank and in the Gaza Strip.⁵⁹

In both the West Bank and the Gaza Strip, any person or organization expressing criticism of the existing government, even a human rights organization, is likely to receive threatening phone calls and in certain cases even be arrested and interrogated.⁶⁰ As one example, in September 2010, the Palestinian General Intelligence Service in Hebron in the West Bank summoned Lama Khater and tried to restrict her from expressing her opinion and her writings on the internet. Intelligence Service officials subsequently arrested her husband and questioned him about the writings of his wife and her relationship with the media. The officials asked him to influence her in order to cut back her writings against the PA, and then asked her to stop writing in return for his release.⁶¹ This restriction on public expression creates an atmosphere of suspicion in which many lose their jobs because of their political views or are required to keep their opinions private.⁶²

Similar restrictions are imposed on the organization of peaceful demonstrations, press conferences, seminars and meetings of individuals and groups holding opposing or critical views of the government authorities. If individuals succeed in assembling, Palestinian Police Forces often scatter them, sometimes employing force against the peaceful demonstrators.⁶³ On August 25, 2010, PA security officials in Ramallah forcibly dispersed a peaceful protest against the PA's agreement to participate in new peace talks with Israel. Journalists, photographers and human rights monitors were among those assaulted.⁶⁴ Another case in February 2011 involved the PA violently attacking peaceful demonstrators at a rally supporting the Egypt protests.⁶⁵ These actions taken by the government stand in violation of Article 20 of the Human Rights Declaration, which ensures the freedom of association.

Conditions are worse in Gaza. Article 24 of the Hamas Charter prohibits defamation of individuals or groups and grants the organization the right to act against any "erroneous" standards.⁶⁶ The Interior Ministry of the Hamas government imposed numerous restrictions on the right to freedom of opinion and expression. On November 10, 2010, the Internal Security Service of the Interior Ministry in Gaza Strip summoned Dr. Ibrahim Abrash—a Palestinian writer, political analyst, and a lecturer at Al-Azhar University in Gaza City. Dr. Abrash was asked to sign a pledge

⁶⁰ Interview with S., Interview with M, *supra* note 2. Interview with B., *supra* note 3.

⁶⁰ Interview with M, Interview with S., *supra* note 2. Interview with B., *supra* note 3.

⁶¹ Independent Commission for Human Rights, *supra* note 47.

⁶² Interview with I., *supra* note 2; Interview with B., *supra* note 3.

⁶³ Amnesty Report, *supra* note 34.

⁶⁴ *Id.*

⁶⁵ "Palestinian Authority: End Violence Against Egypt Demonstrators," *Human Rights Watch*, Feb. 4, 2011, at <http://www.hrw.org/news/2011/02/03/palestinian-authority-end-violence-against-egypt-demonstrators>, accessed Aug 8, 2012.

⁶⁶ Hamas Charter, *supra* note 29.

that he would not criticize Hamas and refrain from doing anything to incite activities, whether in writing or statement. When he refused to sign the pledge, the government summoned him again four days later. This instance represents a broader pattern of intimidation tactics used by Hamas against critical journalists.⁶⁷

Several organizations have been forced to shut down because of their views. The South Society for Women's Health, an NGO providing family planning advice to women in Rafah in the Gaza Strip, was forced to close for three weeks from May 31, 2010, by the Hamas authorities and then only allowed to reopen under Interior Ministry supervision. Two other women's NGOs in Rafah were also closed May 31.⁶⁸ The Sharek Youth Forum, an NGO funded by the UN Development Program and operating in both the West Bank and Gaza Strip, was issued with a temporary closure notice in Gaza on November 30, 2010, following several months of harassment by the Hamas authorities. Its Gaza offices remained closed at the end of 2010.⁶⁹ Finally, in May 2010, a summer camp for children operated by the UN in the Gaza Strip was attacked by a masked gunman who accused the UN of promoting immoral values.⁷⁰

4. Freedom of the Press

Article 19 of the Declaration of Human Rights grants every individual the right to receive and impart information and ideas through any media and regardless of frontiers. Extensive use of arrests, interrogations, violence and threats has been made against reporters and various journalists. TV stations and newspapers are often censored and closed by the authorities. In 2010, Reporters without Borders ranked the PA 150th out of 170 state in freedom of the press⁷¹ and, in 2011, Human Rights Watch reported a significant in violations of reporters' rights by the Palestinian authorities.⁷²

In one case in October 2010, the Palestinian General Intelligence Service in the West Bank town of Qalqilya detained blogger Walid al-Husayin on suspicion advocating atheism and criticizing Islam and other religions through comments posted on a blog. Al-Husayin remained held at the end of the year.⁷³ In February 2010 in Gaza, Hamas officials arrested Paul Martin, a British journalist, after he tried to help a man

⁶⁷ "No News is Good News, Abuses against Journalists by Palestinian Security Forces," *Human Rights Watch*, April 2011, at <http://www.hrw.org/sites/default/files/reports/iopt0411webwcover.pdf>, accessed June 2012.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ "Gaza gunmen set fire to UN summer camp for children," *BBC News*, June 28, 2010, at <http://www.bbc.co.uk/news/10433004>

⁷¹ "Freedom of Press Index of 2010," *Reporters without Borders*, at <http://en.esf.org/press-freedom-index-2010,1034.html>, accessed June 2012.

⁷² Human Rights Watch Report, *supra* note 66.

⁷³ Amnesty Report, *supra* note 34.

accused of collaboration with Israel. Paul Martin was initially accused of spying for Israel but was released after 25 days in custody without charge.⁷⁴

On May 6, 2010, the General Intelligence Service in Hebron detained Samir Anwar Rushdi Rashid, a Palestinian journalist from the city of Hebron who works as a correspondent for the Voice of Al-Aqsa. According to the ICHR, the journalist was detained without being brought before any competent judicial authority regarding the background of his work as a journalist. On December 8, 2010, the General Intelligence Service re-arrested him and confiscated his computer, knowing that he was working for 'Alam Radio affiliated with Hebron University.⁷⁵

In a high profile case, the PA detained journalist Yusuf al-Shayeb on March 26, 2012, without charge following the publication of his article criticizing Palestinian government officials for corruption, spying, and nepotism. He was charged under Article 191 of the Jordanian Penal Code (which still operates in the West Bank and Gaza), which allows for imprisonment of up to two years for "slandering" of government officials. The PA detained al-Shayeb while they investigated his sources, which he refused to provide when interrogated. Regardless of whether or not the journalist's statements were true, under the Universal Declaration of Human Rights, he cannot be detained for expressing them.⁷⁶

Along with forms of intimidation and detention, infringement on freedom of the press sometimes comes in the form of assault. The Palestinian Center for Development and Freedom of the Press (MADA) reported that during the first half of 2011, there were 68 cases of assault on reporters by the Palestinian security forces in the West Bank and Gaza Strip.⁷⁷

On March 29, 2010, members of the National Security Forces in Bethlehem prevented journalists from covering the demonstration called for by the national forces in the governorate in protest against Israeli occupation crimes. A number of journalists were attacked, beaten, insulted and cursed at by the security forces. Mohammad Abu Ghaniyeh, a Palestinian journalist and a photographer for Reuters, Iyad Hamad, a Palestinian journalist and a photographer for the *Associated Press*, and Loay Saban, a Palestinian journalist and a photographer for *Ma'an News Agency*, were all beaten with sticks and cursed by the security forces.⁷⁸

⁷⁴ Id.

⁷⁵ ICHR Report, *supra* note 47, at 107.

⁷⁶ "Palestinian Authority/Israel: Escalating Assault on Free Expression," *Human Rights Watch*, Apr. 3, 2012, <http://www.hrw.org/news/2012/04/03/palestinian-authorityisrael-escalating-assault-free-expression>, accessed Aug 12, 2012.

⁷⁷ "113 Attacks on the Freedom of the Press in the First Half of This Year in PT," *The Palestinian Center for Development and Freedom of the Press*, July 18, 2011, Ramallah, at http://www.madacenter.org/report.php?lang=1&id=873&category_id=13&year=, accessed Aug 12, 2012.

⁷⁸ ICHR Report, *supra* note 47, at 111.

After Palestinian voters elected Hamas into power, Hamas implemented absolute governmental control of the media by distributing Hamas-issued press cards throughout Gaza.⁷⁹ Numerous journalists and media representatives have been assaulted by the Security Service elements of Hamas's Ministry of the Interior while covering certain events. For example, Ahmad Mousa Ibrahim Abu Fayyad, a Palestinian journalist and correspondent for Al-Jazeera Net, was beaten and insulted by members of the police during his reporting for the ceremony organized by Toyour al-Janeh Band on August 4, 2010, in the sports city playground in Qizan al-Najjar in Khan Younis.

When the media and public mechanisms of expressing opinion are restricted, the enjoyment of the basic human right of freedom of expression is replaced by the phenomenon of self-censorship due to fear of punishment. This restrictive climate also inhibits the work of human rights organizations in the area serving in the West Bank and Gaza as they strive to raise awareness within the international community of issues local to those territories.

5. *Freedom of Religion and the Rights of Minorities*

Article 18 of the Human Rights Declaration requires freedom of religion. The Palestinian Basic Law grants Islam the status of an official religion of the state and the principles of *Sharia* serve as the main source of legislation, although the Basic Law states that freedom of belief and worship are also guaranteed. However, some of the *Sharia* laws, called *Hathimi*, do not allow treating members of other religions as equals or with complete tolerance.⁸⁰ These laws prohibit any non-Muslim from holding authority over a Muslim. Most of the Palestinians in the West Bank and Gaza (98%) are Sunni Muslims; however, there is also a population of around 52,000 Christians in the West Bank and the Gaza Strip, only a small fraction of who live in Gaza.⁸¹ Any state governed by *Sharia* is required by the principle of *Thimi* to protect members of monotheistic religions as long as they comply with the rules imposed on them such as prohibition of public worship and payment of special taxes. In its latest report on religious freedom in the West Bank and Gaza, the US State Department noted that the PA generally respects religious freedom in law and in practice.⁸²

Hebrew University Professor of International Law Justus Weiner reports that the PA facilitates crimes against Christians in the West Bank, considered second-class citizens under Islamic law, by neglecting to take action against perpetrators.⁸³

⁷⁹ "Hamas disbands Journalists Union amid continuing incidents," *Reporters Without Borders*, Sep. 6, 2007, at <http://en.rsf.org/palestinian-territories-hamas-disbands-journalists-union-06-09-2007,23565.html>, accessed Aug 12, 2012; "Hamas widens crackdown on journalists in Gaza," Nov. 15, 2007, at http://www.b92.net/eng/news/world-article.php?yyyy=2007&mm=11&dd=15&nav_id=45429, accessed Aug 12, 2012.

⁸⁰ Interview with G., *supra* note 2.

⁸¹ International Religious Freedom Report for 2011, *supra* note 14.

⁸² US State Department Report, *supra* note 36.

⁸³ Justus Weiner, "Human Rights of Christians in Palestinian Society," *Jerusalem Center of Public Affairs*, 2005, at <http://jcpa.org/christian-persecution.htm>, accessed Aug 13, 2012.

Christians hide the offenses made against them due to their fear of arbitrary arrest and torture, since it is highly probable that Christians will be suspected of cooperation with Israel.⁸⁴

Restrictions on religious freedom are more severe in the Gaza Strip, where Christians “have tended toward political invisibility”⁸⁵ under the Islamic Hamas government. Upon its inception, Hamas declared that one of the goals of overtaking the Gaza Strip was to put an end to secularism and heresy. Article 31 of the Hamas Charter allows Christians to live peacefully under Islamic rule.⁸⁶ However, because Hamas declares the *Qur’an* as its constitution and the way of Islam as its way of life, the rights of Christians are limited and conditional to Islamic laws, and the number of Christians residing in the Gaza Strip is steadily decreasing.⁸⁷

Shortly after Hamas gained control over the Gaza Strip, Hamas gunmen used rockets and hand grenades to blow through the doors of the Latin Church and the adjacent Rosary Sisters School in Gaza City.⁸⁸ The Hamas forces burned all the Holy Scriptures they were able to find before setting both buildings on fire. In the same year, Hamas members set fire to a bookstore belonging to the Bible Society and later kidnapped the storeowner in the middle of the night. His body was found mutilated and dumped in a nearby field. Thus, Hamas’ use of power and threats became a reality for Gaza’s Christian population, and most of them have migrated from the Gaza Strip.

6. Women’s Rights

In its Preamble, the Universal Declaration of Human Rights affirms equal rights for men and women. However, in the societies of the West Bank and Gaza, both formal and informal forms of discrimination against women exist. Honor killings, which are murders of females by members of their family or social community after the women have brought shame on the group, occur each year in the West Bank and Gaza. A community can be shamed for a number of reasons, such as the female dressing in a way considered inappropriate, engaging in sex outside marriage, or desiring to marry or divorce based on her own will. Though these killings are carried out privately by individuals and not by the government, the Palestinian law allows those who commit honor killings to evade justice by providing them with quasi-impunity.⁸⁹ Women are also denied legal protection against domestic violence. Many women cannot defend themselves against sexual abuse by their relatives and,

⁸⁴ Interview with G., *supra* note 2.

⁸⁵ Jonathan Spyer, “Analysis: Cruelty and silence in Gaza,” *The Jerusalem Post*, Dec. 11, 2008, at <http://www.jpost.com/MiddleEast/Article.aspx?id=124148>, accessed Aug 10, 2012.

⁸⁶ Hamas Charter, *supra* note 29.

⁸⁷ Spyer, *supra* note 84.

⁸⁸ “Hamas: Call for Expanded Human Rights Jurisdiction,” *Jerusalem Institute of Justice*, 2010.

⁸⁹ Interview with S., *supra* note 2. Interview with B., *supra* note 3; Interview with R., *supra* note 2.

in order to make a complaint about sexual abuse, women must go to the police station escorted by a male relative.⁹⁰

Women do not always have freedom to choose their spouse or decide how or when to marry.⁹¹ Islamic law makes it difficult for women to initiate divorce, though men can divorce women quite easily. Among other things, women must prove that they were beaten, which is exceptionally difficult because the testimony of a woman is worth half the testimony of a man.⁹² This directly contradicts Article 16 of the Universal Declaration of Human Rights, which requires that couples have equal rights in marriage and in divorce. Furthermore, the Palestinian Inheritance Law is not equal; women cannot inherit as much as men.⁹³ Since the majority of the Palestinian population uses local and informal jurisdiction, a kind of village council whose members judge according to the rules of religion and cultural custom, men have superiority within these justice mechanisms.⁹⁴

There are differences between the treatment of women in the West Bank and in the Gaza Strip, as women in the West Bank generally enjoy more freedoms than those living under Hamas in the Gaza Strip. Palestinian women in the West Bank generally enjoy more freedom than those living in other Arab countries as well. They do not need permission from a man to drive a car or to travel, unless they want to travel with their children.⁹⁵ Moreover, five women are currently serving in the Palestinian government as ministers of culture, tourism, education, social affairs and women's affairs.

Articles 17 and 18 of the Hamas Charter establish the role of Muslim women as mothers in charge of the household and the education of their children and their children's preparation to fulfill the religious commandments and their role in war.⁹⁶ Accordingly, Hamas has founded the "morality police" to patrol the Gaza Strip to ensure that women dress in accordance with the conservative Muslim code. There in Gaza, socializing in public with the opposite sex is forbidden, and premarital sex is punishable by imprisonment.⁹⁷

7. *The Rights of Children*

Protecting children's rights is a high priority of international human rights law. Though Palestinian Basic Law prohibits violence against children, the authorities

⁹⁰ Interview with S., *supra* note 2.

⁹¹ Interview with R., *supra* note 2.

⁹² Interview with S., *supra* note 2; Interview with R., *supra* note 2.

⁹³ Interview with R., *supra* note 2.

⁹⁴ Interview with S., *supra* note 2; Interview with B., *supra* note 3.

⁹⁵ Interview with B., *supra* note 3.

⁹⁶ Hamas Charter, *supra* note 29.

⁹⁷ Diaa Hardid, "Hamas tries to detain woman walking with man," Associated Press, July 8, 2009, at <http://www.msnbc.msn.com/id/31793001/print/1/displaymode/1098/>, accessed Aug 8, 2012; Khaled Abu Toameh, "They accused me of laughing in public," *The Jerusalem Post*, July 4, 2009, at <http://www.jpost.com/MiddleEast/Article.aspx?id=147555>, accessed Aug 8, 2012.

often fail to take steps against cases of domestic violence, even when cases of severe abuse are reported. Palestinian law allows for marrying underage girls, and it is customary to employ minors to work in shops, sell goods, or work on family farms.⁹⁸

Muslim parents with a disabled child may perceive the child's disabilities as a form of divine punishment and thus a source of shame.⁹⁹ These children are often isolated from society and, in many tragic cases, are sexually abused by their relatives or neighbors. The situation of disabled children in the West Bank and Gaza is rarely discussed, as statistics and data on this population are not readily available.

In the Gaza Strip, children are exposed to incitement, intolerance, and delegitimization of others, especially Israelis and Westerners. In April 2012, the PA TV children's program, *The Best Home*, featured a child reciting a poem promoting Pan-Arabism. The poem, by an Egyptian writer, included the following words: "Our enemy, Zion, is Satan with a tail."¹⁰⁰ Hamas organizes "summer camps" for thousands of teenagers aged 13-18 years, which combine social activism with Islamic radicalism, political indoctrination and paramilitary training.¹⁰¹ These camps violate Article 26(2) of the Human Rights Declaration, which advocates education for peace, tolerance and friendship between all nations and groups.

Additionally, the fighting forces in Gaza often use children as informants, as part of their combat system, and as human shields, when necessary.¹⁰² The fighting forces send the children to the border with Israel to gather information about the movements of the Israeli army. Combatants choose to locate their center of activity at the vicinity of children's educational institutions and escape into these institutions to avoid exposure and deter retaliation.

INTERNATIONAL FUNDING OF THE PA

Upon its creation under the Oslo Accords, the Palestinian Authority faced a range of challenges, the most pressing ones concerning the Palestinian economy. Israeli closures, permits policies, and other complex restrictions on the movement of people and goods aggravated the economic situation that was already stifled by low

⁹⁸ Interview with B., *supra* note 3.

⁹⁹ Sofie Hviid, "Disabled Children Face a Hard Life," *This Week in Palestine*, Feb. 2011, at <http://www.thisweekinpalestine.com/details.php?id=3327&ed=191&edid=191>, accessed Aug 8, 2012.

¹⁰⁰ "Israel is 'Satan with a tail,' in poem recited by child on PA TV," *Palestinian Media Watch*, Apr. 22, 2012, at http://www.palwatch.org/main.aspx?fi=157&doc_id=6776, accessed Aug 8, 2012.

¹⁰¹ "Children and Youth," *Palestinian Media Watch*, at <http://www.pmw.org.il/main.aspx?fi=339>, accessed Aug 8, 2012; "Children as Combatants," *Palestinian Media Watch*, at <http://www.pmw.org.il/main.aspx?fi=844>, accessed Aug 8, 2012.

¹⁰² "Hamas Exploitation of Civilians as Human Shields," *Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center (IICC)*, Jan. 6, 2009, at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terror+Groups/Hamas_Exploitation_Civilians_Human_Shields.htm, accessed Aug 8, 2012.

public investment and the contraction of the regional economy.¹⁰³ As these conditions threatened the stability and survival of the newly established PA, it became the responsibility of international communities to support it. International communities refocused and redirected funds to finance the PA's continued budgetary shortfalls, housing programs, and emergency job creation measures.¹⁰⁴ Even so, such funding proved ineffective and only created more tension between all parties. In 1996, the President of the World Bank stated: "The sense of urgency is clear. Peace will only be assured in that area if you can get jobs for those people."¹⁰⁵

In 1997, Israel reduced their closure policy, which led to growth in employment and economic expansion in both the West Bank and Gaza.¹⁰⁶ This Israeli action supported the goal of stability within the Palestinian Authority. However, during the violence of the Second Intifada, the Israeli government put back into place many closure policies as well as many restrictions. In the two years following the start of the Second Intifada and the reintroduction of Israeli restrictions, the GDP in the West Bank and Gaza shrunk 40%.¹⁰⁷ After Hamas won the election in Gaza in 2006, most international donors halted assistance to the PA.¹⁰⁸ The political rivalry between Hamas and the PA strained financial conditions. The World Bank estimated that in 2008 the PA would need \$1.2 billion in recurrent budget support, in addition to \$300 million in development aid.¹⁰⁹ The Hamas-PA political rivalry and the growing economic problems in the West Bank and Gaza prompted the EU to propose a plan to send aid directly to the Palestinians. Accordingly, the EU set up a "temporary international mechanism" (TIM) to channel the money for an initial three-month period, which was later extended.¹¹⁰ In the beginning of 2008, the EU moved from the TIM mechanism to program known as PEGASE in which direct support is transferred to the PA's Central Treasury Account in addition to the support transferred through the TIM.¹¹¹

¹⁰³ *Aid Effectiveness in the West Bank and Gaza*. Japan and the World Bank. 1999.

¹⁰⁴ "West Bank and Gaza: An Evaluation of Bank Assistance" (PDF). OECD. March 7, 2002. Retrieved 2008-10-29.

¹⁰⁵ Ball, Nicole; Friedman, Jordana D.; Rossiter, Caleb S. (2000). "The Role of International Financial Institutions in Preventing and Resolving Conflict". In David Cortright. *The Proce of Peace: Incentives and International Conflict Prevention*. Rowman & Littlefield. ISBN 0-8476-8557-8.

¹⁰⁶ *Aid Effectiveness in the West Bank and Gaza*, *supra* note 101.

¹⁰⁷ Overview: Stagnation or Revival? Israeli Disengagement and Palestinian Economic Prospects" (PDF). World Bank. December 1, 2004.

¹⁰⁸ Sayigh, Yezid (September 1 2007). "Inducing a Failed State in Palestine". *Survival* (Routledge) 49 (3): 7–39. doi:10.1080/00396330701564786.

¹⁰⁹ "Palestinian Economic Prospects: Aid, Access and Reform" (PDF). World Bank. September 22, 2008.

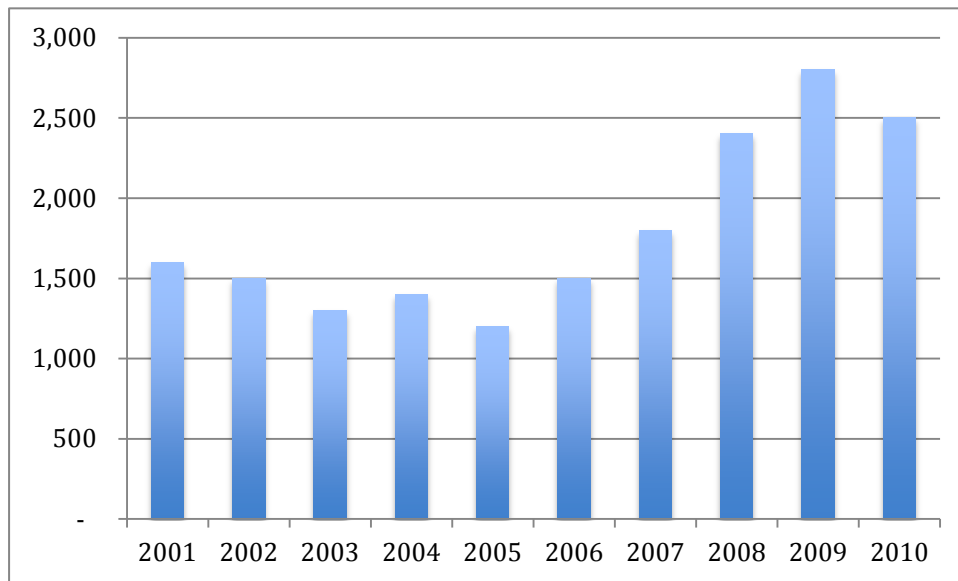
¹¹⁰ "Powers Agree Palestinian Aid Plan". *Middle East (BBC News)*. June 18, 2006., "Palestinians to Get Interim Aid". *Middle East (BBC News)*. May 10, 2006.

¹¹¹ "Implementing the Palestinian Reform and Development Agenda" (PDF). World Bank. May 2, 2008.

Overall, foreign aid is the main driver of economic growth in the West Bank and Gaza,¹¹² and the two major providers of foreign aid to the PA are the EU and the US. All foreign aid sent to the West Bank and Gaza generally falls into one of three categories: budgetary, emergency/humanitarian, and development. The three major institutional foreign aid providers are the US Agency for International Development (USAID), the European Commission's Humanitarian Aid Office (ECHO), and the United Nations Relief and Works Agency (UNRWA).

¹¹² David Wainer "Palestinians Lure Banks With First Sukuk Bills: Islamic Finance," December 08, 2010, Bloomberg/Business Week.

Figure 4: Total Official Humanitarian Aid to Palestinians, 2001-2010*
(Stated amounts represent millions of \$USD)



*Amounts as reported by a non-profit watchdog organization compiling data from OECD Development Assistance Committee.¹¹³

Both the EU and US have laws governing foreign assistance and programs to facilitate transfer of the foreign aid to the PA. The following paragraphs describe the different EU and US regulations and laws as well as amounts of foreign aid. In a broader perspective, in the fifteen years following the Oslo Accords, the Palestinians received \$4 billion in aid, which translates into \$1,330 a year per person, four times the amount per person grant by the US's Marshall Plan for the post-World War II reconstruction of Europe.¹¹⁴

EU Funding of the PA

The EU's role as one of the largest donors to the Palestinian Authority dates back to the Oslo Accords. The guidelines for EU foreign aid to the PA are compiled primarily in the 2009 Lisbon Treaty, which serves as the EU's constitutional basis, as well as secondary legislation.¹¹⁵ The EU has launched many development programs in accordance with its foundational principles as laid out by the Lisbon Treaty: liberty, democracy, and respect for human rights and the rule of law. The EU has, to a large extent, espoused a policy of delivering untied aid for the last twenty-five years with the objective of increasing transparency and accountability. However, under EU law, foreign aid to third countries may be reduced or discontinued, wholly or partially, if

¹¹³ Global Humanitarian Assistance, <http://www.globalhumanitarianassistance.org/countryprofile/palestineopt>, accessed Nov 5, 2012.

¹¹⁴ Clawson, Patrick, "The Palestinians' Lost Marshall Plans," originally published by *The Jerusalem Post*, Aug 9, 2002, <http://www.washingtoninstitute.org/policy-analysis/view/the-palestinians-lost-marshall-plans>, accessed Nov 5, 2012.

¹¹⁵ Consolidated Version of the Treaty on European Union, Feb. 7, 1992, 2010 OFFICIAL JOURNAL OF THE EUROPEAN UNION [O.J.] (C 83) 13.

such countries fail to respect international law, human rights, and the rule of law.¹¹⁶

The EU's mandate in foreign aid, including the granting of humanitarian assistance, is based on the 2009 Lisbon Treaty and secondary legislation. Title III of the Treaty on the Functioning of the EU (TFEU), as amended by the Lisbon Treaty, provides the legal framework for the EU's development policy. In particular, Article 208 of the TFEU on Cooperation with Third Countries and Humanitarian Aid establishes the principles on which foreign aid policy must be conducted and the objectives to be achieved. It also delineates the capabilities of the EU and its Members and obliges them to fulfill their commitments and take into account the objectives endorsed within the UN framework and other international organizations. Specifically, Article 208 stipulates that the EU must exercise its development policy within the framework of the principles and objectives of its external actions; that "the Union's development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty;" and that the Union's development policy and that of its Members "complement and reinforce each other."¹¹⁷ The EU continues to endorse the European Consensus on Development (ECD) adopted in 2005.¹¹⁸ The ECD established the foundation for a common EU vision on development designed to deliver increased and more effective aid, and also led to the adoption of the EU Code of Conduct on Complementarity and Division of Labour in Development Policy in 2007.¹¹⁹ The EU Code of Conduct is designed to harmonize donor practices and increase cooperation and collaboration in joint co-financing programs with other donors.¹²⁰

The EU launched the PEGASE (Programme d'Expérimentation d'une Gestion Automatisée et Sécurisée, French for Experimental Program of Automated Management and Security) mechanism as part of the three year Palestinian Reform and Development Plan (PRDP). PEGASE's job is to ensure that EU funding aligns with the Palestinian Reform and Development Plan (PRDP) axes: governance, social development, economic and private sector development and public infrastructure development. PEGASE serves as the main instrument that allows the EU to channel money from its budget and from its member state's budgets into the PA's budget. This money is used to help pay salaries of public workers, give money to vulnerable families, support Gaza's power plant, as well as many infrastructure projects, judicial

¹¹⁶ "Regulation of Foreign Aid in Selected Countries 2011/2012," The Law Library of Congress, Global Legal Research Center LL File No. 2011-006054, http://www.loc.gov/law/help/foreign_aid_2011-006054_FINAL_RPT.pdf, accessed Nov 5, 2012.

¹¹⁷ Article 208 of the Lisbon Treaty, <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-5-external-action-by-the-union/title-3-cooperation-with-third-countries-and-humanitarian-aid/chapter-1-development-cooperation/496-article-208.html>, accessed Nov 5, 2012.

¹¹⁸ The European Consensus, 2006 O.J. (C 46) 1

¹¹⁹ European Union Code of Conduct on Complementarity and Division of Labour in Development Policy [EU Code of Conduct], <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0072:FIN:EN:PDF>, accessed Nov 3, 2012.

¹²⁰ Towards a Division of Labour in European Development Co-Operation: Operational Options," June 2007, <http://www.oecd.org/dataoecd/60/23/46859449.pdf>, accessed Nov 3, 2012.

and financial reforms, and Palestinian security, health and education systems.¹²¹

Since the start of PEGASE, the EU has helped foster Palestinian trade by giving €432,000 to finance the Trade Corridors' Facilitation, €2.5 million to modernize Palestinian customs procedures, and €14.5m to the European-Palestinian Credit Guarantee Fund which guarantees loans to small and medium enterprises through the Palestinian banking system. The EU has also given €10 million to support a number of agriculture-based initiatives such as land reclaiming projects to increase levels of arable land and olive oil, projects that produce export-quality organic and fair trade Palestinian olive oil.¹²² Thirdly, the EU has given €1,026 million to the UNRWA for its core programs in education, food assistance, health and relief and social service.¹²³

In addition to assisting trade and agriculture, PEGASE has assisted in civil situations. Through PEGASE, the EU gives financial support to nearly 50,000 Palestinian families, over half of whom live in the Gaza Strip, in its Aid to Vulnerable Palestinian Families program. These families receive regular allowances through a cash support program and a network of banks. In 2008, the EU provided €33 million in aid through this program. Furthermore, the EU contributed €95.8 million to provide fuel for the Gaza power plant, €20 million to a World-Bank led multi-donor trust fund, the Emergency Services Support Project, to help Palestinian public services in education, health and the social sectors across the West Bank and the Gaza Strip. In 2008 alone, the EU allocated €551 million including €421 million of direct EU support and €130 million of support from EU member states. On a monthly scale, that is €21.25, representing more than 25% of the total wage bill of PA employees and 45% of the civilian bill.¹²⁴

Through 2012, the EU has continued to give over €20 million a month specifically for salaries and pensions. For the year of 2012, the EU pledged €155 million to the Palestinian Authority and since the start of PEGASE, the EU has given over €1.3 billion in direct financial support programs.¹²⁵

The EU's values of liberty, democracy, and respect for human rights and the rule of

¹²¹ EU Assistance to the Palestinians, http://eeas.europa.eu/delegations/westbank/eu_westbank/tech_financial_cooperation/index_en.htm, accessed Nov 3, 2012.

¹²² "Economic: Providing for Sustainable Economic Growth," EU Assistance to the Palestinians, http://eeas.europa.eu/delegations/westbank/eu_westbank/tech_financial_cooperation/index_en.htm, accessed Nov 3, 2012.

¹²³ "Refugees and UNRWA: Improving the Lives of Palestinian Refugees," EU Assistance to the Palestinians, http://eeas.europa.eu/delegations/westbank/eu_westbank/tech_financial_cooperation/index_en.htm, accessed Nov 3, 2012.

¹²⁴ "Direct Financial Support to the Palestinian Authority," EU Assistance to the Palestinians, http://eeas.europa.eu/delegations/westbank/eu_westbank/tech_financial_cooperation/index_en.htm, accessed Nov 3, 2012.

¹²⁵ EU Assistance to the Palestinians, http://eeas.europa.eu/delegations/westbank/press_corner/all_news/index_en.htm, accessed Nov 3, 2012.

law inform its policies abroad. These values are shared among the twenty-seven member states of the EU who have collectively adopted the Lisbon Treaty and have endorsed the EDC to achieve these goals, forming a major pillar of the EU's development policy. In 2008, the EU adopted the PEGASE mechanism to help support the Palestinian Authority. Since then they have given over €1.3 billion in support, not including all donations from member states and other European NGO's to UNRWA.

US Funding of the PA

US legislation on foreign assistance exists to prevent the allocation of foreign aid to human rights abusers. One of the principal pieces of legislation is the Leahy Law, which prohibits the US from funding any foreign security unit for which there is credible evidence that the unit commits human rights abuses. The Leahy Law states:

None of the funds made available by this Act may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless the Secretary determines and reports to the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice.¹²⁶

The United States has passed legislation to restrict aid to a variety of governments that engage in human rights abuses. For example, under the Cuban Democracy Act, the United States Congress found that the Cuban government has "demonstrated consistent disregard for internationally accepted standards of human rights and for democratic values. It restricts the Cuban people's exercise of freedom of speech, press, assembly, and other rights recognized by the Universal Declaration of Human Rights."¹²⁷ Accordingly, the United States Congress voted to maintain sanctions on the Castro government so long as it continues "to refuse to move toward democratization and greater respect for human rights."¹²⁸ These sanctions include prohibiting any direct financial assistance to the Cuban government.

In 2011, under the Trading with the Enemy Act (1917), President Obama chose to renew the embargo on Cuba, stating that the Cuban government "certainly ha[s] not been aggressive enough when it comes to liberating political prisoners and giving people the opportunity to speak their minds."¹²⁹ Likewise, in 2010, the US State

¹²⁶ 2001 Foreign Operations Appropriations Act (Sec. 563 of P.L. 106-429).

¹²⁷ 22 USC. § 69.

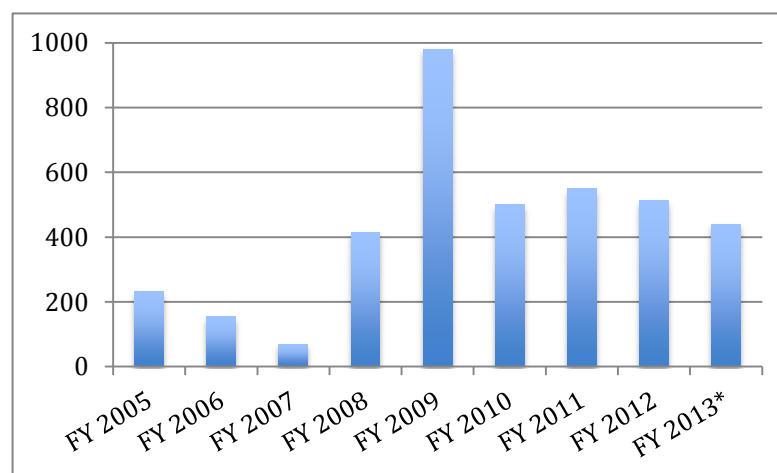
¹²⁸ *Id.*

¹²⁹ Uri Friedman, "Obama Quietly Renews US Embargo on Cuba," *The Atlantic*, Sep. 13, 2011, at <http://www.theatlanticwire.com/global/2011/09/obama-quietly-renews-us-embargo-cuba/42430/>, accessed Aug 8, 2012.

Department withheld \$26 million in aid to Mexico for its failure to meet human rights standards in its military efforts against drug cartels.¹³⁰

In regards to the PA, the United States' annual appropriations legislation regularly contains a number of conditions, limitations, and restrictions on US aid. For example, the law prohibits any US assistance to a PA government that includes Hamas as a member unless all members agree to recognize Israel's right to exist and accept previous Israel-Palestinian agreements.¹³¹ No aid is permitted for a future Palestinian state unless it: 1) demonstrates a firm commitment to peaceful coexistence with Israel, 2) takes appropriate measures to counter terrorism and terror financing, and 3) works with other countries in the region to establish a just, lasting, and comprehensive peace.¹³² Moreover, under the Consolidated Appropriations Act of 2010, the United States Congress prohibits funding in the West Bank and Gaza of any person who "engages in, or who has engaged in terrorist activity" or "for the purpose of recognizing or otherwise honoring individuals who commit, or have committed acts of terrorism."¹³³

Figure 5: US Bilateral Assistance to Palestinian Authority, FY2005-FY2013¹³⁴
(Stated amounts represent millions of \$USD)



*Amount stated for FY2013 is suggested but not yet appropriated.

The US continues to provide direct financial assistance to the PA and funds other Palestinian institutions through USAID. Since the establishment of Palestinian self-rule after the Oslo Accords, the US government has committed over \$4 billion in bilateral assistance to the PA. Since 2008, the US assistance to the Palestinians has averaged over \$600 million per year, including an average of \$200 million per year in

¹³⁰ Elisabeth Malkin and Randal C. Archibold, "US Withholds Millions in Mexico Antidrug Aid," *The New York Times*, Sep. 3, 2010, at <http://www.nytimes.com/2010/09/04/world/americas/04mexico.html>, accessed Aug 8, 2012.

¹³¹ *Id.* at 4.

¹³² *Id.* at 4-5.

¹³³ Consolidated Appropriations Act, 2010, P.L. 111-117, Sec. 7039 (b).

¹³⁴ Jim Zanotti, "US Foreign Aid to the Palestinians" (2011), *Congressional Research Service*, at <http://fpc.state.gov/documents/organization/166792.pdf>, accessed Aug 13, 2012.

direct budgetary assistance, \$100 million in security assistance to the PA, and \$200 million per year through USAID. In 2012 alone, US bilateral assistance consisted of approximately \$530 million.¹³⁵

The total dollar amounts of annual aid from the US to the PA (see Figure 4) in large part represent direct funds issued to the PA through USAID. This direct assistance is intended to cover costs of government administration, education, health, economic development, and humanitarian assistance. The US also provides assistance through its International Narcotics Control and Law Enforcement (INCLE) in order to train, reform, and provide non-lethal equipment for PA civil security forces; to restrain militants from Hamas and other organizations advocating violent jihad; and to institute rule of law for a future Palestinian state.¹³⁶

US Congress conditions the PA's receipt of the funds on its commitment to peaceful coexistence with Israel and restriction of terror related activities. However, there is inadequate accountability and oversight of the PA's use of the funds and, meanwhile, the PA is not required to abide by international human rights norms prior to receiving the funds. Human rights organizations operating in the West Bank and Gaza have urged the international community to condition funding to the PA on human rights reforms. In February 2011, following a violent attack by the PA security forces on peaceful demonstrators at a pro-Egypt rally in Ramallah, the Human Rights Watch stated: "The US and EU should suspend aid to Palestinian Authority forces unless the Palestinian authorities take appropriate measures to end such abuses and allow Palestinians to enjoy their rights to freedom of assembly and expression." The speaker, Sarah Leah Whitson, head of Human Rights Watch's Middle East and North Africa division, added that instigators of the violence should be prosecuted. "The PA should take action against the responsible police officers or the US and EU should find another use for their taxpayers' money."¹³⁷

The PA's Funding of Terrorism

In contradiction with the stated values and regulations on foreign aid held by the EU and the US, evidence suggests the PA funds terror-related activities out of foreign aid. Under a newly enacted Palestinian law, for example, the PA allocates monthly salaries to Palestinians imprisoned in Israel for terror-related offenses. The salary goes directly to the prisoner or the prisoner's family from the day of arrest. Currently, families of more than 5,500 Palestinian prisoners are receiving aid totaling over \$5,207,000 per month. This program is entirely subsidized by foreign aid.¹³⁸

¹³⁵ Id.

¹³⁶ Id.

¹³⁷ "Palestinian Authority: End Violence Against Egypt Demonstrators," *Human Rights Watch*, Feb. 4, 2011, at <http://www.hrw.org/news/2011/02/03/palestinian-authority-end-violence-against-egypt-demonstrators>, accessed Aug 8, 2012.

¹³⁸ Palestinian Media Watch, PMW SPECIAL REPORT, JULY 26, 2011, at <http://palwatch.org/STORAGE/special%20reports/Funding%20terrorists%20with%20US%20money.pdf>, accessed June 2012 (hereinafter, "PMW Report").

In addition, PA officials regularly commemorate terrorists. In March 2011, the PA Minister of Prisoner Affairs visited the family of terrorist Abbas Al-Sayid, who planned a suicide attack in 2002 that killed 30 Israelis. The family was given an honorary plaque.¹³⁹ In honor of Mother's Day in March 2011, PA Prime Minister Salam Fayyad honored three Palestinian women who were directly involved in terrorist bombings in Israel.¹⁴⁰ In April 2011, the PA Minister of Prisoner Affairs unveiled a "Tree of Freedom for Prisoners" in Bethlehem during a ceremony honoring 73 terrorists serving life sentences in Israeli prisons.¹⁴¹

PA Prime Minister Fayyad sponsored a children's summer camp in 2011 in which the children were divided into three groups named after three renowned terrorists: Dalal Mughrabi, who led the most lethal attack in Israel's history, Salah Khalaf, who headed the Black September terror group, and Abu Ali Mustafi, the General Secretary of the Popular Front for the Liberation of Palestine.¹⁴² In each of these cases, the general budget support granted to the PA by the US enabled this celebration of terrorists or individuals involved in terror-related activities.

Celebration of Terrorism in the PA Media

Through its official media, the PA encourages an understanding of terrorism as heroism by commemorating anniversaries of terrorist attacks, those that assist them, and the terrorists themselves. For example, on the anniversary of the Fatah movement in January 11, the official PA TV celebrated terrorist Dalal Mughrabi who was involved in the 1978 Coastal Road massacre that killed 38 Israeli civilians, including 13 children.¹⁴³

In March 2011, PA TV honored Ahlam Tamimi, the woman who drove the suicide bomber to the Sbarro pizza in Jerusalem in which 15 people were murdered in 2001. The PA TV included footage of a certificate Fatah awarded to Tamimi. The certificated read, "To the heroic prisoner, Ahlam Tamimi, as a token of esteem for your sacrifices and your acts of heroism..."¹⁴⁴

In April 2011, the official PA daily referred to four terrorists involved in murdering 117 Israelis as "heroic."¹⁴⁵ Then in May 2011, PA TV honored terrorist Fahimi

¹³⁹ "A Palestinian 'gift' for Passover- Official Palestinian promotion of terrorism," *Israel Ministry of Foreign Affairs*, Apr. 8, 2011, at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Palestinian_incitement/Palestinian_gift_for_Passover_8-Apr-2011.htm, accessed Aug 8, 2012.

¹⁴⁰ PMW Report, *supra* note 137, at ¶11.

¹⁴¹ "PA unveils 'Tree of Freedom' decorated with pictures of terrorists serving life sentences," *Palestinian Media Watch*, May 19, 2011 at http://palwatch.org/main.aspx?fi=157&doc_id=5035, accessed Aug 8, 2012.

¹⁴² PMW Report, *supra* note 137, at ¶10.

¹⁴³ *Id.* at ¶17.

¹⁴⁴ *Id.* at ¶ 18.

¹⁴⁵ *Id.* at ¶ 16.

Mashahr, an accomplice to a suicide bombing in Jerusalem that killed 19 Israelis. The PA television host told Mashahr's daughter that her father was "heroic."¹⁴⁶

The use of US funds by PA officials and the PA media to celebrate acts of terrorism against Israel both stands in violation of US laws governing foreign aid and reduces the funds available for the PA to "reduce poverty, improve health and education, create jobs and advance democracy." In pursuit of these goals of USAID, the United States should take action to ensure all USAID funds are appropriately invested in building up Palestinian society in accordance.

Financial Corruption within the PA

Charges of financial corruption within the PA are frequent and involve a prodigious amount of money. After the PA ousted him in 2011, former Fatah leader Mohammad Dahlan accused Mazen of financial corruption and poor character, observing that the situation in Israel and the West Bank and Gaza has enabled Mazen "to practice dictatorship against the Palestinian people, silence people and deny them their salaries."¹⁴⁷ Dahlan claimed he was forced out of the PA because he inquired into the disappearance of \$1.3 billion from the Palestinian Investment Fund—an independent investment company established in 2000 to "maximiz[e] the assets' value for its shareholders: the Palestinian people" that, since the death of Arafat, Mazen personally oversees. Dahlan says the amount of money held in the fund shrunk from \$2 billion to \$700 million for unknown reasons.¹⁴⁸

Concerned about millions in foreign aid going to waste, the international community asked Salam Fayyad, at that time an economist, to supervise spending in the PA. For years, little action was taken to investigate cases where embezzlement of public funds was suspected. Mazen recently established the Anti-Corruption Commission along with a special court to investigate cases of corruption and embezzlement within the PA. In 2011, two PA Ministers faced accusations of corruption: Economy Minister Hassan Abu Libdeh and Agriculture Minister Ismail Daiq. On April 30, 2012, the Anti-Corruption Commission filed charges of fraud, embezzlement and money laundering against Arafat's former economic advisor, Mohammed Rashid. Head of the Commission Rafik Natche said Rashid is suspected of taking millions of dollars out of the Palestinian Investment Fund and the PLO's treasury, as well as setting up fake companies in his name and in the names of relatives. "The money and the companies disappeared," Natche stated.¹⁴⁹

Osama Mansour, the PA official in charge of tracking Palestinian land sales to Israelis, recently faced accusations that he was stealing money the PA entrusted to him to

¹⁴⁶ *Id.* at ¶ 19.

¹⁴⁷ Khaled Abu Toameh, "Abbas 'Feels He's Above the Law,' Charges Dahlan," *The Jerusalem Post*, July 31, 2011, at <http://www.jpost.com/MiddleEast/Article.aspx?id=231686>

¹⁴⁸ *Id.*

¹⁴⁹ "Arafat's moneyman targeted in highest-profile Palestinian corruption probe," *Associated Press*, May 17, 2012, at <http://www.alarabiya.net/articles/2012/05/17/214664.html>, accessed Aug 13, 2012.

catch Palestinians selling land to Israelis and to buy the land back when possible. Mansour fell from a window to his death in July 2012 while in Palestinian custody. The PA claimed he committed suicide, but Mansour's family suspects he was killed.

USAID Funding of Propagandist Education

In 2007, USAID was audited following allegations that USAID funds were indirectly supporting terrorist activity. In the audit, USAID admitted that it could not "reasonably ensure" that its funding was not ending up in terrorist hands. USAID later implemented a specialized vetting process and audits to ensure that funds are not diverted to Hamas or other terrorist organizations.¹⁵⁰

Epidemiological research shows a correlation between hate language—language “used to dehumanize, demonize, stigmatize, delegitimize, or slander groups defined by their national, ethnic, religious, racial or political identity”—and acts of violence. When prejudice, bigotry, revulsion and hatred are accepted, individuals immersed in them become predisposed to violence and bystanders to violent behaviors are desensitized and therefore do not protest against such behaviors.¹⁵¹ Journalist David Bedein discovered in a recent investigation that Palestinian school textbooks continue to praise the use of terrorist violence against Jews and to deny the existence of the State of Israel. Eldad Pardo, board member of the Institute for Monitoring Peace and Cultural Tolerance in School Education (IMPACT-SE) and head of the organization's Palestinian textbook research group, asserted, "There is generally a total denial of the existence of Israel – and if there is an Israeli presence it is usually extremely negative."¹⁵² In Palestinian geography textbooks, Israel usually does not appear in maps of the Middle East, instead "Palestine" is shown to encompass Israel, the West Bank and the Gaza Strip. Jaffa is also shown on maps of "Palestine," but Tel Aviv and other predominantly Jewish cities, such as Ramat Gan, are not displayed.¹⁵³

IMPACT-SE also found that Palestinian textbooks include many references to martyrdom, death, jihad and refugees returning to cities and towns in Israel – and frequently demonize Israelis and Jews. Other textbooks teach students "the rank of shahid (martyr) stands above all ranks," and included a Muslim hadith about the destruction of Jews by Muslims on the day of the resurrection, which also appears in the Hamas charter.¹⁵⁴ This reflects a larger pattern permeating Palestinian culture

¹⁵⁰ Zanolli, *supra* note 133.

¹⁵¹ "Can we prevent genocide by preventing incitement?" Jerusalem Center for Genocide Prevention (JCGP), http://www.genocidewatch.org/images/Articles_Can_we_prevent_genocide_by_preventing_incitement.pdf, accessed Nov 5, 2012.

¹⁵² Joshua Hamerman, "Israel absent or only negative presence in PA textbooks," *The Jerusalem Post*, Apr. 13, 2011, at http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?ID=216374&R=R1&utm_source=twitterfeed&utm_medium=twitter, accessed Aug 13, 2012.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

that reveals itself on television, in banners posted in streets, in newspapers, and in colleges and universities.

The Jerusalem Center for Genocide Prevention states, "People are not born to hate, and a culture of death is not natural to life."¹⁵⁵ Education can either embrace positive core values of life and dignity of the other, or it can reinforce negative depictions of the other. According to Bedein, the Palestinian textbooks containing and schools where they are used have been largely financed by USAID. While USAID stated that these funds have been used to "reduce poverty, improve health and education, create jobs and advance democracy," a USAID official admitted to Bedein that the agency does not inspect the PA school curriculum to ensure that it complies with the terms of the US-backed peace process.¹⁵⁶

CONCLUSION

Establishing a political context where human rights are protected is a long-term process that governments must continuously envisage and move towards. Within such a context, human life—including life of people who differ in terms of religion, ethnicity, and politics—is celebrated, government officials are accountable to those they serve, and justice mechanisms are strong.

This report has highlighted several human rights violations regularly committed by the Palestinian government authorities: arbitrary detention, torture and cruel punishment, violation of freedom of expression and the freedoms of the press, violation of freedom of religion and minority rights, and the violation of the rights of women and children. Given the strong financial ties of the European Union and the US to the PA and their responsibilities to uphold and affirm the human rights of each individual regardless of where they reside, the European Union and the US should leverage their relationships to the PA to exhort it to demonstrate and strengthen its commitment to international human rights standards as reflected in the Universal Declaration of Human Rights.

While continued funding to the PA is vital to sustain its existence and maintain security in the West Bank, the European Union and the US should make the continued funding of the Palestinian government contingent upon the PA's commitment to instituting the reforms that would create better human rights conditions. Considering the large sum of foreign aid to the Palestinian Authority and speculation of gross corruption within the PA's finances due to lack of accountability, the European Union, the US, and other foreign aid providers should recognize the need for and take steps to encourage stronger transparency and a stronger system of controls within the PA. Continued funding of the Palestinian government should be contingent upon demonstrated commitment to human rights reforms and real reform.

¹⁵⁵ JCGP, *supra* note 150.

¹⁵⁶ Tzvi Ben Gedalyahu, "Expose: USAID Funds PA Schools for Incitement," *Arutz 7*, November 11, 2009 at <http://www.israelnationalnews.com/News/News.aspx/134354>, accessed Aug 8, 2012.

Jerusalem Institute of Justice urges the international community and human rights organizations to work together to call for the following specific reforms:

- The PA's adoption of the core value of life and respect for life as the most important human right. "Live and let live."
- The PA's prevention of hate language and incitement, especially when it is directed at vulnerable populations such as youth.
- Allocation of a portion of foreign aid to the Palestinian Government authorities for the purpose of educating the population about their basic rights and the way residents can act to gain relief due to violation of these rights at the local and/or international level.
- Disclosure by international human rights organizations working in the West Bank and Gaza of known violations by Palestinian government authorities.
- Tighter mechanisms of public disclosure of money transfers among PA funds and stronger controls within the PA's financial structure in order to promote an atmosphere of internal accountability and to discourage corruption.
- Ensuring due process including swift, unbiased and fair investigations, indictments, and trials.
- Strengthening of the independence of the judicial authority, especially from security agencies.
- PA inspection into prisons and detention centers to ensure the holding of detainees is in compliance with the legal framework and that detainees receive due process of law.
- Increased internal monitoring over detention centers and investigation of incidences of torture and inhumane treatment.
- Accountability of the PA security agencies to cease the practice of torture and inhumane treatment in detention centers and prisons and follow through with accountability measures for violators of such orders.
- Discontinuation of trying journalists before military courts.
- Investigation and justice in cases of honor killings.
- Greater disclosure of allocation and use of USAID program funding to reduce the chance that the funds will be used to support terrorist activities.
- Cessation of the PA's celebration and commemoration of terrorists and terrorism.
- Removal of content within textbooks that hinders positive perceptions of the "other" based on core values of life and human dignity.

The PA is heavily reliant upon foreign aid from around the world and thus is in a position to listen to the international community, especially as it seeks to further establish a presence in global venues such as the UN. The PA currently aspires to

acquire a higher level of autonomy and governance over people living in geographic areas, which are currently stewarded by the government of Israel. Should the PA obtain an increased level of self-government before civil reforms are implemented and human rights abuses are reduced, JIJ believes the quality of life of the Palestinian people will be negatively affected and therefore views such reforms as an immediate concern for the international community. The international community should not endorse, much less actively advance, any solution to the Israeli-Palestinian conflict that does not place the human rights of all peoples in this region as a top priority and consideration.

Engaging the PA in dialogue on sustainable measures of human rights reform will also draw the facts into the public's eye to deepen global understanding of issues inherent to the conflict. An awareness of this key dimension of the conflict in Israel and the West Bank and Gaza is needed in the public square, and all parties involved should follow up knowledge of the situation with firm action in order to encourage change in the West Bank and Gaza. This will serve to further the cause of universal human rights in our day.