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ISRAEL, THE OCCUPIED WEST BANK AND GAZA STRIP, AND THE PALESTINIAN AUTHORITY TERRITORIES

JUSTICE UNDERMINED:
Balancing Security and Human Rights in the Palestinian Justice System

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I. SUMMARY

This report looks at serious human rights violations committed by the Palestinian Authority (PA) against other Palestinians and the failure of the Palestinian justice system to provide safeguards and redress. It concentrates on the year since the renewal of violent clashes between Palestinians and Israeli security forces in September 2000—an uprising known among Palestinians as the al-Aqsa Intifada or Intifada II (the Intifada). The report looks at underlying weaknesses of the Palestinian justice system that were evident long before the Intifada, as well as the deterioration in the application of justice as a result of the challenges posed by of the current conflict and the impact of Israeli policies. It documents serious abuses such as torture of detainees, arbitrary arrest, prolonged arbitrary detention, the imposition of the death penalty and carrying out of executions after grossly unfair trials, the failure to bring to justice those responsible for vigilante killings, and the impunity of security forces and other officials who commit serious abuses.

The victims of these abuses during the past year have mostly been Palestinians detained as alleged collaborators with Israel, hundreds of whom have been arrested since the beginning of the current Intifada. Most are suspected or alleged to have provided information about other Palestinians to Israeli security forces or to have been involved in selling Palestinian lands to Israelis. Previously, before the start of the current Intifada, the victims and the majority of detainees were members of militant groups such as the Islamic Resistance Movement (Hamas) and the Palestinian Islamic Jihad Movement (Islamic Jihad), as well as other Palestinian critics of the PA. However, when the current Intifada began, the PA released most of the detainees it was then holding from these groups, despite concern that some may have been responsible for attacks on Israeli civilians.[1] Clearly, as civilians may never be targeted for attack even in situations of armed conflict or occupation, if the PA has evidence that any past or present detainees or others have committed violent offences against Israeli or other civilians, it should bring them to justice for these acts in accordance with international fair trial standards.

Some of the detainees released at the start of the current Intifada, as well as other Palestinian militants or critics, have been briefly redetained and released periodically during the past year, usually following armed Palestinian attacks against Israelis. Most recently, in September and October 2001, the PA again began arresting alleged planners or perpetrators of armed attacks against Israeli citizens.[2] These arrests followed heightened pressure from Israel for the PA to clamp down on those responsible for carrying out suicide bomb attacks and other violence against members of the Israeli Defense Forces and Israelis.

On October 31, 2001, Ghazi Jabali, director-general of the Palestinian police, issued an order that placed seven alleged members of Islamic Jihad and Hamas in administrative detention, without charge or trial, for periods of six months to one year.[3] Human Rights Watch considers this development to represent an alarming weakening of the PA's already fragile judicial system.

Human Rights Commitments of the Palestinian Authority

Although it is not yet an independent state, the PA aspires to be the government of a sovereign state. PA leaders have repeatedly pledged in meetings with international human rights organizations, in radio broadcasts and in the Oslo Accords that the PA intends to abide by internationally accepted human rights norms. The Draft Palestinian Basic Law, as yet unratified by President Arafat, reflects international human rights guarantees. The PA should be held accountable under accepted international human rights standards in the treatment of persons living under its jurisdiction.

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[1] According to media reports, the first release took place on October 4, 2000, when a group of twelve Hamas detainees were released from Gaza Central Prison. Subsequent releases took place circa October 8 and October 12. See Jeruslaem Media and Communications Center (JMCC), "The Seventh Day of the al-Aqsa Intifada," JMCC daily press summary, Vol. 7 Number 2025, October 5, 2000; JMCC, "Cabinet Meeting Yesterday: Hamas and Islamic Jihad Representatives Attended," JMCC Daily Press Summary, Vol. 7 No. 2028, October 7, 2000.

[2] Amnesty International estimates that at least sixty people were arrested during this period. See Amnesty International, "Palestinian Authority: Justice Must Not Be Discarded," news release, November 8, 2001 (MDE 21/023/2001 197/01).

[3] See Al-Haq, "Al-Haq Condemns the Palestinian National Authority's Administrative Detention of Seven Palestinians," press release, November 4, 2001.

Yet, the serious human rights abuses described in this report undermine crucial foundation stones of an effectively functioning state that respects human rights, including the rule of law, the separation of powers, independence of the judiciary, and the legal accountability of officials who violate the law. While the abuses continue, and so long as the authority and independence of the judiciary are not respected, Palestinians will continue to lose confidence in the willingness and ability of the system and their leaders to protect them against the arbitrary exercise of power by Palestinian security forces and officials.

Underlying Flaws in the Palestinian Justice System

Many of the human rights abuses described in this report have their origin in fundamental shortcomings of the Palestinian justice system. The PA executive—the president, ministers, the police and the range of different security forces – have systematically undermined the authority and independence of the judiciary, the law, and legal remedies. The separation of powers is not respected. By weakening the ability of the judiciary to hold the executive accountable, the executive has permitted officials to commit serious human rights abuses, including torture, unlawful killings, and prolonged arbitrary detention with impunity.

A detainee who is arbitrarily detained can complain to the attorney general and petition the High Court to be released. However, the security forces systematically ignore orders of the High Court to release detainees who are being held arbitrarily. Although it is a criminal offense not to follow such court orders, no member of the security forces or other official has been prosecuted or convicted for such abuses. Despite his obligations under the law, the attorney general rarely intervenes when detainees complain of arbitrary detention or mistreatment and in practice has little authority over the security forces, especially in relation to alleged collaborators and Islamists in detention. The institution of the attorney general has been weakened further by the creation in November 1999 of the post of state security attorney general.

Direct interference by the executive is further undermining the independence of the judiciary. On at least two occasions in 1996 and 1998, judges were removed without good cause. In June 2000, President Arafat established the long-awaited High Judicial Council, which has responsibility for appointing, promoting, disciplining, and training judges. Yet in September 2001 the security forces arrested a judge allegedly for facilitating the sale of land to Israelis, ignoring the authority of the High Judicial Council to sanction the arrest of a judge.

President Arafat has still not ratified several laws passed by the Palestinian Legislative Council (PLC) that are essential for unifying and updating the laws throughout the territory under the administration of the PA and establishing the rights of all persons in the PA areas. These key laws are the Draft Palestinian Basic Law (passed by the PLC in October 1997), the Draft Judicial Authority law (passed in November 1998), the Draft Ordinary Courts Law (passed May 2000), and the Draft Penal Code (passed June 2000).

At least ten different security forces operate in the PA. They tend to perform as autonomous units with ill-defined, overlapping and poorly coordinated functions. With little accountability, they often ignore the judicial system and the laws governing their actions. The three security forces most frequently mentioned in this report are the Military Intelligence Service (MIS or *Istikhbarat*), the General Intelligence Service (GIS or *Mukhabarat*), and the Preventive Security Service (PSS or *al-Amn al-Wiqa'i*).

The Palestinian justice system was weak and politicized after operating from 1967 until 1994 under Israeli military administration, which did not encourage an independent judiciary and neglected its physical infrastructure. Palestinian courts did not handle cases related to security or political matters during the period of Israeli military administration. Thus, the period from the inception of the PA in 1994 represents the first time a local Palestinian legal system has been required to deal with political or security cases since 1948.

The justice system has been further damaged by the PA's failure to give sufficient authority, respect, and financial and other resources to the judiciary. The system is plagued by an insufficient number of judges, the lack of properly qualified and a lack of trained judges, prosecutors, lawyers, and court officials. The inadequate budget

provided by the PA for the judiciary has meant poor salaries that encourage corruption, and result in further deterioration of buildings and infrastructure.

Impact of Israeli Responses to the Current Intifada

The fragile Palestinian justice system has been battered further by Israeli responses to the current Intifada. The policies of closures, blockades, and other restrictions on freedom of movement have brought chaos to the day-to-day functioning of the courts. Judges, lawyers, and witnesses have found it difficult or impossible to reach court buildings. Human Rights Watch has also noted instances of Israeli harassment of Palestinian human rights lawyers, which have affected their ability to represent and reach clients.[4]

Over the past year, several police, security, and civil defense installations—including prisons and detention centers—have been damaged by Israeli shelling or air strikes, often carried out in reprisal for attacks on Israelis by armed Palestinians, for which Israel holds the PA responsible.[5] While Israel has called on the PA to imprison individuals involved in the planning and carrying out of attacks on Israelis, such reprisal attacks on the installations of the very organs that should be conducting these arrests appear to undermine that outcome. PA officials have complained that such attacks are compromising their ability to maintain law and order and have further cited the threat to the lives of detainees from such attacks as a reason for releasing large numbers of detainees.

Abuse of Arrest and Detention

Human Rights Watch estimates that, as of September 2001, the PA was holding more than 450 Palestinians without charge or trial, the majority of them for allegedly being informants for Israeli security forces but some for alleged involvement in the sale of Palestinian land to Israelis.[6] This report examines in particular PA administration of justice as it pertains to these detainees.

These detainees, like many activists detained before them, regularly experience violations of their internationally-recognized human rights. Palestinian security forces sometimes arrest alleged collaborators arbitrarily, without sufficient evidence, acting on rumors and popular denunciations. Detainees are commonly arrested without a warrant and not told the reasons for the arrest; their families are not informed of their whereabouts and while under interrogation the suspects are denied access to lawyers and independent doctors. They are commonly not brought before a judge within twenty-four or forty-eight hours, as required by Palestinian law. In many cases extensions in police custody are not authorized, as required, by the attorney general. Once arrested, they can spend months in detention without charge or trial, and without judicial supervision or an effective remedy to secure their release, at risk of abuse by the security forces that hold them.

On October 31, 2001, the PA entered a new phase by issuing administrative detention orders placing seven alleged members of Islamic Jihad and Hamas in untried detention, without charge, for periods of six months to one year.[7]

Persistence of Torture

Those detainees who undergo interrogation by Palestinian security forces are often tortured, especially if they are suspected collaborators and particularly if held by the MIS, the GIS, or the PSS. They are generally not physically ill-treated after interrogation ends, when they are usually transferred to a prison. The techniques of torture include *shabah* (prolonged sitting or standing in painful positions), *falaqa* (beating on the soles of the feet), beating, punching and kicking, suspending from wrists, and threats of death. Five Palestinians are known to have died in police or security force custody since the current Intifada began, at least three in circumstances that

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[4] See "Impact of Israeli Restrictions and Attacks" below.

[5] Since the beginning of the Intifada, police stations and security or civil defense installations have been damaged by Israeli shelling or airstrikes in and around the main Palestinian towns of Ramallah, Nablus, Jenin, Tulkarem, Qalqilya, Jericho, Khan Yunis, Rafah, and Gaza City. Many of these installations contain holding or detention facilities. Al-Saraya prison in Gaza City and Junayd prison in Nablus were also damaged in such attacks.

[6] Human Rights Watch interview, Gaza City, September 5, 2001.

[7] See Al-Haq, "Al-Haq Condemns. . . ."

suggest torture may have contributed to their death. This brings to twenty-eight the number of detainees known to have died in custody since the PA was established in 1994.[8]

At least five factors encourage the torture of detainees under interrogation. First, detainees are routinely denied access to the outside world and the protection this brings while they are under interrogation. Second, prosecutors in the State Security Courts rely heavily on uncorroborated, signed confessions as the only or primary evidence, so there is intense pressure on the security forces to extract information from suspects. Third, perpetrators enjoy impunity. Torture allegations are usually dealt with by individual security forces as a confidential and internal disciplinary matter, a practice that is inadequate as an effective deterrent. Fourth, the absence of clear instructions by security force commanders and proper training of all security forces personnel has impeded the development of a culture of respect for the human dignity of all detainees. Finally, there exists a general public attitude that alleged collaborators deserve whatever treatment they receive by way of punishment, exacting revenge, and deterring others.

State Security Courts and Grossly Unfair Trials

The State Security Court, a special tribunal whose procedures do not comply with international fair trial standards, has displaced and undermined the ordinary courts. Established by presidential decree in 1995, with the strong encouragement of the U.S. and Israel, the court is neither independent nor impartial. The president convenes the court on a case-by-case basis. He can decide which cases are referred to it and he appoints and dismisses its judges at will. The ordinary courts have been further undermined and marginalized as the president has transferred jurisdiction over an increasing number of crimes, many of which have little to do with national security, to the court.

Since the current Intifada began, sixteen defendants have been tried in the Higher State Security Court or Military Court as informants for Israeli security forces. Fifteen have been convicted. Eleven of the fifteen were sentenced to death and two executions have been carried out.

Although the authorities have rectified some of the abuses of trial procedures prevalent when the court was established, the trials are still inherently and grossly unfair. Many are held in a highly charged atmosphere that compromises the right of defendants to be presumed innocent until proven guilty. Some hearings seem to have been hastily convened in response to Israeli attacks and to assuage public anger. Most trials last only a few hours. Most defendants who deny the charges against them are convicted solely or principally on their uncorroborated, signed confessions, obtained while they were held in incommunicado detention, and which they often retract in court. The court has consistently failed to investigate adequately defendants' allegations that their confessions were extracted under torture. In violation of international standards and usual procedures in Palestinian laws, those convicted by the State Security Court have no right to appeal to a higher court.

Except in rare cases, the accused are defended by court-appointed counsel who are not practicing lawyers, but serving members of the security forces. They usually say little on behalf of their client, fail to present a proper defense and sometimes use language showing they consider their client to be guilty. Little advance notice of a trial is given, usually only a day. Defense lawyers sometimes have a few minutes, or in some cases twenty-four hours, to prepare their defense. Some court-appointed defense lawyers have tried to challenge evidence and present elements of a defense, but they have usually been blocked by court rulings. For example, the court invariably rejects requests for adjournments to prepare a defense.

Street Injustice: Vigilante Killings of Alleged Collaborators

Since this Intifada began Human Rights Watch estimates that at least thirty Palestinians, mostly alleged or suspected collaborators, have been shot or stabbed to death by unknown attackers in execution-style killings. The

[8] Twenty-three deaths in custody took place from 1994 to 2000. See Human Rights Watch, *World Report 2001* (New York: Human Rights Watch, 2001), p. 367. Deaths in custody during 2001 are listed in "Torture, Ill-Treatment and Deaths in Custody" below.

real total may be higher. In one town alone, Tulkarem, a human rights fieldworker told Human Rights Watch there had been eleven such vigilante killings since September 2000.

With no semblance of due process, completely outside the justice system, some killings appear to have been motivated by personal grievances. Others have resulted in the mistaken killing of the wrong person. In many cases a clandestine group has claimed responsibility and denounces the victim as a collaborator. While President Arafat and other senior PA officials have condemned the killing of alleged collaborators,[9] investigations by PA security forces have been perfunctory and not a single perpetrator has been brought to justice.

Balancing Security and Human Rights during the Intifada

The issue of collaborators has become acute during this Intifada, chiefly because of the Israeli policy of "liquidations." Many Palestinians are convinced that this policy of targeted killing of alleged Palestinian militants has depended on Palestinian informants. This sense of an "enemy within" has split communities and families and spread fear and suspicion.

A government or governing authority has a responsibility to provide basic security and prevent attacks on its citizens. However, the imperative of guaranteeing security must be balanced with respect for the human rights of alleged offenders. Policies undertaken in a time of national crisis must still respect the rule of law, not abrogate it. Many Palestinian human rights organizations and lawyers have strongly argued in support of this view.

The new challenges facing the fledgling Palestinian justice system as a result of the current Intifada should not be met with further arbitrary arrests, torture, and unfair trials. Such a response undermines the very notion of a justice system and risks leading to anarchy, loss of confidence in the institutions of governance, and the deeper alienation of Palestinians from their authorities and one another. The weaknesses of the justice system should be overcome by resorting to strict respect for the rule of law and for international human rights standards. These international human rights principles highlight serious deficiencies in the way the PA has responded to the perceived threat of collaborators.

First, certain human rights can never be suspended in any circumstances. Torture and extrajudicial, arbitrary, or summary killings are prohibited no matter what the alleged offense. Yet, this report confirms that alleged Palestinian collaborators have been tortured and some have died in custody.

Second, it is a basic principle of criminal law that, for an individual to be detained, she or he must be suspected of or charged with having committed a recognizable criminal offense. PA officials told Human Rights Watch they only arrest, detain, and prosecute collaborators who fall into two categories. The first is made up of those who have had a relationship with Israeli security after 1994, especially informants who give information that assists Israel in its policy of "liquidations."[10] From the perspective of the Palestinian Authority, giving such information to Israel amounts to a recognizable criminal offense akin to "treason" or "espionage," and is punishable by death or a lengthy term of imprisonment.

The PA also says it arrests Palestinians who sell land to Israelis. It is not uncommon for governments to prohibit or penalize the alienation of land to foreigners, including nationals of neighboring countries. Violations of such prohibitions are usually dealt with by blocking the sale of land in the courts, and/or by imposing fines or terms of imprisonment. In the context of the Palestinian-Israeli conflict, the PA has declared all such alienation of land as a threat to national security carrying a lengthy term of imprisonment, or even the death penalty.

In both of the above examples the PA does not distinguish between different levels of culpability, nor does it appear to take account of the intentionality element of the crime. For example, mere contact with Israelis, even Israeli security officials, should not by itself constitute a treasonable offense unless the accused carried out a

[9] See *Amman Al-Dustur*, "PA Justice Minister Interviewed on Issue of 'Collaborators' With Israel," FBIS, March 18, 2001, p 32 (FBIS-NES-2001-0318).

[10] See Human Rights Watch, "Letter to Ehud Barak: Halt 'Liquidations'," press release, January 29, 2001.

specific act. An unwitting participant in Israeli intelligence-gathering activity should not be charged with, nor found guilty of, the severe crime of treason.

Finally, all persons are entitled to equal rights during arrest and detention. An alleged collaborator, like any suspect, must still be treated equally in accordance with Palestinian law and international standards for arrest, detention and trial. No one should be arrested arbitrarily, without sufficient evidence or in violation of legal procedures.

Is Change Possible during the Intifada?

Some Palestinian leaders told Human Rights Watch they agree that measures are needed to reduce or eliminate human rights violations and strengthen the justice system, but that such reforms are not possible while the heightened conflict with Israel and the pressure of Israeli restrictions continue. On the contrary, Human Rights Watch believes that the PA can and should take practical steps now, even in the middle of this crisis, to ensure justice and build an effective and independent Palestinian justice system. The recommendations below are made with the realities of the current crisis clearly in mind. But they are made with the conviction that there is an urgent need to stop those widespread and serious human rights violations that are being committed by Palestinians officials against fellow Palestinians.[11]

II. RECOMMENDATIONS

To the Palestinian Authority

End Torture and Impunity

- Condemn publicly, and at the highest level, all torture and ill-treatment of detainees. Instruct all security officials not to use these practices. This statement should be widely disseminated to all personnel of all security forces, along with clear guidance on the forms of interrogation and treatment that amount to torture or ill-treatment and are prohibited.

- Investigate all allegations of torture and ill-treatment thoroughly and impartially, release the results, and prosecute those responsible in public trials that meet international standards for fairness, with punishments that reflect the seriousness of the offense. Prohibit security forces from dealing with allegations of torture purely as an internal and confidential disciplinary matter.

- Carry out autopsies after every death in custody and make public the results.

- Carry out independent investigations of all deaths in custody, publicly release the findings, and, as appropriate, discipline or prosecute any member of the security forces or prison service or other officials found to be responsible.

Give All Detainees Prompt and Regular Access to Family, Lawyers of their Choice, Medical Attention, and Judicial Supervision

- Maintain a public register of all individuals detained;

[11] Recent Human Rights Watch publications on Israel, the Occupied Palestinian Territories and the Palestinian Authority include: Human Rights Watch, *Israel, the Occupied West Bank, Gaza Strip, and Palestinian Authority Territories: Center of the Storm: A Case Study of Human Rights Abuses in Hebron District* (New York: Human Rights Watch, 2001); Human Rights Watch and Amnesty International, "Human Rights Monitors Needed in Israeli-Palestinian Conflict," open letter to leaders of US, EU, Israel, and PA, and UN Secretary-General Kofi Annan, July 6, 2001; Human Rights Watch , "Israel/Palestinian Authority: Call on Islamic Jihad to Stop Civilian Killings," press release, November 8, 2001. A full list of Human Rights Watch publications and press releases on Israel, the Occupied West Bank and Gaza Strip, and the Palestinian Authority Territories can be found at http://www.hrw.org/mideast/is-ot-pa.php.

Failure to Ratify the Basic Law and Judiciary Laws

President Arafat has failed to ratify several laws passed by the PLC that are essential to build a firm legislative foundation for the justice system and respect for human rights. The Palestinian Draft Basic Law was approved by the PLC on October 2, 1997. It would provide the PA an interim constitution, set out the rights of all residents in the Palestinian areas, guarantee an independent judiciary and separation of powers, and strengthen the ability of victims to assert their rights. But President Arafat has not yet ratified this law, so it has not taken effect.

The PA inherited different legal systems in the West Bank and Gaza, each with its own multiple layers of accumulated laws. French-influenced Jordanian criminal law and procedure largely operate in the West Bank. A combination of Egyptian and British Mandate law, reflecting the Anglo-Saxon system, operates in the Gaza Strip. There is an urgent need to remove this confusion by unifying and updating the laws throughout the Palestinian areas. A prison law (the Reform and Rehabilitation Centers Law, No.6 of 1998) was passed and ratified in May 1998. The Draft Criminal Procedure Law is still under discussion by the Legal Committee of the PLC.

President Arafat has also failed to ratify three fundamental laws that would strengthen the independence and authority of the judiciary: the Draft Judicial Authority Law, passed by the PLC on November 25, 1998,[35] the Draft Ordinary Courts Law, passed by the PLC on May 17, 2000, and the Draft Penal Code, passed by the PLC on June 28, 2000.

The persistence of the Intifada presents no obstacle to such ratification. President Arafat could immediately ratify these laws and demonstrate a significant commitment to building an independent and effective judiciary.

Proliferation of Unaccountable Security Forces

At least ten different police and/or security forces operate in the PA, with a combined strength of approximately 40,000 personnel.[36] Although in theory they are all accountable to the overall head of security, Gen. Abd al-Razzaq al-Majaida, in practice there is no unified command and they lack an overall legal framework. They lack common standard operating procedures and rules based on human rights standards in such areas as methods of interrogation. They tend to act as autonomous units with ill-defined and overlapping functions. With little accountability they are able to ignore the judicial system and often the laws governing their actions. There is often poor coordination among them, as some Palestinians have discovered when they were arrested and released without charge by one agency only to be rearrested by another (see below). The main agencies involved in arresting "political" and "security" detainees are the General Intelligence (GIS or *Mukhabarat*), the Military Intelligence (MIS or *Istikhbarat*) and the Preventive Security Services (PSS or *al- amn al-wiqa'i*), with Force 17 (*quwa sab?at?ashar*), the elite presidential guard, also sometimes involved.

Lack of Resources, Infrastructure, and Trained Personnel

Almost every lawyer, judge, security force officer, human rights organizations, and PA official with whom Human Rights Watch spoke believed that the justice system was severely weakened by the insufficient number of judges, the lack of properly qualified and trained judges, prosecutors, lawyers and court officials, and the inadequate budget provided by the PA for the judiciary, which leads to the poor salaries that encourage corruption. Budgetary constraints also contribute to crumbling buildings and infrastructure. Mohammad Ayoub, a Palestinian lawyer who has researched the state of the judicial system, has commented:

> Judges do not have the necessary knowledge to exercise their functions. For thirty years [during the Israeli occupation administration] they were told how to fill in forms and not argue matters of substance. This has killed us lawyers. We need training of both judges and lawyers. I desperately need training.[37]

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[35] It reaffirms the independence of the judiciary; establishes the different courts and the attorney general; prescribes the qualifications, duties, and expected ethical conduct of judges; and establishes the High Judicial Council and how judges can be disciplined, removed, or arrested.

[36] See the list of police and security forces in Amnesty International, "Prolonged Political Detention. . . ," p. 7 and Appendix I.

[37] Quoted in Simpson, *Detainees Denied Justice*, p. 34.

In 1999, the U.N. Office of the Special Coordinator in the Occupied Territories carried out a detailed study of the state of the Palestinian judicial system and the needs for future assistance.[38] This study confirmed that although more than U.S. $100 million had been committed to rule of law projects by international donors since the establishment of the PA, there remained serious gaps and weaknesses, especially in relation to the judiciary, the prosecutorial system, and penal institutions. The judiciary needs new and rehabilitated court buildings, a national judicial training institute, and resources to develop the knowledge and capacity of technical court staff such as clerks and researchers, process servers, and court managers. The prosecutorial system needs more prosecutors, basic professional training on the role of a prosecutor, and basic office facilities and equipment. Although there have been some positive developments in recent years, such as the growth of the Institute of Law at Bir Zeit University, the conclusions of 1999 apply equally today.

V. IMPACT OF ISRAELI RESTRICTIONS AND ATTACKS

The Palestinian justice system was already fragile and politicized after operating from 1967 until 1994 under an Israeli military administration, which did not encourage an independent judiciary and neglected its physical infrastructure. It has suffered further from Israeli responses to the current Intifada, including drastic restrictions on freedom of movement, the destruction of police stations, prison and detention centers, and the harassment of human rights lawyers.

Restrictions on Freedom of Movement

Human Rights Watch has documented elsewhere the widespread impact of the Israeli policy of closures, blockades, and curfews of Palestinian areas and tight control of movement into, out of, and within the areas controlled by the Palestinian Authority.[39] In addition to their devastating impact on the Palestinian economy, the closures have seriously impeded access to education, medical assistance and jobs, and have helped to paralyze the day-to-day functioning of the Palestinian justice system. Judges, lawyers, police, and petitioners are able to reach the court only hours late, if at all. Clerks often cannot deliver court documents or summons. The High Court in Ramallah should meet every week for instance, but two of its three judges live in Tulkarem and Hebron. The three judges have been able to meet together only once since the current Intifada began more than a year ago.

The chaos caused by restrictions on movement has aggravated already severe delays in resolving court cases and further eroded the confidence of the public in the system. The PICCR has estimated that restrictions have caused increased delays in 80 percent of cases.[40] The vast majority of Palestinian officials, as well as ordinary citizens, are unable to travel between the West Bank and the Gaza Strip. This has exacerbated the sense of separation and isolation of the two areas, required greater duplication of administration, and weakened coordination and the exercise of a unified authority.

Human rights defenders have also been hit by the restrictions. The Palestinian Society for the Protection of Human Rights and the Environment (LAW), has recounted how a staff member was stranded in Hebron for four days in June 2001 trying to reach the LAW office near Jerusalem.[41] On one attempt he had to turn back when the route was blocked by cement and stone barricades and his car was hit by bullets fired by Israeli soldiers at a checkpoint. On the fifth day he succeeded in leaving Hebron:

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[38] U.N. Office of the Special Coordinator in the Occupied Territories (UNSCO), *Rule of Law Development in the West Bank and Gaza Strip—Survey and State of the Development Effort*, May 1999, available at UNSCO page on the United Nations website: http://www.un.org.

[39] See Human Rights Watch, *Center of the Storm*, pp. 111-129. A policy of severe restrictions on the movement of Palestinians has been in place since March 1993. See Human Rights Watch, "Israel's Closure of the West Bank and Gaza Strip," *A Human Rights Watch Short Report*, Vol. 8, No. 3 (E), July 1996.

[40] PICCR, *Sixth Annual Report*, p. 36.

[41] The quotes are taken from LAW, *Obstacles to LAW due to Israeli Attacks and Closures*, June 13, 2001, http://www.lawsociety.org/Press/Preleases/2001/June/Jun13.html.

> One of the taxis he took was shot at and chased by Israeli soldiers, forcing him and the other passengers to flee the car and run for cover between the trees...The taxis whose drivers were determined to go on were forced to take high and very rugged mountainous routes, after passengers had been made to get out and cross 900 m on foot in a very dangerous area on their way to Bethlehem and Beit Sahour.

He finally reached the LAW office. The journey, which took one and a half hours before the Intifada, now took six and a half hours and required five different taxis.

The closures have also severely limited the ability of Palestinian families to visit their relatives detained in Israeli prisons and of Palestinian lawyers to represent these detainees. Some lawyers have occasionally been able to obtain permits to enter Israel, though the permits are not respected when there is a complete closure. Human rights organizations have had to hire lawyers based in Israel to take on cases.

Destruction of Police Posts, Prisons and Detention Centers

Over the last year, the Israel Defense Forces (IDF) have attacked Palestinian police stations, prisons, and security establishments, often in response to attacks on Israelis. While Israel has repeatedly criticized the PA for failing to take into custody those allegedly responsible for attacks against Israelis, the IDF attacks have severely damaged Palestinian police, prison and security infrastructure and disrupted the administration of justice by destroying offices, places of detention, equipment, and files.

According to the information given to Human Rights Watch, such attacks have also sometimes threatened the lives of detainees. In the first use of Israeli fighter aircraft against Palestinian targets since the 1967 war, Israeli F-16 aircraft attacked several locations in Nablus on May 18, 2001, including Junayd prison. Eleven members of the Palestinian police were killed, including seven prison guards. Thirty-two others were injured.[42] The Israeli attack was part of a coordinated strike on several West Bank targets, undertaken in response to a Palestinian suicide bombing attack outside a shopping mall in the Israeli city of Netanya earlier the same day, in which seven people were killed and up to one hundred were injured. Both Hamas and Islamic Jihad claimed responsibility for the Netanya attack. "The Palestinians are going to pay a very dear price," said Danny Naveh, Israeli minister-without-portfolio. "We lived a very difficult day today and our anger is great."[43]

The al-Saraya prison complex in Gaza City came under IDF fire on May 10, 2001 during an Israeli military action undertaken in response to two instances of civilian killings. On May 9, 2001, two Israeli children were found beaten to death close to the Gush Etzion settlement at Tekoa, near Bethlehem. PA officials condemned the killing and a little-known group, "Palestine Hizbullah Organization," claimed responsibility. Two Romanian workers were killed by a roadside bomb explosion as they tried to repair the fence at a border crossing in Gaza the same day, for which Hamas claimed responsibility. Colonel Hamdi Rifi, the director-general of the Prison Service, told Human Rights Watch that several Israeli missiles were fired at the al-Saraya prison complex in Gaza City during the Israeli attack on May 10, 2001, hitting the educational wing adjacent to the prison.[44] The complex also houses police and security force headquarters. An Israeli Army spokesperson reportedly described the May 10 attack on Gaza City as "a self-defense action by Israel in response to many terrorist attacks over the last few days."[45] The official IDF announcement of the incident made no reference to any attacks directed against Israelis from the prison complex.

Following these attacks, prisoners were released or moved to unofficial detention centers for their safety. The director of prisons in Gaza City told Human Rights Watch that from about June 2001 he began to release 300

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[42] BBC News, "Israeli Warplanes Hit Back," May 18, 2001, http://news.bbc.co.uk/hi/English/world/middle_east/newsid_1338000/1338454.stm.

[43] See, for example, Agence France-Presse, "Warplanes Could Be Used Against Palestinians: Israel," May 18, 2001.

[44] On the attack, see BBC News, "Israel Hits Arafat's Nerve Centre," May 10, 2001, http://news.bbc.co.uk/hi/English/world/middle_east/newsid_1323000/1323038.stm.

[45] Lieutenant Olivier Rafowicz, quoted in Ewen Macaskill and Suzanne Goldenberg, "Israel Rockets Key Palestinian Sites: Fatah Offices Hit in Retaliation for Death of Romanian Workers and Jewish Teenagers," *The Guardian*, May 11, 2001.

prisoners considered not dangerous, for their own safety. Prisoners in Jenin and Jericho were reportedly moved from the main prison to a private building in about July or August 2001.

Harassment of Human Rights Defenders

Since the current Intifada began, Israel has arrested at least three human rights defenders as they crossed into or out of Palestinian areas. Palestinian human rights organizations reported that on September 10, 2001, 27-year-old Daoud al-Dir?awi, a lawyer with the PICCR responsible for Palestinian detainees in Israeli prisons, was arrested at the Qarama bridge while he was on his way to Ashqelon prison, inside Israel. Daoud al-Dir'awi told a human rights lawyer that in detention he was deprived of sleep and subjected to *shabah* (a form of torture using prolonged painful positions). On October 24, the prosecution unsuccessfully appealed the court ruling that he should be released, but on October 25 produced an administrative detention order that allowed the military authorities to detain al-Dir?awi without charge until April 24, 2002.[46] He is reportedly being investigated in relation to alleged membership of an "illegal" association when he was a university student.

?Adnan al-Hajar, aged 33, is the legal coordinator of Al-Mezan, a human rights center in Jabaliya refugee camp near Gaza City. On April 23, 2001, he was arrested by Israeli police at the Rafah border crossing in the south of the Gaza Strip. He was returning to Gaza with members of the PLC after attending a twenty-day legislative training course in Egypt, funded by a U.S. NGO. Al-Hajar told Human Rights Watch that he was taken to Ashqelon prison.[47] Over the next month, he said, he was interrogated for five days out of every week, for up to twenty hours a day, and subjected to *shabah*. He was made to sit on a very low stool for up to twenty hours at a time with handcuffs on his hands and feet and a chain between the two sets of handcuffs, forcing him to be constantly bent over. Interrogators shouted loudly in his ears, which has caused continued problems with his hearing. He was not beaten, he said, but "they tried to scare me:"

> He [the interrogator] told me...we assassinate lots of Palestinians and we can assassinate you...Don't believe you are protected by working at a human rights center...All the human rights centers are under my feet.

Al-Hajar said he was interrogated about his studies in Algeria, his work at Al-Mezan, and his relations with alleged members of Islamist groups and with the PA:

> After fifteen days interrogation the head of security came and said, "You have to confess that you support any Palestinian group, Fatah, Islamic Jihad. If you tell us this we will call your lawyer to speak with the court and you will be released."
>
> On May 23, 2001, after one month of detention, al-Hajar was released without charge.

Hashem Abu Hassan, a thirty-seven-year-old fieldworker for a well-known Israeli human rights NGO, was arrested on April 28, 2001 while traveling by taxi on the Nablus-Jenin road. He was detained for over twenty-four hours. According to B'Tselem, during his arrest IDF members searched through his field documents and took testimonies he had gathered from victims of human rights violations, saying the testimonies "are for Hamas."[48] Abu Hassan was interrogated, and released on April 29, 2001.

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[46] Al-Haq, "Palestinian Human Rights Defender Daoud Darawi Under Administrative Detention," press release, October 29, 2001.

[47] Human Rights Watch interview with ?Adnan al-Hajar, Jabaliya, September 5, 2001.

[48] See B'Tselem, "B'Tselem Demands the Release of its Field Researcher," press release, April 29, 2001.

VI. BALANCING SECURITY AND HUMAN RIGHTS DURING THE INTIFADA

I admit the fact that the legal procedure is not completely 100 percent ... We are in a hurry. What are we going to do? We are in a corner, our back to the wall. We can't wait for more victims, more assassinations, more assassinated.

Freih Abu Meddein, Palestinian minister of justice[49]

Because we have a difficult political situation, our internal situation must be strong. We must have a strong rule of law.

Ahmad M. Sayyad, lawyer and director of Mandela Institute for Prisoners[50]

"Collaborators" and the Intifada

One of the most explosive issues within Palestinian society concerns Palestinians who allegedly assist or cooperate with Israel in ways harmful to Palestinian national security.[51] The issue of collaborators has become especially acute during this Intifada, in connection with charges that Palestinians have provided information that enabled Israeli security forces to kill Palestinians they are targeting as part of their policy of "liquidations" of militants who are said to pose a threat to Israelis.[52]

Since Israel withdrew from territories now under the control of the PA, Israel's "need to recruit agents has grown," writes an Israeli journalist:

> The burden of gathering intelligence now falls mainly on collaborators. It is perhaps the dirtiest game of the occupation, and far from fading away, it continues as strong as ever ... the Shin Bet tries every possible method of acquiring more agents and its people cynically exploit economic and personal hardships. A license to visit Israel? An exit permit for medical treatment? Family reunification? First tell us a little about what's happening in the village mosques.[53]

Many Palestinians see collaborators as the enemy within. The issue has split communities, creating fear and suspicion, stigmatizing families if one member is accused perhaps in an anonymous leaflet of "collaborating." Hanna Mansour Salama (see below), convicted by a court in January 2001 of cooperating with Israeli security, was quickly denounced by his family in an advertisement placed in *Al-Ayyam* newspaper, which declared "we have cut off relations with him. . . . We support the verdict against him, and against all the traitors...."[54]

During the first Intifada, before the PA was established, hundreds of alleged collaborators were lynched, tortured or killed, at times with the implied support of the PLO.[55] Street killings of alleged collaborators continue in the current Intifada (see below) but so far in much fewer numbers. During this Intifada, the PA has arrested hundreds of suspected collaborators, tortured many to extract confessions, put some on trial, and televised confessions. State security and military courts have convicted a handful—imposing the death penalty on most,

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[49] Quoted in an interview by Orla Guerin for BBC News, March 20, 2001, http://news.bbc.co.uk/hi/english/world/middle_east/newsid_1231000/1231455.stm

[50] Human Rights Watch interview, Ramallah, September 9, 2001.

[51] For detailed studies on Palestinian "collaborators" and human rights, see PHRMG, *Human Rights and Legal Position of Palestinian 'Collaborators,''* July 2001, http://www.phrmg.org/English/Collaborators/Collaborators.htm; and B'Tselem, *Collaborators in the Occupied Territories: Human Rights Abuses and Violations*, by Dr. Saleh Abdel Jawad and Yizhar Be'er, February 1995.

[52] See Human Rights Watch, "Letter to Ehud Barak: Halt 'Liquidations'," press release, January 29, 2001.

[53] Gideon Levy, "Between False Friends and True Enemies," *Ha'aretz*, May 14, 2000, quoted in PHRMG, *Human Rights and Legal . . .*

[54] Tom Segev, "Condemned to Death in Four and a Half Hours," *Ha'aretz*, January 19, 2001, p. B6.

[55] See PHRMG, *Human Rights and Legal . . .*, and B'Tselem, *Collaborators in the Occupied Territories. . ..*

two of whom have been executed. The aim is to punish suspected collaborators and deter others from assisting Israel. The PA also offered to pardon collaborators who turned themselves in and gave a full confession during a highly-publicized forty-five-day "amnesty" that began on January 13, 2001. Officials told Human Rights Watch that relatively few people took advantage of the "amnesty."

The term "collaborator" has several broad and sometimes ill-defined meanings.[56] During the current Intifada particular focus has been put on two types of collaborators. The "informant" (*jasus*) provides Israeli security forces with information about the activities and movements of Palestinian activists, while the "infiltrator" succeeds in infiltrating Palestinian organizations and providing information from the inside. The "land dealer" (*simsar al-aradi*) or broker facilitates the purchase of Palestinian land by Israelis, often by purchasing blocks of land and then reselling it.

There are, however, other meanings of collaborator that were more relevant to the period of the Israeli occupation through 1994. The "intermediary" (*al-wasit*) helped Palestinians do the complex paper work and security checks the Israelis required before granting most services. The "armed collaborator" (*al-?amil al-musallah*) accompanied Israeli Special Forces to identify the houses of wanted activists. Palestinians have also spoken about the "economic collaborators" who tried to promote Israeli products on the Palestinian market, often acting as representatives of Israeli companies, and the "political collaborators" who officially or informally represented Israeli interests, sometimes taking on positions of authority in local administrations.

In the tensions of the current conflict almost anyone fitting these descriptions is at risk of being denounced or killed by unknown attackers or arrested by security forces, even for activities committed many years ago during the Israeli occupation. The following sections will consider which aspects of the popular notions of "collaboration" could be considered a criminal offense under human rights principles and Palestinian law and how such people should be treated.

Applying Human Rights Principles

The PA has a responsibility to protect people living under its jurisdiction and to arrest and put on trial those who have committed a criminal offense that threatens public safety. International human rights principles point to the circumstances in which the arrest, detention, and trial of alleged collaborators may be legitimate. These same principles indicate serious abuses in the way the PA deals with alleged collaborators.

First, certain human rights, enshrined in article 4 of the U.N. International Covenant on Civil and Political Rights, can never be ignored or suspended in any circumstances. These include the right not to be arbitrarily deprived of life and the right not to be tortured. No matter what crime an alleged collaborator or other detainee may be accused of committing, he or she can never be tortured or extrajudicially, summarily, or arbitrarily killed. Yet, as this report shows, alleged Palestinian collaborators have been tortured and some have died in custody.

Second, it is a basic principle of criminal law that, for an individual to be detained, she or he must be suspected of, or charged with, having committed a recognizable criminal offense—that is, an offense established by law. PA officials told Human Rights Watch they only arrest, detain and prosecute collaborators who fall into two categories The first is made up of those who have had a relationship with Israeli security after 1994,[57] especially informants who give information that assists Israel in its policy of "liquidations."[58] From the perspective of the Palestinian Authority, giving such information to Israel amounts to a recognizable criminal offense akin to "treason" or "espionage," and is punishable my death or a lengthy term of imprisonment.

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[56] The following is taken from Dr. Saleh Abd al-Jawwad, "The Classification and Recruitment of Collaborators," in papers from the PASSIA conference on collaborators (see footnote no. 1 above).

[57] Article XX(4) of the 1994 Gaza-Jericho Agreement provided that until there is an "agreed solution" for "Palestinians who were in contact with the Israeli authorities," the "Palestinian side undertakes not to prosecute these Palestinians or harm them in any way." Article XVI (2) of the Israeli Palestinian Interim Agreement on the West Bank and the Gaza Strip ("Oslo II") of September 28, 1995 states that "Palestinians who have maintained contact with the Israeli authorities will not be subjected to acts of harassment, violence, retribution or prosecution."

[58] See Human Rights Watch, "Letter to Ehud Barak. . . ."

The PA also says it arrests Palestinians who sell land to Israelis. It is not uncommon for governments to prohibit or penalize the alienation of land to foreigners, including nationals of neighboring countries. Violations of such prohibitions are usually dealt with by blocking the sale of land in the courts, and/or by imposing fines or terms of imprisonment. In the context of the Palestinian-Israeli conflict, the PA has declared all such alienation of land as a threat to national security carrying a lengthy term of imprisonment, or even the death penalty.

In both of the above examples, the PA does not distinguish between different levels of culpability, nor does it appear to take account of the intentionality element. For example, mere contact with Israelis, even Israeli security officials, should not by itself constitute a treasonable offense unless the accused carried out a specific act, such as intentionally giving sensitive information to the Israeli authorities. An unwitting participant in Israeli intelligence-gathering activity should not be charged with, nor found guilty of, the severe crime of treason.

Finally, if any person is arrested on suspicion of having committed a form of collaboration that is a recognizable criminal offense, he or she must be treated according to the law and in line with international human rights standards for arrest, detention, and trial. If legitimately arrested, an alleged collaborator must be treated equally and fairly, like any other criminal suspect. This includes ensuring he or she is charged within a reasonable time or released, and not being subject to prolonged or arbitrary detention.

"Collaboration" in Palestinian Criminal Law

In the first State Security Court trial in the West Bank of an alleged collaborator accused of passing information to Israel which assisted in a 'liquidation' (see trial of ?Alam Bani ?Odeh in State Security Court below), the accused was charged with premeditated murder and being an accomplice to murder under the 1960 Jordanian Penal Code. He was also charged under the 1979 PLO Revolutionary Penal Code (described below). Subsequent State Security Court trials in the West Bank have invariably applied article 111 of the 1960 Jordanian Penal Law, which says:

> Any Jordanian who conspires with a foreign state, or contacts it to incite an aggression against the state or to provide the means for such aggression, is punished with life imprisonment with hard labor. The act is punishable by execution if it had repercussions.

Article 112 of this law is also occasionally used, but is more open-ended, providing the death penalty for "Any Jordanian who conspires with the enemy or contacts it to collaborate with it by any means to achieve victory over the state..."

The laws used in the Gaza Strip are still more loosely-worded, unsuited to trying civilians and open to abuse. The 1979 Revolutionary Code, used in the past to discipline its fighters, has never been incorporated into PA domestic law, yet it has occasionally been applied by the State Security Court and continues to be used regularly in the Military Court. "Treason" in article 131 is punishable by death for "anyone who works or establishes a relationship with a state or party hostile to the revolution ... to commit hostile acts against the revolution" or 'to support its [the enemy state's] military operations or to harm the military operations of the revolution." The State Security Court in Gaza has also referred to espionage provisions of (Egyptian) order no. 555 of 1957, introduced when Egypt controlled the Gaza Strip. The provisions of order no. 555 should also be reviewed and updated.

Those accused of selling land in the West Bank are prosecuted under Jordanian law. Prior to 1967 Jordanian law provided a punishment of up to five years in prison for selling land to "foreigners."[59] This appears to have been superseded in 1973 by the Law for Preventing the Sale of Immovable Property to the Enemy, which characterized the sale of land to Israelis in Jordan or the West Bank as a crime against state security punishable by death. Jordan repealed this law as part of the peace process with Israel. Although there is continuing legal

[59] See PHRMG, *Human Rights and Legal . . .*

controversy about whether either of these laws applies in the West Bank today,[60] the PA attorney general said in May 1997 that he would seek the death penalty for any Palestinian convicted of selling land to Jews.[61] Human Rights Watch has learned of three persons, a judge, a notary, and a lawyer, who have been arrested in 2001 allegedly for involvement in land sales to Israelis, though it is not known if anyone has been charged or tried.

VII. ARBITRARY ARREST AND DETENTION WITHOUT TRIAL

Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

Article 9(1), U.N. International Covenant on Civil and Political Rights and see also Article 11, Draft Palestinian Basic Law

"Political" Prisoners Prior to the Intifada

Before the current Intifada, the majority of detainees arrested and held without charge or trial were "political" detainees, most being suspected supporters of militant groups such as Hamas and Islamic Jihad, but also including critics of the PA, journalists, and opponents of the Oslo agreements.[62] Many were detained in periodic waves of mass arrests, often after Israel exerted pressure on the PA to take action against those who planned or carried out attacks against Israeli civilians or security forces. At least 350 "political" detainees were estimated to have been arrested in 1999, and 360 in 2000.[63] The largest wave of arrests took place after four suicide bombings in early 1996, when up to 1,200 suspected Islamists were detained.[64]

When the current Intifada began, the PA released most of the "political" detainees it was then holding, despite concerns that some may have been responsible for attacks on Israeli civilians.[65] Clearly, as civilians may never be targeted for attack even in situations of armed conflict or occupation, if the PA has evidence that any past or present detainees or others have committed violent offences against Israeli or other civilians, it should bring them to justice for these acts in accordance with international fair trial standards.

Some of the detainees released at the start of the current Intifada, as well as other Palestinian militants or critics, have been briefly redetained and released periodically in the past year, usually following armed Palestinian attacks against Israelis.[66] Most recently, in September and October 2001, the PA again began arresting alleged planners or perpetrators of armed attacks against Israelis. These arrests followed tightened pressure from Israel for the PA to clamp down on those responsible for carrying out suicide bomb attacks and other violence against members of the Israeli security forces and Israeli civilians.

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[60] Human Rights Watch discussions with Hussain Abu Hannud, PICCR lawyer, Ramallah, September 9, 2001.

[61] Human Rights Watch, *World Report 1998*, p. 340.

[62] For the period up to September 1997, see Human Rights Watch, "Palestine Self-Rule Areas: Human Rights Under the Palestinian Authority," *A Human Rights Watch Report*, Vol. 9 No. 10 (E) September 1997, pp. 11-14.

[63] See Amnesty International, *Report, 2000*, p. 187 and *Report, 2001*, p. 187.

[64] Human Rights Watch, *Palestinian Self-Rule Areas*, p. 11.

[65] According to media reports, the first release took place on October 4, 2000, when a group of twelve Hamas detainees were released from Gaza Central Prison. Subsequent releases took place *circa* October 8 and October 12. See JMCC, "The Seventh Day of the al-Aqsa Intifada," JMCC Daily Press Summary, Vol. 7 No. 2025, October 5, 2000; JMCC, "Cabinet Meeting Yesterday..."

[66] See, for example, BBC News Online, "Palestinians Confirm Arrest of Hamas Official," Monday, July 31, 2000, http://news.bbc.co.uk/hi/english/world/middle_east/newsid_860000/860008.stm; JMCC, "Arrest of Persons Suspected in the Case of Killing the Two Israelis in Tulkarem," JMCC Daily Press Summary, January 25, 2001, Vol. 8 No. 2118; and JMCC "Hamas ex-Detainees Hand Over Themselves...."

Round-Up of Alleged Collaborators

The vast majority of detainees held without charge or trial since the current Intifada erupted have been Palestinians alleged to have cooperated with Israeli security forces. Human Rights Watch estimates that as of September 2001, the PA was detaining without charge or trial more than 450 Palestinians for allegedly being informants for Israeli security services or for selling Palestinian land to Israelis.[67] The total figure may be well in excess of 500 and is in addition to convicted collaborators now serving prison terms. Probably 80 percent of these are held in the West Bank. The General Intelligence Service has been responsible for most arrests of alleged collaborators, though the Preventive Security Service also makes such arrests. Less still is known about those held by the secretive Military Intelligence Service, and their number.

A well-placed official in the PA state security judicial system told Human Rights Watch that there were more than 400 "security" prisoners in the West Bank alone.[68] Another official, General Tawfiq Tirawi, head of the GIS for the West Bank, said that there were a maximum of 300 alleged collaborators in detention in the West Bank who had already confessed and that 200 of these were held by the GIS.[69] He would not disclose the number of "security" prisoners in the West Bank who had not made confessions.

Far fewer "security" prisoners seem to be held in the Gaza Strip, possibly up to one hundred, though the deputy chief of the Gaza PSS reportedly said in March 2001 that 150 alleged collaborators had been arrested since the beginning of the Intifada.[70] The PICCR told Human Rights Watch there were between forty-five and fifty-five such detainees held as of early September in the sections of al-Saraya prison run by different security forces: the PSS holding twenty to thirty, the GIS fifteen, and the MIS about ten, with the PSS holding another fifteen in a detention center in Tal al Hawa.[71] In addition, the director-general of the Prison Service, Colonel Hamdi Rifi, told Human Rights Watch that al-Saraya prison in Gaza City housed thirty "security" prisoners, which would include convicted prisoners and those whose interrogation has finished but who have not been tried.

The number of "security" prisoners fluctuates because of periodic round-ups, often in response to a specific killing of a Palestinian militant and resulting public anger, and because some detainees are subsequently released without charge. Following a week of violence and the killing by Israel of senior Hamas activists in the first week of August 2001, security forces reportedly rounded-up sixty alleged collaborators in Palestinian areas.[72] A journalist reported visiting the "security" prisoner section of Hebron prison in January 2001, where 200 alleged collaborators had been detained over the previous month.[73] Human rights lawyers told Human Rights Watch that sixty alleged collaborators were arrested in one day in Jenin in early June or July, and a further sixty were rounded-up in Ramallah circa July 19, though some of these were subsequently released.

The precise number of "security" detainees is impossible to verify. As a human rights lawyer in Gaza explained to Human Rights Watch:

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[67] In comparison, in 1999, Amnesty International estimated that there were at least 250 "security" prisoners held without charge or trial for more than one year. See Amnesty International, *Palestinian Authority: Defying the Rule of Law – Political Detainee Held without Charge or Trial*, April 1999, p.7, (AI Index: MDE 21/03/99).

[68] Human Rights Watch interview, September 3, 2001.

[69] Human Rights Watch interview with General Tawfiq Tirawi, Ramallah, September 7, 2001. A Palestinian human rights source estimated that as of early September there were between 323 and 335 alleged collaborators no longer under interrogation (i.e. most but not all of these would likely have "confessed") in various locations in the West Bank, broken down as follows: Jenin, 67, Nablus, about 106 (including 6 at PSS Nablus) Tulkarem, about 7, Hebron, about 65-75 (including 50-60 at GIS Hebron), Dahriya, 20, Jericho, 8-10, and 50 at GIS Bethlehem. A Palestinian human rights lawyer who visits "security" prisoners said there were 20 held in Ramallah central prison as of September 2001.

[70] *al-Quds* newspaper, March 22, 2001.

[71] Human Rights Watch interview, September 5, 2001.

[72] BBC News, "Palestinians round up 'collaborators.'"

[73] Karin Laub, "Palestinians Defend Sweep of Hundreds of Suspected Informers for Israel,' Associated Press, January 24, 2001.

Nobody knows , not even God, because anyone can arrest, even the political parties sometimes keep people. ... I can't visit them in detention. For me they could be in the Hague.[74]

The figures reflect deep concern in the Palestinian administration about the reliance of Israeli security forces on Palestinian informants to carry out military or security operations. It is also a way for the PA to appear to be acting decisively in an attempt to assuage popular anger and fear of betrayal.

In the climate of fear and suspicion in the midst of this conflict, Palestinian security forces often appear to be rounding up Palestinians arbitrarily with little evidence to justify arrest and detention, acting on rumors, suspicions, and popular denunciations. This is clear from the number of detainees who are eventually released without charge, the long periods before others are brought to trial, if at all, and the testimonies of detainees who are tortured to elicit evidence, even fabricated, against a suspected informant. Once arrested, alleged collaborators can spend months in detention without judicial supervision or any effective remedy to secure their release and are at risk of abuse by the security forces that hold them.

Khaled al-Qidra, now the state security attorney general, explained to Human Rights Watch that some alleged collaborators are kept in detention, sometimes without charge or trial, because in the community they would be at risk of being killed by unknown attackers. Protecting persons at risk of unlawful attack does not justify arbitrary detention without charge or trial. No one should be arrested and detained unless there is reasonable evidence to suggest they may have committed a criminal offense.

Administrative Detention

As this report went to press, Human Rights Watch learned that the Palestinian Authority had placed seven members of Islamic Jihad and Hamas under administrative detention. Administrative detention is a form of deprivation of liberty ordered under the sole authority of the executive branch – in the above cases the orders were issued by Ghazi Jabali, director general of the Palestinian Police – and where no judicial warrant is issued or criminal charges brought. Ironically, administrative detention has been used widely by Israel against Palestinians, permitting suspects to be held without charge or trial for renewable periods of up to six months and, in some cases, lasting several years.

Human Rights Watch has expressed concern about the practice of administrative detention when it has been introduced to circumvent proper legal procedures, including the right to be tried within a reasonable time; to be informed of the specific reasons for the arrest; the right to challenge before a judicial authority the lawfulness of the detention and to be released if the detention is found to be arbitrary or unlawful; and the right to be able to complain to a judicial authority about mistreatment. In light of the performance of the PA since 1994, particularly in the areas of arbitrary arrests, prolonged untried detention, unfair trials and mistreatment of detainees, Human Rights Watch views this development as a further disturbing deterioration in the already weakened Palestinian judicial system.

Abuse of Palestinian Law and Human Rights Standards

Different procedures for arrest and detention apply in the Gaza Strip and West Bank, but they are similar in many details.[75] In several respects the laws in force reflect more recently developed international human rights standards that evolved after the original laws were formulated. In the absence of the Draft Palestinian Basic Law, yet to be ratified by President Arafat, and where the law is silent or unclear, internationally accepted standards should guide practice and interpretation. There are two key United Nations standards on arrest and detention: the U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the

[74] Human Rights Watch interview, Gaza City, September 4, 2001.

[75] The most important laws for arrest and detention in the Gaza Strip are the British Mandate, the 1924 Criminal Procedure (Arrest and Searches) Ordinance and British Mandate, and the 1940 Magistrates Courts Procedure Rules. In the West Bank, the relevant laws are the 1961 Jordanian Criminal Procedure Code and the 1960 Jordanian Penal Law. For an analysis and translation of relevant laws on arrest and detention, see Simpson, *Detainees Denied Justice*, especially pp.32-34 and Annexes III and IV.

Body of Principles), which is the most detailed set of authoritative recommendations in this area, and the U.N. International Covenant on Civil and Political Rights.

Arrest Warrant

Broadly, under Palestinian law, unless security forces catch someone in the act of committing a crime, they must first obtain a warrant for arrest before they can detain a suspect.[76] In the vast majority of cases investigated by Human Rights Watch no arrest warrant was shown to the detainee. State Security Attorney General Khaled al-Qidra, insisted to Human Rights Watch that the law is always followed:

> The police cannot arrest anyone without giving me a request...and showing they have real evidence and asking me for an order to arrest. If there is evidence I issue the warrant, then they are brought to me. The law is followed. I am serious...This is the freedom of the people. My job is to protect freedoms of the people....There have been no cases of illegal arrest in the last year.

The cases investigated by Human Rights Watch show otherwise.

Informing Detainee of Reasons and Informing Family of Detention

One safeguard against arbitrary arrest is the requirement in international standards that a detainee must be "informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."[77] It is equally important for a detainee's family to be told of the arrest and where he or she is being held.[78] In practice, families are not informed of the arrest. They often find out from neighbors who see the arrest or from relatives or friends in the security forces. In the cases investigated by Human Rights Watch, families were often told little more than that the detainee was being kept for "security reasons." The detainee may only find out the charges against him or her once the interrogation begins.

Prompt First Appearance Before Judicial Authority

In the Gaza Strip detainees must be brought before "a magistrate" within forty-eight hours of arrest[79] and in the West Bank a detainee must be brought before the attorney general within twenty-four hours.[80] International standards say a detainee must be brought "promptly" before a judicial authority. These safeguards provide an essential element of outside supervision of the detention. In many of the cases investigated, however, detainees were routinely not physically brought before a judicial authority, or were brought only belatedly, many weeks or months later, by which time any signs of mistreatment usually had faded.

Authorized Extensions of Detention and Charge or Trial within Reasonable Time or Release

Under Palestinian law, after the initial twenty-four or forty-eight hours, the security forces can only keep an arrested person in detention for a maximum of thirty days and then only if the attorney general approves a first extension and then a second fifteen-day extension.[81] At the end of the thirty days, or if the attorney general refuses

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[76] Gaza: (British Mandate) 1924 Criminal Procedure Ordinance, Sections 3 and 4 (when police can arrest without a warrant) and Section 6 (need for arrest warrant) and Section 242, 1940 Magistrates Courts Procedure Rules (only the attorney general may initiate a criminal case if he has 'reasonable and probable cause'). West Bank: 1961 Jordanian Criminal Procedure Code, Article 103 (need an order to arrest) and Article 99 (arrest by judicial police if sufficient evidence).

[77] Article 9(2), International Covenant on Civil and Political Rights.

[78] Body of Principles, Principle 16(1) "Promptly after arrest and after each transfer ... a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody."

[79] British Mandate, 1924 Criminal Procedure (Arrest and Searches) Ordinance, Section 10(1): "A person arrested with or without warrant and detained under the last preceding section [concerning powers of arrest of police officers] shall be brought before a magistrate within forty eight hours of his arrest."

[80] 1961 Jordanian Criminal Procedure Code, Article 112: (1) "... The accused brought before him [the attorney general] under the terms of a warrant shall be questioned within 24 hours of being held in custody," (2) "At the expiry of the 24-hour-period, the custodial officer shall automatically bring the accused before the attorney general."

[81] Gaza: 1924 Criminal Procedure (Arrest and Searches) Ordinance, Sections 10(3) [first extension] and 10(3)(a). Although it is not clear, under Section 10(3)(a) it may be possible to apply for further extensions beyond 30 days. West Bank: Article 114(1), 1961 Jordanian Criminal Procedure Code.

to give one of the extensions, the detainee must be charged or released. The law considers that twenty-four to forty-eight hours is sufficient for the security forces to question and decide whether to charge a detained suspect. An extension should only be given if there is evidence to justify keeping the suspect in detention, and to allow more time to collect additional evidence before laying charges.

Despite clear evidence to the contrary, the state security attorney general insisted to Human Rights Watch that there are "no more than three or five people" in detention without charge or trial. In practice, the Palestinian security forces routinely ignore the requirement to seek and justify formal, limited extensions of detention, and continue to hold suspects illegally with impunity. In most of those cases investigated, the detainee was, or continues to be, held in detention without charge or trial for periods ranging from two months to well over a year.

The state security attorney general also explained to Human Rights Watch that when deciding which detainees to bring to trial he takes into account the provisions of the Oslo Accords that forbid the trial of those accused of collaboration during the Israeli occupation prior to 1994. These detainees are therefore likely to remain in a limbo, in detention but without charge or trial, possibly for years.

Access to Families, Lawyers, and Doctors

Access to the outside world, to families, lawyers, doctors, and the courts, is one of the most important safeguards against abuse.[82] For this reason international standards say that such access should be given promptly and can never be delayed for more than a matter of days.[83] In practice, families are denied access to Palestinian detainees until after the period of interrogation is over, which often lasts two months, and can last longer. The period of interrogation is the most dangerous, for this is when detainees are commonly mistreated (see Torture below).

West Bank law gives a suspect the right to contact and retain a lawyer but no clear and express right is found in the law in Gaza.[84] International human rights standards are clear that a detainee has the right to communicate and consult with a lawyer,[85] must be informed of this right,[86] and must have adequate time and facilities to do so without delay and in confidentiality, including to prepare a defense to any criminal charge.[87] As mentioned above, lawyers have found it even more difficult during this Intifada to visit detainees, and the few who in the past were able to see detainees under interrogation are now being denied access. Palestinians generally see little point in appointing a lawyer, certainly before a trial is imminent, as the lawyer will be powerless to assist the detainee. When lawyers and families are able to see detainees it is usually within hearing of guards and so difficult and potentially dangerous, given the possibility of reprisals, for the detainee to speak openly about his or her treatment.

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[82] Body of Principles, Principle 19, "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world..."

[83] "... communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days," Body of Principles, Principle 15. The Draft Law to Prohibit Torture of those Arrested, Jailed or Imprisoned, which was rejected by the PLC in May 2000 would have given detainees the right to contact their family or lawyer within six hours of the arrest and the right to see family or lawyer within forty-eight hours.

[84] Article 63(1), 1961 Jordanian Criminal Procedure Code. While the detainee has a right to confidential contact with his or her lawyer, this is unless the General Prosecutor decides otherwise (Article 66(2)).

[85] Body of Principles, Principle 18: "(1) A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel. (2) A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel. (3) The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order."

[86] Body of Principles, Principle 17.

[87] Article 14 (3) (b), International Covenant on Civil and Political Rights provides that in determining a criminal charge, everyone has the right "to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his choosing."

Punishment for Illegal Arrest and Detention

In both Gaza and the West Bank it is a crime to illegally detain anyone. In Gaza any official who commits or directs an arbitrary act, such as illegal detention, is liable to two years of imprisonment.[88] In the West Bank an official who illegally detains anyone or an official in a detention center who admits a detainee without a proper order or keeps him beyond the legally permitted period of detention, can be imprisoned for up to one year.[89] Although such illegal detentions are common and widespread, Human Rights Watch does not know of any PA prosecution and conviction of an official for illegally detaining a person.

Testimonies and Reports

The case of 27-year-old lawyer Nasr Muhammad Ni?aman al-Rif?ai[90] illustrates how the security forces often blatantly abuse the laws on arrest and detention, ignore court proceedings and compound the problem by competing among each other. Al-Rif?ai was arrested by the Preventive Security Service in Ramallah on September 24, 2000, without an arrest warrant, apparently for allegedly selling land to Israelis. For fifteen days he was interrogated and tortured. Human Rights Watch was told that he was suspended for long periods from a window frame with the tips of his toes just touching the floor, handcuffed, threatened with death, and beaten. His case was transferred to the civil police. He was held incommunicado until the last day before his release at the end of December 2000. The case was set down for hearing in the civil courts on March 25, 2001. The day before the hearing, al-Rif?ai was rearrested by another security agency, the Military Intelligence Service, which reportedly said that, unlike the PSS, they would be able to uncover sufficient evidence against him. He was again held incommunicado for about five months, after which his family was able to visit him weekly at the MIS section of Ramallah central prison. One year after his first arrest, and after a total of nine months in detention, al-Rif?ai has not, at the time of writing, been charged or tried.

Tareq Muhammad Khader Sumaya from Abu Qash, near Ramallah, has also suffered from such rivalry, or lack of coordination, between agencies. After being arrested by the PSS in December 2000 and released, he was rearrested twenty days later by the MIS in January 2001. As of September 2001, nine months later, no one had been allowed to visit him.[91]

In many of the cases investigated by Human Rights Watch detainees were commonly held incommunicado for at least two months, and sometimes considerably longer. Families were told no more than that their relative was being detained for "security reasons." Bassam Hassan Hussein al-?Imla, from Nablus, was arrested in January 2001 and transferred to the MIS in Ramallah, where he remained as of September 2001. His family was allowed to visit him for the first time at the end of March and then again in May. They have only been told that he is being held for "security reasons."[92] Qassem Abd Allah Asmar al-?Imla from Qabalan, near Nablus, was arrested by the MIS on April 27, 2001. His family was not allowed to visit him until June and he was released without charge in July. It is not clear why he was arrested.[93]

The PA has arrested and detained without trial a number of Palestinian Arab citizens of Israel for alleged collaboration with Israel. The Israeli Ministry of Justice provided Human Rights Watch with the names of thirty-five Israeli Arabs allegedly held by the PA on these grounds. The information showed that eleven are held in Hebron and seven in Ramallah, with the rest detained in Nablus, Qalqilya, Jenin, Yata, and Dura. Five were arrested between April and August 2000, and the remaining thirty were detained since the Intifada began. The information suggests that seventeen have been held without charge or trial for more than six months.

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[88] (British Mandate) Criminal Procedure Ordinance, No.74 of 1936, Section 112(1)(a) and anyone who "wilfully disobeys any law" (Section 143) also is liable to two years imprisonment.

[89] 1961 Jordanian Criminal Procedure Code, Article 178, "Any official who stops or imprisons a person in circumstances not provided for by law shall be punished by imprisonment for a period from three months to one year;" and see Article 179 re: officials in detention centers.

[90] Human Rights Watch interviews, Ramallah, September 9, 2001.

[91] Human Rights Watch interview, Ramallah, September 9, 2001.

[92] Human Rights Watch interview, Ramallah, September 9, 2001.

[93] Human Rights Watch interview, Ramallah, September 9, 2001.

A Palestinian Arab with Israeli citizenship, Nasr Abu Kbash (37), a farmer from Sum'u, near Hebron, was arrested on November 13, 2000 by the GIS and is detained without charge or trial in Thahriya prison near Hebron. He was held incommunicado for the first four months, during which time he was reportedly beaten around the head and face.[94] Ghassan Hassan Nimr, a 24-year-old restaurant worker from Beit Safafa, Jerusalem, was arrested by the PSS when he visited Hebron in January or February 2001, and has been held in Thahriya prison without charge or trial since then. His family was able to start weekly visits after the first two months in detention. He has reportedly not been tortured. Palestinian officials reportedly say he has confessed to collaborating with Israel.[95]

Amnesty International estimated that in 2000, prior to the current Intifada, about 300 "political" and "security" detainees arrested in previous years continued to be arbitrarily held without charge or trial, though at least eighty of these were Islamists released in September/October 2000. [96] More were released in the following months. Faruq Abu Hassan, a postal worker from Gaza, has been held by the MIS in Gaza without charge or trial since his arrest on November 8, 1994, and despite a High Court order for his release on December 9, 2000 (referred to above). He had spent thirteen years in an Israeli prison before his arrest. For the first three months of 1995 he was denied access to the outside world while under interrogation, during which time he was allegedly severely beaten. His wife Zahira has described[97] how she paid 8,500 Jordanian dinars (about U.S. $12,000) to a member of the MIS who claimed that with the payment her husband could be released. Instead, she was stopped from seeing her husband for the next eighteen months. The authorities refuse to say why Faruq Abu-Hassan is being held. The PHRMG considers his detention is related to a letter he co-signed in 1981 while in an Israeli prison that was sent to then Egyptian President Anwar Sadat supporting Egypt's peace agreement with Israel.[98]

VIII. TORTURE, ILL-TREATMENT, AND DEATHS IN CUSTODY

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2(2)

Torture Under Interrogation: Military Intelligence, General Intelligence, and Preventive Security Services

Detainees who undergo interrogation by Palestinian security forces are commonly tortured, especially if they are suspected collaborators and particularly if they are held by the GIS, MSS, or PSS. This fact mirrors Human Right Watch's conclusion in its 1997 report on human rights in the Palestinian areas.[99] As in 1997, detainees are generally not physically ill-treated after the period of interrogation ends, when they are usually transferred to a prison under the director of prisons. With heightened public anger being directed at Palestinians who allegedly provide information that assists Israel in carrying out its "liquidations" of suspected Palestinian militants, alleged informants in detention are now at greatest risk of being tortured.

The categories of prisoners most at risk have changed over the years, but what has remained constant is the widespread use of torture under interrogation. In its annual report for 2000, the PICCR speaks of the persistence of physical and psychological torture in PA detention centers, especially to extract confessions.[100]

The authorities generally deny that torture occurs, or admit only isolated incidents, and insist that those responsible are disciplined and that security forces personnel are clearly instructed that torture is prohibited. "I

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[94] Human Rights Watch interview by telephone, from Jerusalem, September 11, 2001.
[95] Human Rights Watch interview, Jerusalem, September 9, 2001.
[96] Amnesty International, *Report, 2001*, p. 188.
[97] PHRMG, *The State of Human Rights in Palestine*, Annual Report 1999, Volume 4, Issue #1, March 2000, pp. 65-66.
[98] An English translation of the letter is in *ibid.*, pp. 66-67.
[99] Human Rights Watch, *Palestinian Self-Rule Areas*, p. 16.
[100] PICCR, *Sixth Annual Report*, p.147. The PICCR received 135 complaints of torture or ill-treatment in 2000. Many were supported by medical reports and photographs showing evidence of torture.

have never come across any cases of defendants being beaten," Fateh Sorour, the chief judge of the State Security Court, told Human Rights Watch. "Maybe in the past there were cases, but not now," he added. Khaled al-Qidra, the state security attorney general, insisted "We cannot accept anyone torturing any Palestinian, even collaborators, because this has to do with the freedom of our people."

Methods of Torture and Ill-Treatment: Testimonies and Reports

Many of the methods of torture being used during this Intifada have been common since the PA was established, including:

- *shabah*, being made to stand or sit up in painful positions for long periods, often hooded or blindfolded and often combined with sleep deprivation;
- *falaqa*, beating on the soles of the feet;
- beating, punching and kicking the victim, especially around the head and ears, sometimes using a leather-covered stick about one meter long, and sometimes while the victim is hooded or blindfolded;
- suspension by the wrists, with feet barely touching the floor;
- threats of death or injury, including rape.

Palestinian human rights organizations also report that some techniques common in the past are still sometimes used, such as burning with cigarettes and exposure alternately to extremes of hot and cold. Families are often not allowed to visit detainees until signs of torture have faded. However, people who visited Nasr Abu Kbash (see above), told Human Rights Watch that they saw obvious signs of mistreatment, including a swollen face. [101] This was the first time he had been allowed visitors after his arrest by the GIS in November 2000 for alleged collaboration with Israel.

General Tawfiq Tirawi, the head of the General Intelligence Service in the West Bank, acknowledged to Human Rights Watch that Hussam al-?Aslini, convicted in January 2001 in Bethlehem (see State Security Court below), had been mistreated by the Criminal Investigation Police (*al-bahth al-jina'i*) when initially arrested in December 2000. Tirawi denied, however, that the detainee had been mistreated after he had been transferred to the custody of the GIS. Other sources alleged that the torture included being whipped with electrical wire, being forced to stand on sharp objects, and being threatened with death. [102]

Khaled al-?Akkeh was arrested by the PSS in Gaza on February 14, 2001 and convicted by the Gaza State Security Court on August 12, 2001 of helping Israeli forces kill Mas'ud Ayyad on February 13, 2001. Over a period of eighteen days after his arrest al-?Akkeh was allegedly subjected to *shabah* and punched repeatedly in the face with his head hooded. He is said to have lost some vision in his right eye and some of his hearing in his left ear. He was able to receive visitors about twenty to thirty days after his arrest. [103] Khaled al-?Akkeh was shot by police on September 9, 2001, apparently while trying to escape from custody (see Deaths in Custody below).

Sometimes torture is used to obtain false testimony to strengthen a case against another person. Yusra al-Ramlawi, a 29-year-old woman from Khan Yunis in the Gaza Strip, was arrested in June by the GIS. Al-Ramlawi was not accused of being a collaborator herself, but was tortured in an unsuccessful attempt to persuade her to give false evidence that would implicate another person as a collaborator. [104] A confidential source told Human Rights Watch al-Ramlawi was two months pregnant at the time of the arrest and had informed her interrogators of this. Nevertheless, she was beaten into unconsciousness, which caused her to miscarry and lose the fetus. Some

[101] Human Rights Watch interview by telephone from Jerusalem, September 11, 2001.
[102] Human Rights Watch interview, Bethlehem, September 7, 2001.
[103] Human Rights Watch interview, Gaza City, September 4, 2001.
[104] Human Rights Watch interview, Gaza Strip, September 6, 2001.

days later an interrogator threatened to rape her, but stopped when al-Ramlawi screamed. Despite a complaint to other officers, that interrogator was back at work three days later. At the end of June, al-Ramlawi was transferred to the GIS section of al-Saraya prison in Gaza City, where she was allegedly further beaten. The interrogation and mistreatment only stopped when she was transferred to the main part of al-Saraya prison. There she was able to receive visitors but remained in detention without charge or trial as of the beginning of September.[105]

Torture is often used to extract a confession, but not always successfully. A 37-year-old Palestinian male from Nablus, whose identity is being kept confidential due to fear of possible reprisals, was arrested by the PSS in August 2001.[106] During three days of interrogation he was reportedly punched and kicked and made to stand on one leg for many hours in an attempt to make him confess to cooperating with Israeli security. After three days, and failing to obtain a confession, the PSS transferred him to Junayd prison. After about ten days he was released, but was then rearrested almost two weeks later by the PSS. In the PSS section of Junayd prison he was reportedly subjected further to *shabah* in an attempt to force him to confess.

The Case of F.M., 28-Year-Old Woman[107]

F.M., a 28-year-old woman, whose identity is known to Human Rights Watch but is being kept confidential due to fear of possible reprisals, was arrested by the General Intelligence Service in June 2001. The aim of her interrogation was to get her to admit to giving M...., a suspected collaborator, the names of Palestinians who were shooting at Israeli forces. Describing her second day of interrogation, F.M. told Human Rights Watch:

> He [the interrogator] came and covered my eyes and pulled my hair. "What is your relationship with M....?" I said, "He is the neighbor of a relative." "You didn't know he is a collaborator?" He then struck me with both hands on the ears. I couldn't hear anything [for a while]. He pushed me and I fell to the floor.... "Raise your legs." He brought a chair [and put my legs on them] and started hitting the soles of my feet with [a leather-covered stick used for animal herding].

The interrogator threatened F.M. that her fate would be the same as a girl whose body had been found on the street recently. F.M. continued:

> He told me "We are the strongest Palestinian group and we can do whatever we want ..." "Excuse me," said another man behind me, "it seems to me she doesn't want to talk and I want to open her mouth to make her talk." He then struck me on the ears again and beat my feet as I sat on a chair. I was then taken from the room and pushed into another room [used as a cell], still blindfolded. Suddenly someone kicked me karate style on the head. I fell unconscious on the floor. When I woke up I had a headache and couldn't feel anything in my right hand and arm and my leg was numb. The next day both hands were numb and I could not see clearly.

F.M. was taken to a medical clinic where a nurse insisted on keeping her for treatment. This was refused and F.M. was returned to the detention center. Her treatment improved. For the next four weeks the GIS kept promising she would be released. Instead, F.M. was transferred to another detention center[108] where she was interrogated for seven days, eight hours a day well into the night, again seeking a confession of a relationship with M.... Here she was again subjected to *falaqa* and beatings, including from a female guard. F.M. explained:

> Every time they asked me about M.... and I said no, they would beat me.... They would make me stand in the corridor outside [other interrogation rooms], just to listen. I could hear the men crying because of the torture.

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[105] Human Rights Watch interviews in the Gaza Strip, September 5-6, 2001.
[106] Human Rights Watch interview with field worker of a human rights organization, Tulkarem, September 8, 2001.
[107] Human Rights Watch interview with victim, September 2001.
[108] Human Rights Watch was informed of the name of the detention center.

Three months after being arrested, F.M. was released without charge. She has continuing medical effects of the torture, including constant headaches and difficulty walking.

Deaths in Custody

Five Palestinians are known to have died in police or security force custody since the current Intifada began, at least three in circumstances which suggest that torture may have contributed to the death, as indicated below. Two deaths reportedly occurred in the custody of the MIS, one in the custody of the GIS, and one in the custody of the PSS, with the fifth unknown. Four deaths occurred within a space of just over two months, between mid-August and mid-October 2001.

This brings to twenty-eight the number of detainees known to have died in custody since the PA was established in 1994.[109] In about half of these cases the deceased was alleged to have been a collaborator. Autopsies are usually performed and, although families may sometimes be invited to select a medical representative to attend as an observer, Human Rights Watch is not aware of any case in which autopsy results have been publicly released. In at least one case this year the authorities have admitted the autopsy revealed signs of torture (see Abu 'Amra case below). It is common practice for President Arafat to set up a commission of inquiry following a death in custody, but the PA does not make the results public, nor are those responsible for abuses usually prosecuted.[110]

Salim Mahmud Hassan al-Akra?, a father of five in his thirties, died at a hospital in Nablus on the West Bank on February 27, 2001.[111] His was the first known case of an alleged collaborator dying in custody since the current Intifada began. MIS officers arrested him on February 6, 2001 and held him incommunicado until they transferred him to a Nablus hospital, probably on February 24. A fellow detainee has said that he and Salim al-Akra? were beaten with sticks and punched by masked or hooded men while handcuffed in MIS custody. A witness in Nablus who saw the body of al-Akra? in the hospital morgue told Human Rights Watch[112] it bore signs of torture: bruising on the wrists and ankles and head. An autopsy was performed but the results have not been released.

Suliman Qwaidh Mohammad Abu ?Amra (38) from Deir al-Balah, died on or about August 15, 2001 after having been reportedly arrested by the MIS in Gaza City on August 8, 2001and held incommunicado until his death.[113] The family was informed that he had died from a heart attack while being interrogated. The state security attorney general confirmed to Human Rights Watch that the autopsy carried out by a doctor at Shifa Hospital in Gaza showed signs of violence. He suggested that those responsible were unknown, although he did pledge that "we will prosecute if we have the evidence." President Arafat has declared Suliman Abu 'Amra a martyr, which means the family will receive financial support from the PA. The family is reportedly no longer insisting on a further investigation and prosecution.[114]

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[109] Twenty-three deaths in custody took place from 1994 to 2000. See Human Rights Watch, *World Report 2001*, p. 367.

[110] Human Rights Watch is aware of four instances in which security officials have been tried as a result of deaths in custody. The most recent followed the death of Walid al-Qawasmi (48) in General Intelligence custody on August 9, 1998. The PICCR reports three GIS officers were tried for negligent homicide on November 11, 1998. First Lieutenants Muhammad 'Uthman and Yacub al-Takruri were both found guilty of negligent homicide and sentenced to six months imprisonment and a transfer from the GIS. A third officer, Major Abd al Latif Abd al Fatah, was tried *in absentia*, sentenced to seven years in prison, and discharged from the GIS. See PICCR, *Fourth Annual Report*, Appendix I, Case 14, p. 243.

[111] Facts are from Human Rights Watch interviews in Nablus, September 1, 2001, and testimony gathered by LAW and by the PHRMG.

[112] Human Rights Watch interview, Nablus, September 1, 2001.

[113] See Palestinian Center for Human Rights (PCHR), "A Palestinian Prisoner Dies in Custody of the Palestinian Military Intelligence Service under Suspicious Circumstances," press release, Refugee: 44/2001, August 15, 2001, http://www.pchrgaza.org/files/PressR/English/2001/44-2001.htm

[114] Human Rights Watch interviews, Gaza Strip, September 4 - 6, 2001.

Khaled al-?Akkeh , whose alleged torture in detention was described earlier, was reported to have been killed by police as he tried to escape from prison or during a prison transfer in Gaza City on September 9, 2001. Newspaper reports quote police as saying that they first fired in the air before shooting him.[115]

?Imad Muhammad Amin al-Bizreh (30), a Palestinian Arab of Israeli citizenship, was reported by the PHRMG to have died in the custody of the PSS in Nablus Central Prison on October 8, 2001. Al-Bizreh was reportedly arrested on October 1 while visiting family in Nablus on charges of collaboration with Israel. Officers of the PSS are quoted as saying that al-Bizreh hanged himself in his cell.[116]

?Ala' al-Din Hassan Muhammad Wahba (41) from Khan Yunis, in the Gaza Strip, reportedly died in hospital on October 21, 2001, after three days of incommunicado detention by the GIS in Khan Yunis.[117] The security forces have alleged that he was arrested for "security reasons" and that he committed suicide after he was confronted with the confessions of his "co-conspirators." The brother of the deceased, a medical doctor, saw the body and declared in an affidavit that he saw "bruises and swelling in the hands, signs of a blow to the forehead, swelling in the neck apparently resulting from another blow, and traces of wire or rope around the neck."

IX. REASONS WHY TORTURE CONTINUES DURING THE INTIFADA

Palestinian security forces were torturing detainees long before the current Intifada. Nevertheless, some of the key factors identified below that facilitate the persistence of torture have been exacerbated in today's political climate.

Extracting Confessions

> *...any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.*
>
> U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 15[118]

The prosecution in State Security Court trials relies heavily on signed, uncorroborated confessions as the only or primary evidence (see below). There is intense pressure on the security forces to extract information from "security" detainees that will lead to other alleged informants before they pass information to Israeli security forces. This encourages security forces to use whatever means they consider necessary to obtain a confession, including torture.

Fateh Sorour, the chief judge of the State Security Court, initially told Human Rights Watch that the court did not rely unduly on confessions, but later in the interview, when explaining why there are delays in transferring detainees from the security forces to his jurisdiction, said that "the most important thing is for the security forces

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[115] Agence France-Presse, "Palestinian Sentenced to Death for Collaboration Killed in Escape Bid," September 10, 2001.

[116] PHRMG, "Death in Custody, A List of People Who have Died While in Custody in the PA," http://www.phrmg.org/resources/deathincustody.htm; Daraghmeh, M., "Palestinian Prisoner Dies in Custody," Associated Press, October 9, 2001.

[117] The information and quote in this paragraph is taken from PCHR, "The Death of a Palestinian Detained by the Palestinian Intelligence," press release, Refugee: 59/2001, Gaza, October 23, 2001. See also press releases issued by LAW (October 22, 2001) and Al-Mezan (October 23, 2001).

[118] In the West Bank, Article 208 of the Jordanian Penal Code currently provides a punishment of three months to three years of imprisonment for using violence or compulsion to extract a confession or information. The Draft Palestinian Penal Code, not yet ratified by the president, would forbid the use of force to obtain a confession, but would only declare it to be a misdemeanor, which is normally considered a more minor crime—see Article 109(b). The Draft Palestinian Basic Law would also prohibit torture to extract confessions.

to get the confession." The former detainees interviewed by Human Rights Watch were tortured either to confess to cooperating with Israel or to agree to incriminate another person. Not only do international standards prohibit absolutely the use of confessions extracted under torture, but such confessions are also notoriously unreliable. As Khaled al-Qidra, the state security attorney general conceded to Human Rights Watch, "If I was tortured I would say anything."

Impunity and Failure of Remedies

> *If an investigation ... establishes that an act of torture ... appears to have been committed, criminal proceedings shall be instituted against the alleged offender.*
>
> U.N. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 10
> *An order from a superior officer or public authority may not be invoked as a justification of torture.*
>
> U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2(3)

The systematic failure to prosecute and punish those responsible for torture and ill-treatment can only have sent a powerful message to the security forces that their leaders will acquiesce in the mistreatment of detainees or even that they encourage it if it produces confessions. [119] Torture and ill-treatment by law-enforcement and security officers is an example of the grossest ill-discipline and can only erode the chain of command. Torture, when it is not seen as the result of ill-discipline, at best reflects tolerance by, and at worst, an express policy of, security force commanders that torture may be used to extract information or to punish detainees.

Despite the stream of allegations of torture over the last twelve months, no member of the security forces or other PA officials is known to have been prosecuted for mistreating a detainee since the Intifada began. In the preceding years officers were put on trial only in rare and highly public cases.[120] Such trials were often secret and summary and failed to explore the real chain of command and responsibility for the acts.[121]

Mistreatment of detainees is usually dealt with as an internal matter by each security agency in its own way. The head of the General Intelligence Service in the West Bank, General Tawfiq Tirawi, told Human Rights Watch that his staff have been clearly instructed that torture is forbidden, that his officers monitor the methods of interrogation employed, and that ten to twelve members of the GIS have been disciplined in the last seven years. The GIS, however, declined to provide details of these cases. The head of international relations for the GIS in the West Bank, Walid Abu Ali, told Human Rights Watch, "if we are seen to discipline officers for ill-treatment of detainees the public will not like it," and "if I was being disciplined I would not like it to be known publicly." With such opacity it is difficult to find out the truth and punish abuses and stop torture.

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[119] Although as referred to above current Palestinian law prohibits violence to extract torture, the Draft Law for the Prevention of Torture of those Arrested, Detained or Imprisoned, rejected by the PLC in May 2000, would have introduced a broader and clearer prohibition against torture which does not yet exist in the PA criminal law. Article 13 of the Draft Palestinian Basic Law would also prohibit the use of violence by state employees to frighten or cause bodily harm.

[120] For example, one day after the death in custody of Nasser Abed Radwan on June 30, 1997, from blows to the head, a military court convened and convicted and sentenced three officers to death and three others to prison terms. The trial, conviction and sentencing so swiftly after the death suggested an effort by the authorities to mollify critics and public uproar. [Human Rights Watch, *World Report 1998* (New York: Human Rights Watch, 1998)]. In 1998, Amnesty International said it knew of four cases where members of PA security forces had been tried after a death in custody, of three cases within a matter of hours or days. See Amnesty International, *Five Years after the Oslo Agreement: Human Rights Sacrificed for "Security,"* September 1998, p. 30 (AI Index: MDE 02/04/98).

[121] Authorities occasionally publicly denounce torture, such as in the newspaper advertisements taken out in 1997 by Police Chief Ghazi Jabali that instructed security forces to stop violence and warned: "We will not be tolerant of anyone, no matter what their rank, if there is a complaint about him from a citizen who was beaten." Human Rights Watch, *World Report 1998.*

Human Rights Watch welcomes any measures by security force commanders to eradicate torture. However, internal confidential disciplinary procedures are inadequate to stop such a serious crime. If punishment is to be an effective deterrent and instill public confidence in the security forces, the cases must be made public, the investigation must be impartial, independent, and thorough and its results released; the perpetrators must be prosecuted under criminal law; the trial must be fair; and the punishment must reflect the seriousness of the offense.

Many former detainees—and their families—with whom Human Rights Watch spoke feared reprisals if their names were used publicly. Victims and families are reluctant to lodge official complaints. If they do complain they can obtain little or no redress. According to the PICCR, many of the complaints of mistreatment it has received have produced "no serious investigations." The PICCR reported that it generally receives only an abrupt answer from the security agency concerned: "the complaint of the citizen has no grounds."[122]

Attitude to Collaborators During the Intifada

When vigilantes summarily kill people accused of collaboration, with or without evidence but always with impunity, when families can be ostracized by an anonymous leaflet accusing a member of "collaboration," when some prayer leaders refuse to say prayers in the mosque for the victim of a street killing, when the State Security Court fails to respect the basic rights of suspected collaborators; it is not surprising that anyone labeled a collaborator is seen as deserving whatever treatment they receive. The security forces seem to believe that the public and PA authorities will turn a blind eye or even encourage the torture of alleged collaborators, to punish, to exact revenge, and to deter others. Yet it is the obligation of the PA to uphold the rule of law and the human rights of all detainees, even in the face of strong public sentiment encouraging abuses.

Incommunicado Detention

> *...communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.*
>
> U.N. Body of Principles, Principle 15

Detainees are routinely kept in incommunicado detention while they are under interrogation. Human Rights Watch spoke with former detainees who were tortured while they were held incommunicado for up to four months. As discussed earlier (see Arbitrary Arrest above), detainees are not brought promptly before a judge. Families are not allowed to see a detainee during the interrogation period, except if they can informally call on personal contacts in the security forces. Private lawyers and lawyers from human rights organizations rarely have access at this stage, especially to "security" prisoners. During this Intifada even the official PICCR is being refused access. The nongovernmental human rights organization Al-Haq told Human Rights Watch in September that "for the last two to three months we have been paralyzed in our work" because of the lack of access and the refusal of security force officers, especially the MIS, to meet with its lawyers.

In the Palestinian areas, as in other parts of the world, Human Rights Watch has noted the essential link between denying detainees access to the outside world—to judges, families, lawyers, independent doctors and to agencies such as the International Committee of the Red Cross (ICRC)—and the prevalence of torture. Torture flourishes in conditions where detainees are cut off from contact with the outside world and are entirely under the power of their interrogators, without any means of recourse or redress if they are being held arbitrarily or mistreated. Two of the deaths in custody described earlier occurred after seven days of incommunicado detention, one after three days and one after eighteen days. Under the PA, as elsewhere, the risk of torture is heightened by the fact that the agency that arrests and interrogates the suspect also holds them in its own detention center, without outside supervision.

[122] PICCR, *Sixth Annual Report*, p. 147.

In cases investigated by Human Rights Watch, the security forces sometimes sent detainees they had mistreated to doctors, some of whom warned that the detainee could be severely harmed by further mistreatment. The doctors themselves, however, are part of the system and lack sufficient independence or anyone reliable they can turn to if they suspect or see evidence of torture. Sometimes they fear for their own safety if they act on the information. The chief judge of the State Security Court told Human Rights Watch he insists that every suspect transferred to his court be examined by a doctor every forty-eight hours, with the report put in the file that he later sees. This could be one useful safeguard against torture if it was in force during the period of interrogation (which usually ends by the time the case is transferred to the court) if the doctor was independent, and if the reports were reviewed frequently and acted on quickly by a judge.

The PA has signed an agreement with the ICRC allowing access to all detainees kept in its detention centers. This is one essential safeguard against torture in relation to "security" and "political" prisoners who would be of concern to the ICRC. Unfortunately, however, the ICRC is not currently visiting detainees held by the Military Intelligence Service because it has apparently refused the ICRC's usual conditions. The MIS should urgently be brought into line with the other security agencies.

Instruction and Training

Most torture would stop if political leaders and the heads of security forces demonstrated the will to combat it, including acting decisively against abusers. Many Palestinian lawyers and nongovernmental organizations believe that security forces personnel often employ methods of abuse of which they have direct experience, methods similar to those used against them when they were held in Israeli detention centers. Some level of mistreatment in detention also seems to be considered "normal" by many Palestinians. '"When we ask [released] detainees how they have been treated they say OK," one PICCR lawyer explained to Human Rights Watch, "They do not consider *shabah* or *falaqa* torture." Proper training of new staff and regular on-the-job training of officers and subordinates could contribute to building a culture of respect for the human dignity of all detainees. A starting point would be to evaluate seriously the impact of internationally-funded training programs for its security forces since the PA was established.

Such training, if it is to have the desired effect, must be preceded by clear and mandatory instructions from the top echelons of the PA leadership and security force commanders. Various internal security force circulars have warned against the use of violence against detainees, but these often do not specify what behavior is prohibited and they do not have the force of law. Human Rights Watch was given a GIS circular entitled "Detention and Investigation Procedure" No. 679/41, dated July 2, 1997. It contains useful instructions about complying with the law on arrest, detention, and interrogation, most of which are commonly violated. Two brief but direct instructions about treatment of detainees require that "the detained person should receive good treatment throughout" and that "No form of violence may be allowed as a means of investigation." There is no detail, or indication of any consequences for ignoring these instructions. It is not clear either how this document is disseminated or used.

X. STATE SECURITY COURTS AND GROSSLY UNFAIR TRIALS

Everyone is entitled...to a fair and public hearing by an independent and impartial tribunal.

Universal Declaration of Human Rights, Article 10

Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts...

U.N. Basic Principles on the Independence of the Judiciary, Principle 5

The State Security Court is a special tribunal that has displaced and undermined the normal court system. It was created by presidential decree[123] in 1995 to deal with internal and external threats to national security. Since then it has tried more than 130 Palestinians in grossly unfair trials. So far during this Intifada, the court has been used mainly to convict Palestinians accused of being informants for Israeli security services. Palestinian human rights organizations, the Palestinian Bar Association,[124] the PLC human rights committee, and many private lawyers have condemned the State Security Court and called for it to be abolished.

Expanding Jurisdiction and Interference Undermine Regular Courts

The court was set up in April 1995 following intense pressure on the PA from the United States and Israel to prosecute Islamist activists. The first defendants put on trial were Islamists accused of involvement in suicide attacks in Israel. Fifty-five Palestinians were reportedly tried in the State Security Court in its first year in 1995,[125] in secret and summary trials presided over by military officers with no or little legal training, and with many of the trials being held in the middle of the night and lasting only minutes.[126] Following an outcry over the blatant unfairness of the trials, the court was used less frequently in the following years.

Until the current Intifada, most of the accused in Higher State Security Court cases continued to be Islamists, as well as other opponents of the Oslo Accords and critics of the PA. Alleged collaborators were not tried, partly because their offenses dated from 1994 and the PA felt constrained by the Oslo Accords. Instead, suspected collaborators were held in prolonged arbitrary detention without charge or trial. The first alleged collaborators were tried in 1997, not in the State Security Court, but in the Military Court, where trials also fall short of international standards, though importantly there is a right of appeal.[127] The PA gave jurisdiction over

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[123] The presidential decree of February 7, 1995, creating the Higher State Security Court, is based on the Gaza Constitution of 1962, which authorized the Egyptian military governor to create military courts to try crimes against internal and external security. The presidential decree says the court shall be competent to try "crimes against both internal and external security," especially crimes set out in (Egyptian) Order No. 555 of 1964 which sets out a number of security crimes and their punishments including the death penalty.

[124] The chairman of the Palestinian Bar Association told Human Rights Watch that the State Security Court was "an attack on the independence of the judiciary." He expressed the view that it should be abolished, though concentrated in his recommendations on how to improve its procedures if it is not abolished, including: abolishing the special state security attorney general; using only civilian judges; following the court procedures of the civil courts; and only referring special cases to the State Security Court.

[125] Figure from PHRMG database, http://www.phrmg.org/English/resources/statesecuritycourt.html

[126] See Amnesty International, *Trial at Midnight: Secret, Summary, Unfair Trials in* Gaza, June 1995 , (AI Index: MDE 15/15/95).

[127] Two trials are known: (i) Fawzi Muhammad Sawalha, an officer of Force-17, was sentenced to death (later commuted to life imprisonment) by a military court in Nablus on August 12, 1997 for terrorizing, abducting, and ill-treating local civilians, allegedly on the orders of Israeli security. Three other defendants (Khaldun 'Uthamneh, Taher Jamlan and Naser Hamadneh) were tried with him and were sentenced to terms of imprisonment. The trial fell short of international standards for fair trial and the confession of the first defendant was reportedly extracted under torture. See Amnesty International, *Five Years After...*, p. 36; (ii) On May 21, 2000, the military court in Gaza tried four civilians, members of the Hammad family (who as

collaborator cases to the State Security Court in early 2000. The first trial took place on 7 December 2000 in Nablus, just over two months after the current Intifada began.[128]

The Palestinian authorities have continued to expand the jurisdiction of the State Security Courts well beyond the usual boundaries of national security, further displacing the ordinary court system. In March 1998, President Arafat altered the structure by dividing the court into a Lower State Security Court and Higher State Security Court. The lower court was given jurisdiction over crimes relating to public health and the pricing, weighing, and quality of foodstuffs (such as selling food that has expired), and violations of regulations on food supplies, price monitoring, and control.[129] The most serious cases, usually those that carry a maximum penalty of death or life imprisonment, continued to be referred to the Higher State Security Court. In June 2000, over one thousand individual cases of criminal drug use or trafficking were transferred to the Lower State Security Court, a move that the PA justified on the grounds that the civil court system could not cope with the backlog of such cases.[130] Rather than transferring these cases to a system of summary justice, however, the civil system should have been strengthened to cope with them. There have also reportedly been moves by the state security attorney general to transfer jurisdiction to the Lower State Security Court for cases of dishonored checks.

Beyond the court's formal jurisdiction, President Arafat may at any time refer any case to the court on an *ad hoc* basis. State security attorney general Khaled al-Qidra told Human Rights Watch that the only cases referred to the State Security Court are "those directly attacking Palestinian national security." However, in recent years the State Security Court dealt with many cases that had little to do with national security and should have been tried by the ordinary courts, including rape, physical assault of a minister, murder, bank robbery, and tax evasion.[131] Hashem Rabah al-Hito, a merchant who had allegedly evaded taxes, was tried by the Higher State Security Court on charges of sabotaging the national economy. Al-Hito was sentenced to seven years hard labor on December 31, 1998, and fined 5 million shekels (approximately U.S. $1.2 million).[132] The alleged murderers of Nidal Fawzi Nasser, an officer in the MIS, were tried by the State Security Court in Gaza in May 2001. Khaled al-Qidra explained to Human Rights Watch that by murdering a member of the security forces the assailants were held to be attacking the PA itself.

Cases sometimes seem to be referred to the State Security Court to meet public demands for retribution following serious crimes, including human rights abuses, rather than because of the dictates of justice and fairness. This reflects a broader pattern of executive interference in the independence of the judicial process. In a report entitled *No to Street Justice*,[133] the PICCR studied a number of cases where street demonstrations, some violent, led to the authorities transferring ordinary criminal cases such as rape to the State Security Court. Under the pressure of public opinion these courts have given hasty verdicts, in some cases imposing the death penalty. Street demonstrations have also at times demanded that the State Security Court reduce unpopular verdicts.[134]

A human rights lawyer in Gaza, commenting on the question of who decides what cases go to the Higher State Security Court, told Human Rights Watch:

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civilians should not have been tried in a military court), in relation to the death of Yehya ?Ayyash, a Hamas activist. Kamal Hammad and Hussam Hammad were sentenced to death *in absentia*. ?Usama Hammad was released having already served three years and Karima Hammad was declared not responsible for her actions.

[128] Interview by PHRMG with state security attorney general in PHRMG, *Human Rights and Legal Position of Palestinian "Collaborators,"* July 2001, Section D.

[129] LAW, *Military and State Security Courts and the Rule of Law in PA-Controlled Areas*, by Muhammad Ayoub, *circa* 1999.

[130] PICCR, *Sixth Annual Report*, p. 94.

[131] LAW, *Military and State Security Courts...*, pp. 21-24, and PICCR, *Sixth Annual Report*, pp. 95-96.

[132] See JMCC, "President Arafat Ratifies State Security Court Sentence against A Merchant Accused of Sabotaging the Economy," Vol. 6, Number 1,500, January 24, 1999.

[133] PICCR, *No to Street Justice: A Special Report on Cases Referred to the State Security or Military Courts as a Result of Public Opinion Pressure*, Ramallah, August 2000.

[134] See the trial of Ahmad Muhammad Ahmad Abu ?Eisha, described in the section on violations of the right to a fair trail.

This is the dangerous thing. Who decides? President Arafat, not the law. He decides that according to lots of things that do not accord with the law in my opinion. Where public opinion is strong, they demonstrate, shout, he takes the case away from the police and transfers it to the State Security court.[135]

Violation of the Right to an Independent, Impartial, and Competent Court

The State Security Court violates one of the most basic rights of anyone charged with a criminal offense: to be tried by an independent and impartial tribunal that uses established legal procedures (see standards quoted at beginning of State Security Court section above). The State Security Court is neither independent nor impartial. The president convenes it *ad hoc* for each individual case; and, as already mentioned, he can refer cases directly to it and he appoints and dismisses its judges at will. The president also must ratify verdicts of the court. The normal judicial system was further marginalized in 1999 by the creation of a separate attorney general to deal with state security cases.

In the wake of criticism of the exclusive use of military judges in the State Security Courts, President Arafat has named Fateh Sorour, a serving civil judge (in the Conciliation, or lower, court in Bethlehem), to be chief judge in every trial of the State Security Court in the West Bank since mid-2000. However, contrary to ensuring the independence of the judiciary, Sarour has no security of tenure and can be dismissed by the president at any time. Three judges sit in Higher State Security Court cases, and the other two judges in all West Bank cases have been from the military. Only military judges appear to have been used in State Security Court trials in Gaza during the Intifada. Appointing *ad hoc* judges underlines the lack of independence of the court, especially if they are serving members of the security forces.[136]

Trials of Collaborators During the Intifada

Since the current Intifada began a year ago, sixteen defendants accused of being informants for the Israeli security services have been tried in nine trials, eight in the Higher State Security Court and one in the Military Court. As of October 2001, there have been only two or three other trials in the Higher State Security Court, all relating to murders.[137] Fifteen of the sixteen alleged informants were convicted and one was acquitted because of mental incapacity. Of the fifteen convicted, eleven were sentenced to death by firing squad, though only two death sentences have been ratified by the president and carried out (see below). Three others were sentenced to life imprisonment and a minor was sentenced to fifteen years of imprisonment.

Human Rights Watch spoke with lawyers, judges and other officials participating in the trials, as well as lawyers who had observed the trials in court and the families of the accused. The officials interviewed included Fateh Sorour, the chief judge of the State Security Court in all trials in the West Bank since mid-2000. Human Rights Watch also obtained detailed notes of the hearings in seven of the trials, made by the Palestinian lawyers who observed these trials. The trials have been of alleged informants, but any accused, whether in "political," "security," or ordinary "criminal" cases, face the same serious violations of fair trial rights.

Some of the abuses of trial procedures in the early years of the State Security Court have been rectified. Trials are now usually held during the day rather than in the middle of the night; in principle they are open to the public; and where witnesses do give evidence they can often be cross-examined. However, as described below, State Security Court trials are still inherently and grossly unfair. Speaking about the Higher State Security Court, an official of that court told Human Rights Watch "There is no law":

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[135] Human Rights Watch interview, Gaza City, September 5, 2001.

[136] The control by the executive was underlined when Colonel Sameh Nasser refused to accept his appointement as a judge of the State Security Court in April 1995. He was arrested and detained by the security forces for three days until he eventually accepted.

[137] For example, in May 2001 in the Gaza Strip, five people, Corporal Ezz Eddin Jamil Salem Al-Arabeed (24), Lieutenant Salem Jamil Salam (29), Ramzil Jamil Salam al-Arabeed (39), Majdi Jamil Salem Al-Arabeed (36), and Samir Jamil Salem Al-Arabeed (29), were accused of murdering Nidal Nasser, a member of the MIS. The first defendant was sentenced to death, the second defendant to twelve years of imprisonment, the third defendant was acquitted, and the charges were dropped against the last two defendants.

It is more a question of security than justice. It is a mixture of politics and justice. Nothing has changed in the State Security Court.[138]

Violation of the Right to a Fair Trial and to be Presumed Innocent

Every accused "is entitled in full equality to a fair and public hearing"[139] which includes "the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense."[140]

The trials of alleged informers, however, are often held in a highly charged atmosphere that undermines the right to a fair trial. Some hearings seem to be hastily convened in response to Israeli attacks and public anger. For example, tensions were running very high after an Israeli helicopter gunship attack on a building in Nablus on July 31, 2001, killed eight people, including two senior *Hamas* activists and two children who were playing outside. Some 50,000 people demonstrated in Gaza in protest, thousands more in towns on the West Bank.[141] The sentencing in Nablus of those accused in the Thabet Thabet case (see below) was brought forward by a day and held at 11:30 p.m. on the evening of the attack, in order that the guilty verdict could be publicized prior to the funerals of the eight, according to the governor of Nablus. On August 2, the day that tens of thousands of people gathered for these funerals,[142] the trial opened in Nablus of 50-year-old Ahmad Muhammad Ahmad Abu ?Eisha for allegedly assisting Israel to assassinate Salah Darwaza, a Hamas activist.[143] Three days later, in the same town, Sheikh Munzer al-Hefnawi was tried and convicted of helping Israeli security forces kill Sheikh Mahmud al-Madani, another Hamas activist, in February 2001. In circumstances such as these, the atmosphere inside and outside the court heightened the impression that the purpose of the court is to convict, not to weigh up the evidence impartially. The authorities must take steps to ensure that all trials are impartial and are seen to be impartial, including avoiding holding trials at moments of greatest tension and ensuring there are no protests or disturbances in court and within hearing of the court.

The right to be presumed innocent means the prosecution bears the burden of proving the guilt of the accused. If there is not enough evidence the accused must be acquitted, even if this goes against the public mood. Recent State Security Court trials of alleged collaborators since the Intifada began have lasted between eighty minutes and just under eight hours, some spread out over a few days. Where the defendants have denied the charges or pleaded guilty but denied elements of the prosecution case, the trials have not been long or thorough enough to determine fairly the guilt of sometimes up to five defendants in a single trial, often dealing with complex and confusing evidence. In most cases where defendants plead not guilty, the main or only prosecution evidence is uncorroborated, signed confessions, obtained from the accused while they were held in incommunicado detention, and which the defendants retracted in court. Although suspected collaborators often complain they were tortured or mistreated, the court fails properly to investigate claims by defendants that their confessions were extracted under duress or to require that the prosecution present other evidence that corroborates the confessions.

The prosecution evidence is rarely probed or properly challenged by defense counsel (see below). Unlike trials in the years after the court was established, defense witnesses are often allowed to be called, though the court-appointed defense counsel often do not find and present such witnesses. Where witnesses do give evidence, lawyers are usually able to cross-examine them, though court-appointed lawyers often do not do so.

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[138] Human Rights Watch interview, September 3, 2001.

[139] Article 10, "Universal Declaration of Human Rights," and also Article 14, "International Covenant on Civil and Political Rights," which sets out what constitutes a fair hearing.

[140] Article 11, "Universal Declaration of Human Rights," see also article 14(2), "International Covenant on Civil and Political Rights."

[141] BBC News, "Mass Protest after Israeli Attack," July 31, 2001, http://news.bbc.co.uk/English/world/middle_east/newsid_1467000/1467618.stm

[142] BBC News, "West Bank Tensions Escalate," August 2, 2001, http://news.bbc.co.uk/English/world/middle_east/newsid_1467000/1467869.stm

[143] The accused was convicted and sentenced to death after a trial lasting some eighty minutes. The accused admitted in court that the day before the killing that he gave Israeli security forces information about the movements of Salah Darwazeh.

The Bethlehem Case

On January 13, 2001 the State Security Court sitting in Bethlehem tried and convicted four defendants: Muhammad Deif Allah al-Khatib (28), Hussam al-?Aslini (18), Hanna Mansour Salama (19), and Wajih Muhammad Awad Allah Abu Sneid (19). The first defendant was accused of having been an informant for Israeli security for the previous ten years and of having passed on information about Hussein Abayat, an Islamist activist killed by the Israelis in November 2000. The other three defendants were accused of maintaining relations with Israeli security, including passing on information about Palestinian activists.

All the defendants pleaded not guilty. The first defendant only admitted in court that prior to 1994, while in an Israeli prison, he had been protected by the authorities because he had been accused by other prisoners of being an informant. He also admitted that after being released he had lived for a while in a hotel in Tel Aviv (where the prosecution claimed he had worked for Israeli security services). He said that he had returned to Bethlehem in 1994 and became a loyal member of Fatah (Yasser Arafat's organization). The second and third defendants said in court that they could not understand why they had been arrested and prosecuted—i.e., that there was no evidence to justify their presence as accused.

The only evidence that the prosecution presented was the written confessions of the defendants. The defendants agreed they had signed the confessions but claimed they had been extracted through beatings. The judges called a doctor who had examined the first defendant in detention to give evidence. The doctor testified that although when he examined the first defendant in detention he (the first defendant) had claimed he had been beaten, the doctor could find no signs of such beatings. In court the first defendant vehemently challenged the doctor's testimony. A lawyer who attended the trial told Human Rights Watch that the doctor appeared "scared, [standing] like a chair."[144] The court did not probe the other defendants' allegations that they had signed the confessions only after having been beaten.[145]

After four hours of hearings and based solely on the contested confessions, the first two defendants were sentenced to death (not yet ratified) and the last two were sentenced to life imprisonment. The verdict has been recognized as being so unreliable that, at least in relation to Hussam al-?Aslini, the minister of justice has accepted a petition by his lawyer and suspended the verdict pending a review[146]

The Thabet Thabet Case

A well-known Fatah activist, Dr. Thabet Thabet was killed by Israeli security forces on December 31, 2000. In July 2001 in Nablus the State Security Court tried five defendants for assisting the Israelis in this operation: Samr Zaina (21), Amjad Hafayza (28), Hussein 'Uyun (32), Muhammad Mahmud (17), and Hussam Mir?ai (35). The court hastily appointed defense lawyers (see below). All the defendants pleaded not guilty and it appears they all claimed they had confessed after their interrogators had threatened and tortured them. The first defendant admitted a relationship with Israeli security many years previously but said he had only ever provided names of car thieves and drug users. The prosecution relied only on the contested confessions, witness testimonies about the achievements of Thabet Thabet which were irrelevant to proving the charges against the accused, and a medical report claiming to show that the fourth defendant had not been tortured. The claims of torture of the other defendants were not adequately probed. Defense lawyers were allowed to present some witnesses who tried to refute the evidence in the prosecution case and to show that the fifth defendant was suffering from a mental illness. The first three defendants were sentenced to death, the fourth defendant to fifteen years in prison because he was a minor, and the fifth defendant was discharged as he was found to be mentally ill.

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[144] Human Rights Watch interview, Ramallah, September 3, 2001. See also account of a trial observer who described the doctor as "confused," in Segev, "Condemned...," *Ha'aretz*, January 19, 2001, English Edition, pp. B5-6.

[145] As mentioned earlier, General Tawfiq Tiwari, head of the GIS on the West Bank, admitted in an interview with Human Rights Watch on September 7, 2001 that Hussam al-?Aslini had been beaten in detention when first arrested by police, but that this was before he was transferred to the GIS, by whom he was freshly interrogated.

[146] Human Rights Watch interview with Salama Salama, defense lawyer for Hussam al-?Aslini, Jerusalem, September 11, 2001, and see also Orla Geurin, "Collaborators Face Harsh Penalty," BBC News, March 20, 2001, from interview with minister of justice, http://news.bbc.co.uk/hi/English/world/middle_east/newsid_1231000/1231455.stm

Violation of the Right to a Defense, to be Represented by a Lawyer of Choice and to have Time to Prepare Defense

Every accused has a right to be represented by a lawyer of their choice and to have adequate time to prepare a defense.[147]

Except in rare cases, accused appearing before the State Security Court are defended by lawyers who are serving members of the security forces appointed by the court and who are usually not practicing lawyers. They have neither the independence nor the training to present a credible defense—or in some cases any defense. On at least three occasions since the Intifada began the court has made attempts, albeit unsuccessful ones, to have private defense lawyers to represent the accused.[148] Yet having failed, it then went on to impose the death penalty after trials in which court-appointed defense counsel were given no time to prepare and presented hopelessly inadequate defenses.

Human Rights Watch knows of only two of the sixteen alleged informers tried since the Intifada began who were defended by lawyers in private practice.[149] The family of Hussam al-?Aslini appointed Salama Salama on the day of the trial in Bethlehem but the court refused the lawyer's request for a 48-hour adjournment to prepare the defense.[150] Nevertheless, Salama called witnesses to challenge the prosecution case and after the trial's conclusion petitioned President Arafat to review the conviction. As mentioned above, this is the only case in which the court's verdict has been suspended pending a review.

Palestinian human rights organizations will not send lawyers to appear in the State Security Court because they consider it so flawed that it should be abolished. The Palestinian Bar Association takes no position on whether or not its members should act as defense counsel in the State Security Court.[151] But it is very difficult to find a private lawyer prepared to face public wrath and defend an alleged collaborator. A private lawyer retained by the accused Sheikh Munzir al-Hefnawi in Nablus withdrew when he found out the charges. The court appointed a police officer as defense counsel who was given twenty-four hours to prepare and met once with his client. A lawyer defending three accused in the Thabet Thabet case withdrew after his challenge to the constitutionality of the State Security Court was predictably rejected by the judges. On the spot, the judges instructed the police officer who was defending the other accused to represent all the accused, but allowed no adjournment so that the officer could have time to prepare.

Fateh Sorour, chief judge of the State Security Court, told Human Rights Watch that lawyers coming to the court are scared. This was confirmed by a lawyer, an official of the State Security Court, who told Human Rights Watch:

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[147] Article 14(3)(b) of the ICCPR gives accused the right "to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing" and 14(3)(d) provides the right "... to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right...."

[148] In the Thabet Thabet case (see above) the chief judge adjourned the first session because none of the accused were legally represented. He unsuccessfully asked the Palestinian Bar Association to appoint defense counsel. Similar requests to the Palestinian Bar Association were made in the ?Alam Bani ?Odeh trial (see below) and to the Palestinian Bar Association and a human rights organization in the Bethlehem trial (see above).

[149] Apart from the Hussam al-?Aslini case described here, a private lawyer defended Khaled al-?Akkeh in his trial in Gaza in August 2001 (see Torture above). One other State Security Court case since the Intifada has also involved private defense lawyers, though this was not a collaborator case. The five members of the security forces accused in the killing of *Istikhbarat* officer Nidal Fawzi Nasser were represented by two lawyers, including the chairman of the Palestinian Bar Association. One defense lawyer in the trial of ?Alam Bani ?Odeh in Nablus was an employee of the Ministry of Interior.

[150] Human Rights Watch interview with Salama Salama, Jerusalem, September 11, 2001.

[151] Human Rights Watch interview with Abd al-Rahman Abu Nasr, Chairman, Palestinian Bar Association, Gaza City, September 5, 2001.

> The lawyers entering the [State Security] courts are scared like rabbits. They fear that people will consider they are not nationalistic. They fear the same [if representing an alleged collaborator].[152]

In most cases, it appears that court-appointed lawyers say little on behalf of their client, fail to present a proper defense if the accused pleads not guilty or denies some alleged facts, and often use language showing they consider their client to be guilty. Colonel Hassan Mussalam (59) was convicted and sentenced to death on February 11, 2001 in a military court in Hebron for allegedly being an informant for Israeli security. He admitted only to meeting Israeli security agents twice in 1994, receiving a total of NIS 1,800 (about U.S. $450), and identifying an activist in one photograph, before breaking off all contact. The court-appointed defense counsel reportedly did not cross-examine or ask a single question of the key prosecution witness, who was himself a confessed collaborator.[153] In the Bethlehem trial (see above) the police officer defending three accused asked the court to show the accused mercy for becoming entangled with Israeli security—yet the three had denied all the charges.[154]

In many cases families see little point in hiring a lawyer, as they doubt it will change the outcome of the case. Even if a family is able, and can afford, to appoint a private lawyer, there is usually inadequate time to prepare a defense. Little advance notice of a trial is given—usually no more than the day before the court convenes. The son of Col. Mussalam, referred to above, reportedly recounted how:

> One Saturday morning, I heard by chance from a neighbor that my father's trial would be held that day ... I rushed over there and discovered that there really was a hearing about my father's case.[155]

Some court-appointed defense lawyers have tried to challenge evidence and present elements of a defense, but they have usually been blocked by the judges' procedural rulings. Requests for adjournments to prepare cases, for example, are routinely rejected, and lawyers often have to defend their client hours or minutes after taking on the case. Victims, families, and lawyers usually do not know the specific charges before the trial, in violation of the accused's right "to be informed promptly and in detail...of the nature and cause of the charge against him."[156] As discussed earlier, families may only be told vaguely that there are "security concerns" or that their relative is a "collaborator." Lawyers also report that it is difficult to obtain copies of documents such as charge sheets and witness statements.

The Case of ?Alam Bani ?Odeh

On December 7, 2000, ?Alam Bani ?Odeh (24) was convicted and sentenced to death by the State Security Court in Nablus. He had been charged with treason, premeditated murder, and being an accomplice to murder in relation to the killing of his cousin, Ibrahim Bani ?Odeh, on November 23, 2000, allegedly by Israeli security forces. This trial again shows how decisions of the State Security Court judges prevent the accused from obtaining a proper defense even when defense counsel tries to mount one. ?Alam Bani ?Odeh admitted to giving information to Israeli security around the time of the killing but denied knowing that Israeli security agents had planted a bomb in his car, which was remotely detonated after he lent it to his cousin. One of the court-appointed defense lawyers was a member of the PA security forces who possessed a law degree but reportedly had no license to practice, while the other was an employee of the Ministry of the Interior who apparently had not practiced law for four or five years. When these defense representatives asked for the trial to be postponed so that they could prepare a defense, the judges granted them a fifteen-minute adjournment to read the case file. Even so, the prosecution did not, before the trial began, show the defense counsel the witness statements they were going to submit. Nor did the judges allow the defense to call and cross-examine in court the witnesses who had made

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[152] Human Rights Watch interview, September 3, 2001.
[153] Aviv Lavie, "From Hero of the Revolution to a Cell on Death Row," *Ha'aretz*, English edition, February 25, 2001.
[154] A trial observer was reported to have written that the police officer "sp[oke] as though his clients had confessed to the charges rather than denying them." See Segev, "Condemned...," *Ha'aretz*, p. B6.
[155] Aviv Lavie, "From Hero of the Revolution to a Cell on Death Row," *Ha'aretz*, English edition, February 25, 2001.
[156] Article 14(3)(a), International Covenant on Civil and Political Rights.

these sworn statements. Indeed, no witnesses were called to give evidence in court. ?Alam Bani ?Odeh was sentenced to death and executed (see below) after a hearing which lasted a total of two hours.

Violation of the Right to Appeal to Higher Tribunal

Those convicted by the Higher State Security Court have no right to appeal to a higher court. The verdicts are sent to President Arafat for ratification. Yet the right to appeal is enshrined in international standards[157] and the United Nations has particularly emphasized that in death penalty cases "steps should be taken to ensure that such appeal shall become mandatory."[158] This is in addition to ensuring that those sentenced to death are able to seek pardon or commutation of sentence, for example, by appealing to the president. Both the Palestinian ordinary civil court system and the military court provide a right of appeal to a higher tribunal.

Summary justice is reprehensible under any circumstances, but especially where the consequence is the death penalty or life imprisonment. International standards emphasize that the death penalty may be imposed "only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts."[159] The alleged informants tried by the State Security Court may or may not have committed the offenses of which they were charged. Despite some welcome attempts to improve court procedure in a few cases, the failure to respect most of the fair trial rights of the accused makes the verdicts unreliable and deeply flawed.

XI. THE DEATH PENALTY AND STREET INJUSTICE

As of early September 2001, the PA had sentenced twelve people to death since the Intifada began, more than in any other similar period since the PA was established.[160] Eleven of the sixteen alleged collaborators tried by the State Security and Military Courts since the Intifada began have been sentenced to death, as well as one of the accused convicted by the State Security Court in Gaza in May 2001 for killing a member of the security forces.

After a twenty-two month *de facto* moratorium on executions, two death sentences of alleged collaborators were ratified by President Arafat and carried out: ?Alam Bani ?Odeh (see above) was executed on January 13, 2001 in Nablus. The cruelty of the punishment was aggravated by being carried out publicly in front of a crowd of hundreds in the courtyard of the main administration building in Nablus. Majdi Muhammad Ahmad Makawi (27) was sentenced to death on January 11, 2001 in Gaza by the State Security Court for allegedly assisting Israel in killing two Fatah activists and two others in the same vehicle, at a checkpoint on November 22, 2000. Majdi Makawi was executed by firing squad on January 13, 2001.

Human Rights Watch opposes the use of the death penalty in all cases as a violation of the right to life, both because of its inherent cruelty and because of the possibility that individuals wrongly convicted may be executed.

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[157] "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law," Article 14(5), International Covenant on Civil and Political Rights.

[158] Article 6, U.N. Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty.

[159] Article 4, U.N. Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council, Resolution 1984/50, May 25, 1984.

[160] The PHRMG has since reported one more death sentence in September 2001, imposed on September 24, 2001 by the Military Court in Hebron on 21-year-old ?Imad Salah Fleifel for killing a colleague while on duty at a Palestinian checkpoint. Amnesty International figures for death sentences and executions, taken from its published annual reports:

	Death sentences	Executed
1995	1	0
1996	11 (2 commuted)	0
1997:	7	0
1998:	4 (1 commuted)	2
1999:	4	1

The PICCR reported six death sentences imposed in 2000.

These concerns are heightened by the blatantly unfair trials in the State Security Court. The international outcry after these executions, especially from the European Union, may account for the fact that President Arafat has not ratified any more death sentences as of early November 2001. The head of the PLC's Human Rights and Oversight Committee agreed that fair procedures should be followed especially in death penalty because "If you find out after the execution that there has been a mistake, it is not only the person [executed] who pays, but his brothers, wives, uncles."[161]

Street Injustice: Vigilante Killings of Alleged Collaborators

An increasing number of people accused of cooperating with Israel in the past or currently have been killed by unknown attackers. Human Rights Watch estimates that since the current Intifada began at least thirty Palestinians accused of collaboration have been shot or stabbed to death by other Palestinians in execution-style killings.[162] No such cases have been reported in the Gaza Strip, but most major towns on the West Bank have seen such killings, with most occurring in and around Bethlehem, Tulkarem, Qalqilya and Nablus. No one has been brought to justice for any of these killings.

Patterns of Killings

Killings in the West Bank town of Tulkarem, less than 40 kilometers from Tel Aviv, are typical of the pattern across the West Bank. Local human rights monitors say that eleven alleged collaborators were killed in Tulkarem from the beginning of the Intifada until September 2001. For example, Shahir Lutfi was a 44-year-old car mechanic who had been married for three months. On July 5 three masked men in civilian clothes came to the new home he was building in the hills behind Tulkarem.[163] They demanded to see his identity card and then fired one shot in his head and another into his chest. He died before an ambulance arrived. Two groups, the *Kata'ib al-Aqsa* (al-Aqsa Brigade) and he *Kata'ib al-'Adala al-Thawriyya* (Revolutionary Justice Group), reportedly claimed responsibility for his killing in leaflets circulated in the following days and accused Shahir Lutfi of collaborating with Israel and recruiting other collaborators. His family reportedly denied that Shahir Lutfi had collaborated with Israel in any way.

With no semblance of due process, completely outside the justice system, it is not surprising that the killings are carried out for a wide range of motives, some personal. Palestinians have been killed for: allegedly assisting Israel in specific assassinations of Palestinians; cooperating with Israel over long periods, often years ago; and selling land to Israelis. In many cases there is only an ill-defined public accusation of "collaborating with Israel." In some cases murders arising from personal and family disputes are cloaked in the justification of eliminating a collaborator.[164] As Dr. Said Zeedani, director of the PICCR, has said, "we will encounter... 'mixed motives' or 'ulterior motives' or issues relating to family honor and political and social issues; the intertwining and intermingling of these motives."[165]

In some cases the victim has apparently been mistaken for someone else. Hussam As?ad 'Awad, a 40-year-old accountant, was shot dead by two men outside his home in Tulkarem on April 16, 2001. Subsequently, *Al-Ayyam* newspaper quoted the Tulkarem Governor and sources in the PA as affirming that 'Awad was not suspected of cooperating with Israel. An April 23, 2001 public statement by the Tulkarem National and Islamic Forces also denied there was any "security" reason for its units to kill him, and an April 19, 2001 letter to the victim's family from the head of the local municipality expressed condolences and characterized him as a martyr.[166] Observers have suggested the intended target may have been a relative of the dead man who lived in

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[161] Qadul al-Faraj, Ramallah, September 10, 2001

[162] The estimate is based on research by Human Rights Watch.

[163] Human Rights Watch interview, Tulkarem, September 8, 2001.

[164] For example, the *Washington Post* reported that the inhabitants of Burqin widely believed that the killing of Muhammad Musa Abd al-Rahman on January 15, 2001 arose out of a dispute he had with a Palestinian intelligence official over accusations of adultery. See Lee Hockstader, "Palestinians Battle the Enemy Within: Menace of Israeli Collaborators Spawns Executions, Vigilantism, Revenge Killings," Washington Post Foreign Service, February 2, 2001.

[165] Dr. Said Zeedani, "The Issue of Collaborators from a Human Rights Perspective," in PASSIA conference on collaborators, p. 41.

[166] Human Rights Watch interviews, Tulkarem, September 8, 2001.

Israel, and that 'Awad was murdered in a case of mistaken identity. Even so, there was no adequate police investigation and the perpetrators have not been found and brought to justice.

Similarly, 43-year-old Muhammad Fares al-Khatib from Tulkarem was shot dead by an assailant on June 27, 2001 as he walked with his niece on the streets of nearby Qalqiliya. In a letter sent to his widow the following month, Ism'ail Hassan Abu Jabal, the head of PA security forces in the northern district of the West Bank, suggested that Muhammad Fares al-Khatib was mistaken for his brother who had been a "security" suspect during the first Intifada. The letter declared her husband a "martyr" and promised financial assistance that families of martyrs receive from the PA.[167] The letter also promised that because he was considered a martyr, the killing would be investigated further to find the perpetrator. However, no perpetrator has yet been brought to justice.

The social consequences for the family of a Palestinian killed by vigilantes for alleged collaboration can be as severe as that suffered by relatives of those convicted by the State Security Court. In the evening of July 31, 2001 two men wearing PA police uniforms went to the house of 57-year-old Jamal 'Eid Shahin in Beit Sahour near Bethlehem. Jamal 'Eid Shahin walked some distance from the house to talk with the men, who then hit him on his legs and head or neck with an axe before shooting him to death. The *Wihdat al-Tasfiyya* (Elimination Unit) of the *Jihaz al-Amn al-Thawri/Kata'ib Shuhadaa al-Aqsa* (Revolutionary Security System/al-Aqsa Martyr's Brigade) claimed responsibility in a leaflet which proclaimed, "The hand of traitors would not have reached our heroes if it was not for those corrupt ones who sold their conscience and their religion and dignity." The leaflet warned, "We say to those traitors who are left that their time is near. We will not forgive them the blood of the martyrs that they have taken." The imam at the local mosque reportedly refused to pray for the soul of Jamal 'Eid Shahin, which brought further shame on the family and forced them to pray outside the mosque.[168]

The Perpetrators and Response of the Palestinian Authority

It is unclear who is responsible for these killings. Most civilians are too frightened to talk openly about this question. In some but not all cases a leaflet is distributed after the killing, accusing the victim of collaboration and claiming responsibility for a particular group, such as the Revolutionary Security System/al-Aqsa Martyr's Brigade and *al- Adalah al Thawriya* (Revolutionary Justice Group), both in Tulkarem, as well as *Wihdat al-Tasfiyya* in Bethlehem. Hamas, which was responsible for killing alleged collaborators during the first Intifada, has warned that it will do the same this time. "The *'Izz al-Din al-Qassam* (the armed wing of Hamas) will not remain handcuffed and silent in the face of continued ugly crimes by the traitors," the group's military wing was reported as saying. "It will strike with an iron fist against all those involved in collaboration with the Zionist enemy."[169]

In contrast to the past,[170] PA officials have publicly discouraged Palestinians from killing suspected collaborators—yet not a single perpetrator has been brought to justice. Faisal Husseini, the senior PLO and Fatah leader in Jerusalem before his death in May 2001, was reported in January 2001 as warning that "any attempt by an individual or group to...[take the law into their own hands] will bring charges on to them."[171] After a killing in Bethlehem in August, the PA issued a statement in which it "rejects and condemns every attempt by any party to take the law into its hands."[172] General Tawfiq Tirawi, head of the GIS in the West Bank, reaffirmed to Human

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[167] Human Rights Watch interviews, Tulkarem, September 8, 2001.
[168] Human Rights Watch interviews, Bethlehem, September 7, 2001.
[169] BBC News, "Death of Palestinian 'Collaborator.'" January 16, 2001, http://news.bbc.co.uk/hi/english/world/middle_east/newsid_1119000/1119996.stm
[170] In the past, inflammatory comments have encouraged killings. For example, the PA minister of justice, Freih Abu Meddein, seemed to give the green light to violence against suspected land dealers when, following the death in May 1997 of a land dealer, he said, "As I have said before expect the unexpected for these matters because nobody from this moment will accept any traitor who sells his land to Israelis." (Human Rights Watch, *World Report 1998*, "Palestinian Authority").
[171] BBC News, "Death of Palestinian 'Collaborator,'" January 16, 2001, http://news.bbc.co.uk/hi/english/world/middle_east/newsid_1119000/1119996.stm
[172] BBC News, "Palestinians Round up 'Collaborators,'" August 3, 2001, http://news.bbc.co.uk/hi/english/world/middle_east/newsid_1472000/1472239.stm

Rights Watch that such vigilante killings are "bad for the Palestinian Authority and its image" and that therefore the PA does investigate and seek to prosecute.

It is not clear whether and to what extent there may be a link between the groups responsible for the killings and the PA or leaders in the PA, including whether political leaders or security forces have knowledge of the groups' actions but tolerate them. Groups claiming to be part of or close to Fatah, the political organization of President Arafat, have reportedly sometimes claimed responsibility, including one calling itself *Quwwat al-'Asifa* (Storm Forces).[173] After Ahmad Shawqat Salah (29) was shot dead outside his home in al-Khader near Bethlehem on August 2, 2001, the Elimination Unit of the al-Aqsa Martyrs' Brigade claimed responsibility in a leaflet. It was reported that the assailants drove away from the shooting and were able to pass through a nearby military barrier controlled by Force17, an elite presidential unit, without being stopped like all other vehicles. As mentioned above, the killers of Jamal 'Eid Shahin in Bethlehem reportedly wore police uniforms; this should be thoroughly investigated to determine whether or not they were in fact members of the police.

The PA aspires to statehood and should respect human rights laws that require governments to take reasonable steps to prevent or respond to such crimes even if they are carried out by private individuals. In the cases Human Rights Watch investigated in Tulkarem and Bethlehem, the police investigations appear to have been perfunctory at best. In some cases there was no investigation of the scene of the crime; in one the evidence was contaminated when handled by the police; in others there have been no signs of an investigation months after initial questioning of the victims' families. When a relative of one victim in Bethlehem asked the director of the Civil Police to investigate, the reply came, "I have only three things to tell you. A man was killed in [location]. His name is [name]. Who killed him is unknown."[174] The widow of one victim told Human Rights Watch[175] that the local police initially refused to help lift the body from where it lay because they said he was a collaborator. She later pleaded with the GIS *(Mukhabarat)* [176] to investigate. "The *Mukhabarat* said go to the governor," she explained, "and the governor said go to the *Mukhabarat*." When Human Rights Watch asked whether she was pushing for an investigation, she replied that only the governor could make this happen and "to go to the governor you need many people [to make a show of strength] and where will I get them?" Echoing the sentiments expressed by every victim's family Human Rights Watch spoke to, the brother of a man killed in Tulkarem said "I want to know who killed him. This is the most important thing for me."

It is important to note that far fewer Palestinians have been unlawfully killed as alleged collaborators than during the first Intifada, when an estimated 822 alleged collaborators died at the hands of other Palestinians between 1988 and April 1994.[177] The smaller numbers are probably partly because a PA justice system now exists which can absorb some public anger by itself arresting alleged collaborators, and because the PA is more openly and clearly critical of the killings.

Nevertheless, about twenty alleged collaborators were killed in the first year of the first Intifada—similar to the death toll in these last twelve months. During subsequent years of the first Intifada the number of deaths surged dramatically, to about 150 in 1989 and thereafter 100 or more in most years. The escalation seems to have been a response to intensified Israeli operations to arrest suspects, often relying on Palestinian informants.[178] There is a danger that today's vigilante killings will also escalate if Israel continues to liquidate Palestinians and

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[173] See, for example, the report of the killing of Ma'mun Balar in Tulkarem on April 8, 2001, in which a group calling itself "Quwwat al-'Asifa" claimed responsibility. This was the name of Fatah's military branch during the 1960s. See Amira Hass, Amos Harel and Baruch Kra, "Palestinian Man with Israeli ID Killed in Tul Karm," *Ha'aretz*, April 9, 2001.

[174] Human Rights Watch interview with family victim, Bethlehem, September 7, 2001.

[175] Human Rights Watch interview, Tulkarem, September 8, 2001.

[176] Investigating killings of collaborators is the responsibility of the Civil Police but also the *mukhabarat* and the Preventive Security Service because the question of collaborators is seen as related to the security of the PA areas—from Human Rights Watch interview with General Tawfiq Tiwari, head of the *mukhabarat* for the West Bank, September 7, 2001, Ramallah.

[177] Figure compiled by Associated Press, cited in a May 1994 press release by B'Tselem, updating statistics on casualties of Israeli-Palestinian political violence to the end of April 1994.

[178] Figures and analysis of reasons for escalation during first Intifada, see B'Tselem *Collaborators in the Occupied Territories: Human Rights Abuses and Violations*, Jerusalem, B'Tselem, February 1995.

use Palestinian informants, if the frustration and anger at the stalled peace process continues, and if the PA does not act decisively in every case to find and punish the perpetrators and to make it known at the highest level that such killings will not be tolerated.

XII. ACKNOWLEDGEMENTS

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