



PALESTINIAN CENTRE FOR HUMAN RIGHTS

Waiting for the Unlikely:
PCHR Position Paper on PNA “Reforms”
22 June 2002

Since its establishment in 1994, the Palestinian National Authority (PNA) has faced demands for democratic governance and respect for human rights from Palestinian civil society.¹ More recently, in the wake of the full-scale Israeli military offensive in the West Bank that began on 29 March, Israel and the United States have also started to demand PNA “reform”. In response to both domestic and international pressure, PNA President Yasser Arafat has in recent weeks signed several crucial draft laws that had awaited ratification for years, announced changes to the PNA cabinet, and promised to hold new elections for the presidency and the Palestinian Legislative Council (PLC) by the winter of 2002-2003.

This position paper examines four recent areas of PNA “reform”: the Judicial Authority Law, the Basic Law, PLC/presidential elections, and the restructuring of security services. In doing so, PCHR asserts the following points:

- The “reforms” being enacted are, in the current context, irrelevant at best and deceptive at worst. The PNA executive has shown no signs of genuinely adopting the principles that these reforms are meant to enshrine, namely the independence of the judiciary, rule of law, separation of powers, and protection of human rights. Moreover, many PNA institutions have largely ceased to function due to constant Israeli incursions into PNA-controlled areas and the ongoing Israeli military siege of Palestinian communities.
- PCHR is deeply concerned that the language of “reform” is being co-opted at the expense of human rights and democracy by the very entities that have resisted for years – namely Israel, the United States, and the PNA – in order to further their own respective political agendas.
- Just as unprecedented Israeli attacks do not absolve the PNA of its obligation to respect human rights, the Israeli and US governments’ misuse of the rhetoric of reform to perpetuate the occupation does not lessen the need for strong and accountable institutions in Palestinian society. PCHR, which has long advocated PNA reforms, renews its call for both the PNA and the international community to genuinely support democracy and the rule of law in the Occupied Palestinian Territories (OPT).

¹ The PNA is an autonomous entity created by agreements signed by Israel and the Palestine Liberation Organisation. Under the Oslo accords, the PNA is responsible for security and civil matters over 18% of the OPT (“Area A”) and civil matters only (“Area B”) over 41%. These areas are divided into dozens of fragments separated by areas where Israel retains full control (“Area C”).



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Judicial Authority Law

President Arafat signed the Judicial Authority Law on 18 May, nearly four years after it was passed by the PLC.² The law establishes the structure of an independent and accountable Palestinian civil judiciary, including regular courts, appeals courts, and a high court, and as well as an office of attorney general.³ The law was drafted with the input of diverse sections of society, including lawyers, NGOs, academics, and jurists. PCHR has supported the Judicial Authority Law since its inception and welcomes President Arafat's ratification.

In the current context, Israeli attacks render the proper implementation of the Judicial Authority Law almost impossible. The work of nearly all PNA institutions, including police stations, detention facilities, and courts, is severely disrupted by regular invasions of PNA-controlled areas. PNA prisons and police stations are neither safe nor secure, being subjected to repeated aerial bombardment by Israeli combat aircraft. Moreover, the strict Israeli military siege on Palestinian cities, villages, and refugee camps makes movement for judges, lawyers, and other court personnel almost impossible.

In the short period since the ratification of the Judicial Authority Law, the PNA has continued to undermine the independence of the judiciary and the rule of law in numerous ways:

- A ruling by the High Court of Justice in Gaza on 3 June ordering the immediate release of Ahmed Sa'adat, Secretary General of the Popular Front for the Liberation of Palestine (PFLP), was quickly rejected by the PNA cabinet under Israeli and American pressure, even though Sa'adat has been detained without charge since January 2002.⁴
- The PNA State Security Courts, which completely bypass the civilian judiciary and involve summary trials without opportunity for appeal, continue to function; on 5 June, the State Security Court in Gaza sentenced two men to death for the rape and murder of a young girl in Rafah after a three-hour trial (they were executed soon thereafter).
- The PNA executive has not only ignored the Judicial Authority Law, it has sought to unlawfully alter it as well. Soon after ratifying the law, President Arafat reportedly asked PNA Justice Minister Freih Abu Meidan to unilaterally amend several articles of the law

² Under article 71 Para. (1) of the Palestinian Legislative Council's by-law revised on 17/4/1998 30 days to ratify or return any law passed by the PLC; if the president takes no action within the 30-day period, the law comes into force automatically. Although President Arafat took no action on the law during the 30-day period, it was not implemented. The PLC requested ratification on several subsequent occasions without success but failed to take further measures, such as votes of no confidence.

³ On 1 June 2000, President Arafat issued an executive order forming a Higher Judiciary Council to monitor and regulate the conduct of judges, even though the Judicial Authority Law provides for such a body. Curiously, although the executive order claimed to be based on the Judicial Authority Law (which had not been ratified), it specified a different composition for the Higher Judiciary Council than that outlined in the Judicial Authority Law. See *Palestinian Legislative Council: Performance Evaluation of Fifth Term*, PCHR Series Study (27), 2002.

⁴ Israel immediately condemned the High Court decision and threatened unspecified measures if Sa'adat were to be released. The US government, which brokered a deal to have Sa'adat confined without charge by the PNA under American and British supervision, urged the PNA not to take any "unilateral steps." See PCHR press release, 4 June 2002.



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before publishing it, in an attempt to circumvent the legislative process. Abu Meidan refused. He was replaced on 8 June.

- Although Article 34 of the Judicial Authority Law stipulates mandatory retirement for judges at age 70, at least three judges above this age, including Chief Justice Radwan al-Agha, have yet to step down.
- Article 81 of the Judicial Authority Law stipulates that a Higher Judiciary Council shall be established within one month of the law's entry into force in order to regulate the conduct of judges. Although this period has passed, no such Council has been established.

Basic Law

According to media reports, President Arafat signed the Basic Law on 28 May (nearly five years after it was passed by the PLC). The law has yet to be formally published and therefore cannot be implemented at this time. The Basic Law was meant to provide a legal framework designed for the interim period of the Oslo accords, which was to end on 4 May 1999. Unlike a constitution, the Basic Law outlines the rights of citizens while leaving crucial issues regarding any future Palestinian state – including its capital, borders, and definitions of citizenship – to be resolved in final status negotiations.

With the expiry of the interim period on 4 May 1999 and the breakdown of the Oslo process, the context for which the Basic Law was conceived no longer exists and the philosophy behind it is no longer applicable. The law seems to be of little relevance as long as there is no broader political process to resolve issues crucial to the exercise of the Palestinian right to self-determination. PCHR, which called for the ratification of the Basic Law for several years, continues to affirm the need for a legislative framework that guarantees the separation of powers and the protection of basic rights and freedoms. But the belated signing of the Basic Law does little to further these ends.

Presidential and PLC Elections

The first and only national elections under the PNA, for the offices of president and members of the PLC, were held in 1996. Although their terms of office expired with the end of the interim period on 4 May 1999, the president and members of the PLC continue to serve in their posts. From 4 May 1999 until the outbreak of the al-Aqsa Intifada over one year later, PCHR and other Palestinian civil groups actively advocated for new elections, warning that the legitimacy of the PNA would continue to erode without a renewed mandate from the people.

In recent weeks, the PNA has indicated that it plans to hold new elections for both the presidency and PLC in the winter of 2002-2003. Although PCHR recognises the continuing need for the people to express their democratic will, it is extremely unlikely that free and fair democratic elections will be held in the foreseeable future, for a number of reasons:



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1. Proper conditions for elections do not exist in light of the current situation on the ground in the OPT. Israeli occupying forces regularly invade PNA areas while maintaining a strict siege on Palestinian communities. In this environment, normal social functions are severely disrupted either by violence (mass arbitrary detentions, political assassinations, shelling and bombardment, etc.) or by movement restrictions. In the West Bank, this has dramatically worsened since the Israeli invasions of 29 March. The Israeli government has given no indication that it intends to facilitate elections by lifting the siege or refraining from invading PNA-controlled areas. In addition, governments continue to allow Israel to act as a state above international humanitarian law and have failed to take concrete steps to end its systematic violations of the Fourth Geneva Convention. PCHR does not anticipate either of these factors changing in the foreseeable future.
2. While the purpose of elections is to confer a democratic mandate upon an elected leadership, the current Israeli government under Prime Minister Ariel Sharon has long sought to destroy Palestinian political representation in general and the PNA in particular. This is clear in the systematic Israeli attacks on PNA civilian institutions (including broadcasting facilities and the Ministry of Education) and infrastructure (Gaza airport and seaport, neither of which were functioning when destroyed). These policies, as well as Sharon's expressed view that the war of 1948 remains incomplete, strongly suggest that the current Israeli government would consider free and fair Palestinian elections to be a threat.
3. It is not yet clear as to whether the proposed elections would include occupied east Jerusalem, as they did in 1996. Exclusion from east Jerusalem would entail the disenfranchisement of 235,000 Palestinians and serve to legitimise Israel's illegal annexation of the occupied portion of the city. While it is highly unlikely that the Sharon government would allow elections under the PNA in general, it is even less likely that such elections would be allowed to include east Jerusalem.

Given the unprecedented siege on Palestinian towns, villages, and refugee camps, the only elections that can be feasibly envisioned at this time would be on a very local scale. Even this scenario, however, would be deeply problematic; the fragmentation of the OPT into Bantustans would make standardisation and coordination of any elections almost impossible. In addition, daily Israeli incursions into Palestinian communities could easily cause widespread disruption of balloting.

PNA Security Services

PNA Security Services have, since their establishment, enjoyed impunity for violations of human rights, including: illegal arrests, torture and ill-treatment (sometimes leading to custodial deaths), attacks on political opposition as well as PLC members, and excessive use of force in facing demonstrations. The need for security services to be streamlined and brought under the control of the civilian judiciary in accordance with the rule of law is undeniable. Hundreds of Palestinians have been arrested and detained for long periods without charge by PNA security services, often under Israeli and American pressure, despite court rulings ordering their release.



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Much of the recent discussion on this matter has focused on either the number of security services or their relationship with the interior ministry and the PNA president.⁵ PCHR asserts that these questions are less important than ensuring that the work of PNA security services is governed by the following general principles:

- Complete respect for the rule of law, including prompt implementation of court decisions
- Subordination to a clear chain of command under the exclusive authority of the Attorney General
- Accountability for personnel who violate or fail to properly enforce the law

As long as these issues are not adequately addressed, PCHR does not expect a significant increase in the willingness of PNA security services to respect human rights and democratic norms.

Conclusion

The need for transparent and accountable institutions and free and fair Palestinian elections is undeniable. Yet discussion of rebuilding PNA institutions must be reconciled with a reality where Israeli invasions of PNA-controlled areas have become routine “patrols.”

PCHR expects no substantive reforms in the PNA in the foreseeable future and is concerned that superficial “reforms” have deflected attention from ongoing war crimes and other violations of international humanitarian law by Israeli occupying forces. PCHR warns that without concrete steps by the international community to secure Israel’s respect for the Fourth Geneva Convention and its withdrawal from the OPT, the human rights and humanitarian situation of the OPT will only continue to deteriorate. In this context, not only will genuine PNA reform be impossible, but the PNA itself will most likely continue to disintegrate.

⁵ President Arafat held the interior ministry portfolio himself until appointing General Abdel Razeq Yihye as Interior Minister on 8 June. Yihye will reportedly preside over a national security council responsible for all PNA security services.