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The Palestinian Centre for Human Rights

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## **PCHR's Annual Report 2005**

### **Summary**

**Report on the Human Rights Situation in the Occupied Palestinian Territory in 2005**



### **Palestinian Centre for Human Rights**

Consultative Status with the ECOSOC of the United Nations  
Affiliate of the International Commission of Jurists - Geneva  
Member of the International Federation for Human Rights (FIDH) - Paris  
Member of the Euro-Mediterranean Human Rights Network – Copenhagen  
Member of the International Legal Assistance Consortium (ILAC) - Stockholm  
Member of the Arab Organization for Human Rights - Cairo

## **PCHR's Annual Report 2005**

PCHR has published its 2005 annual report 2005, which covers the period from 1 January to 31 December 2005. This report is the outcome of PCHR's activities in 2005. PCHR has published annual reports since 1997.

- **Part One** provides a comprehensive picture of the human rights situation in the Occupied Palestinian Territory (OPT) from 1 January to 31 December 2005. It is divided into two sub-sections:
  - 1) Violations of international human rights and humanitarian law perpetrated by the Israeli Occupation Forces (IOF) in the OPT; and
  - 2) Human rights violations perpetrated by the Palestinian National Authority (PNA) and obstacles to democratic reform.
  
- **Part Two** documents all PCHR's activities from 1 January to 31 December 2005.

PCHR's 2005 financial report, which is prepared by an independent professional auditing institution, is not included here. The completion of the financial report is outside of PCHR's control, so PCHR has decided to publish its 2005 Annual Report without any delay, and the financial report will be published once it is completed.

PCHR hopes that this report will contribute to the struggle for human rights by providing a comprehensive picture of the human rights situation in the OPT. It also hopes that relevant parties will follow the recommendations mentioned in this report, especially those recommendations which are directed at the international community and the PNA. This report serves as a guide for PCHR's future work and also reflects PCHR's strong belief in the importance of transparency for a non-profit, non-governmental organization that provides services to the community. It should also serve as a call for victims of human rights violations to approach PCHR for advice and assistance.

## **Summary**

### **The Human Rights Situation in the OPT in 2005**

On 9 January 2005, Mr. Mahmoud Abbas (Abu Mazen) was elected as the new President of the Palestinian National Authority (PNA) in the second presidential election to be held since the establishment of the PNA in 1994. This election, which was described by all local and international observers as a true expression of the Palestinian people's will, constituted a positive and important step on the process of the peaceful and constitutional transition of authority following the sudden death of the late Palestinian President Yasser Arafat on 11 November 2004. Contrary to many expectations that chaos and conflict would spread following the death of their leader, Palestinians allowed the law and institutional government to triumph and displayed a distinguished example of the peaceful and institutional transition of authority in spite of the challenges facing a people who are under occupation.

There were hopes that this positive development would be followed by other basic steps that would push forward democratic reform following years of stagnation, including holding the legislative elections on 17 July 2005, as was decided by a presidential decree issued by the interim president of the PNA, Rawhi Fattouh, on 7 January 2005. There were also hopes that Palestinians would be able, for the first time since the establishment of the PNA, to select their local representatives through local council elections, a process which started in late December 2004 and was expected to be completed in 3 phases, thus putting an end to the policy of appointments that had been followed by the PNA.

Palestinians received the year 2005 with great expectation that the peaceful transition of authority would positively affect the human rights situation in the Occupied Palestinian Territory (OPT). They hoped that these positive developments would manifest themselves at the internal level in favor of reinforcing the rule of law, institutional government, ending the state of security chaos and stopping human rights violations. There were hopes also that these developments would contribute to stopping war crimes being perpetrated by Israeli Occupation Forces (IOF) throughout the OPT since September 2000, especially as the new Palestinian leadership was able to reach a declaration in February 2005 of a truce by all Palestinian national and Islamic factions, under which these factions stopped military attacks on Israeli targets.

However, hopes for an improvement in the human rights situation, whether with regard to violations of international humanitarian law and human rights law perpetrated by IOF against Palestinian civilians and property or concerning Palestinian violations of human

rights and democratic reform, soon vanished.<sup>1</sup> There is further evidence that Israel has continued to commit crimes against Palestinian civilians, in spite of the change in the Palestinian leadership, and that the Israeli claim of the nonexistence of a Palestinian partner was only a pretext to taking more unilateral steps and creating new facts on the ground in order to annex more Palestinian land and undermine the possibility of establishing a viable Palestinian state. Although killings committed by IOF against Palestinian civilians notably decreased in comparison with the preceding five years, IOF continued, if not escalated at times, to commit willful killings, including extra-judicial executions. They also continued to increasingly confiscate land for the purposes of settlement expansion and the construction of the Annexation Wall in the West Bank. There was a notable decrease in the destruction of civilian property, particularly houses. However, IOF tightened the internal and external siege imposed on the OPT and imposed additional restrictions in the movement of Palestinian civilians.

There were many developments related to violations of human rights perpetrated by IOF against Palestinian civilians and property in 2005. The most notable development was the unilateral Disengagement Plan implemented in the the Gaza Strip by the Israeli government. In September 2005, IOF dismantled all Israeli settlements in the Gaza Strip (21 settlements) and 4 others in the northern West Bank. This development in itself constituted a positive development, particularly in the Gaza Strip, where the positioning of settlements, and the associated IOF military network, on more than 40% of its land came to an end. The PNA gained control over all areas classified as areas B and C under the Interim Agreements of 1994 and 1995.<sup>2</sup> Nevertheless, this important development did not come in the framework of Israel's respect for its obligations under international law, nor was it a declaration by IOF of the end of their occupation of the Gaza Strip and the evacuated settlements in the northern Gaza Strip. It was rather a part of a unilateral strategic plan to redesign Israel's presence in the OPT, to create and impose facts that conform to its strategic visions and goals. Under this plan, Israel withdrew its occupation forces and settlers from the Gaza Strip, but maintained control over its air, sea and border crossings, thus leaving the essence of its occupation of the Gaza Strip untouched. Facts on the ground reveal the reality of the Disengagement Plan and prove PCHR's position first cited in a position paper it issued in 2004 that the plan is merely a form of redeployment of IOF around the Gaza Strip and does not end the occupation - rather it reinforces it.<sup>3</sup> These facts contradict the political position of the PNA and most national and Islamic factions that dealt with the plan as a liberation of the Gaza Strip and an end to

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<sup>1</sup> It is important to note that at the end of 2005, preparations started to hold legislative elections as scheduled on 25 January 2006, and despite the deterioration in the internal security situation, Palestinian President Mahmoud 'Abbas expressed his strong commitment to holding these elections on the scheduled date.

<sup>2</sup> Areas C are under full control of IOF, and areas B are under Israeli security control while civil authorities are in the hands of the PNA.

<sup>3</sup> See Sharon's Gaza Redeployment Plan: A Denial of Human Rights, Not an End to Occupation, position paper, PCHR: 2004.

occupation. These factions competed with each other in claiming this “victory”, in order to further their own political ambitions.

The implementation of the Disengagement Plan was accompanied by unprecedented restrictions on movement between the Gaza Strip and the outside world. All border crossings, including Rafah International Crossing Point, the sole outlet of the Gaza Strip to the outside world, were closed for 80 days, beginning on 7 September 2005. On 15 November 2005, the Palestinian and Israeli sides reached an agreement regarding the border crossings of the Gaza Strip, according to which Rafah International Crossing Point was reopened on 25 November 2005. Although restrictions on the movement of Palestinians between the Gaza Strip and the outside world was eased, the agreement maintained effective control of IOF over the crossing point and the movement of persons and goods between the West Bank and the Gaza Strip. According to the agreement, the crossing point would be operated under direct international supervision and Israeli control via monitoring cameras. Those who have the right to travel through the crossing point are Palestinians who have national numbers (identity cards), which are decided by IOF rather than by the PNA. IOF decides the legal status of Palestinians as permanent residents of the OPT or visitors. As a result, thousands of Palestinian families are deprived of possibility of seeing each other. These facts are further evidence of IOF's control over the movement of Palestinians through Rafah International Crossing Point.

The agreement would allow Palestinians to export Gaza Strip agricultural products through Karni (*al-Mentar*) crossing and the Rafah International Crossing Point. Furthermore, the Kerem Shalom crossing point would be opened for Palestinian imports. However, Israeli clearance firms would hold responsibility for carrying out customs clearance. Thus, IOF have reinforced their control over the economy of the Gaza Strip, by maintaining direct control over importation and exportation.

Under the agreement, IOF would allow bus convoys for goods and passengers between the Gaza Strip and West Bank, starting on 15 December 2005, and on 15 January 2006, IOF would allow truck convoys to move between the two areas. In addition, the agreement included stipulations to draft a plan to reduce restrictions on movement within the West Bank, starting on 31 December 2005. It also allowed the commencement of the construction of the Gaza sea port, and a trilateral committee would be set up to draft security and operational arrangements before the port would open. Finally, the agreement stipulated that discussions on the reopening of Gaza International Airport would continue. Nevertheless, by the end of the year, Israeli authorities had not committed to most provisions of the agreement and nothing had changed with regard to the movement of persons and goods between the West Bank and the Gaza Strip.

Before, during and after the implementation of the Disengagement Plan, IOF continued to perpetrate violations of human rights against Palestinian civilians and property throughout the OPT, while the international community remained silent under the pretext

of not pressuring Israel and providing an appropriate atmosphere for its Prime Minister Ariel Sharon to implement his plan. Facts on the ground reveal the real goals of the plan and how Sharon exploited the international support to implement it in order to achieve strategic goals in the West Bank, including expropriating more of its land and transforming Palestinian communities into cantons through settlement expansion and accelerated construction of the Annexation Wall. These facts represent the other face of Sharon's plan.

In 2005, Israel, its occupation forces and settlers continued to establish new settlements and expand existing ones, confiscating more Palestinian land in the West Bank for the purposes of settlement expansion and the establishment of bypass roads for settlers. In March 2005, Israeli sources revealed that the Israeli government had approved two plans to build 3500 housing units between East Jerusalem and "Ma'ale Adumim" settlement to the east. These plans would expand the aforementioned settlement towards East Jerusalem and would prevent geographical contiguity of any future Palestinian state. In December 2005, the Israeli Ministry of Construction and Housing put out tenders to build 228 new housing units in West Bank settlements. The tenders included 150 units in "Betar Elite" settlement and 78 units in "Efrat" settlement in Bethlehem. According to media sources, since the beginning of 2005 the ministry had submitted tenders for the construction of 1131 housing units in the West Bank.<sup>4</sup>

In 2005, IOF continued to construct the Annexation Wall inside West Bank territory in violation of international humanitarian law and the Advisory Opinion issued by the International Court of Justice in Hague on 9 July 2004. Construction was particularly aggressive in occupied East Jerusalem in 2005, while it also continued in other Palestinian districts, especially in Bethlehem and Hebron. IOF continued also to construct walls around large settlement in the West Bank, such as "Ariel" settlement, south of Nablus, whose wall stretches 22 kilometers into West Bank land. The Israeli government made slight changes to the route of the Wall, but maintained its original plans to annex large settlement to Israel, such as "Ariel" which is the largest settlement in the northern West Bank and "Gush Etzion" settlement bloc between Bethlehem and Hebron. Under these changes, the length of the Wall upon its completion will be 670 kilometers (the previous planned length before changes was 720 kilometers). The length of the Wall actually following the Green Line (the line 1949 armistice line between Israel and the West Bank) will be 135 kilometers instead of the previously planned 48 kilometers. By the end of 2005, IOF had constructed at least 200 kilometers of the Wall. On completion of the Wall, according to public Israeli plans, more than half of the West Bank's area will have been effectively annexed to Israel.

In 2005, IOF consistently used disproportionate and indiscriminate force during their operations in civilian areas throughout the OPT. Attacks by IOF impacted on Palestinian

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<sup>4</sup> see <http://www.haaretzdaily.com>, 27 December 2005.

civilians in the Gaza Strip before and after the implementation of the Disengagement Plan. At the end of the year, IOF declared the establishment of a buffer zone in the northern Gaza Strip. Unarmed Palestinian civilians were killed as a result of shelling in residential areas; during Israeli military incursions into Palestinian areas; as a result of extra-judicial executions; during demonstrations; at Israeli military checkpoints; and also during periods of relative calm. In 2005, 207 Palestinians died as a result of actions by IOF and settlers. IOF continued to disregard the principles of proportionality and distinction in its actions in the OPT, resulting in the death of 187 unarmed civilians, who were killed whilst posing no threat to Israeli soldiers or settlers. Of the civilians killed, 46 were children and 7 were women. In addition, hundreds of Palestinians were wounded by IOF, including 129 in the Gaza Strip. Thus, the number of Palestinians killed by IOF and settlers since the beginning of current Intifada has increased to 2,936, including 651 children and 106 women. In addition, tens of thousands of Palestinians, including 8,662 in the Gaza Strip, have been wounded since September 2000. Hundreds of those wounded sustained permanent disabilities.

Extra-judicial executions constitute a blatant form of willful killing committed by IOF against Palestinian civilians, predetermined and approved by the Israeli political and judiciary establishments. Despite the truce declared by the Palestinian national and Islamic factions at the beginning of 2005, IOF committed more extra-judicial executions even if at a lower rate than was witnessed in the previous 5 years. They escalated such attacks in the last quarter of 2005. According to PCHR's documentation, in 2005, IOF carried out 18 extra-judicial execution operations, in which 44 Palestinians were killed. Of those killed, 32 were targeted persons, and 12, including 6 children, were non-targeted civilian bystanders. In addition, 17 Palestinians were injured. A total of 236 extra-judicial execution operations were conducted by IOF between 29 September 2000 and 31 December 2005. A total of 515 Palestinians (17.5% of the total number of Palestinians killed by Israeli forces in the same period) were killed in these attacks. Of those killed, 171, including 51 children, were non-targeted civilian bystanders.

By the end of 2005, at least 9,000 Palestinians, including about 300 children and 100 women, were still in Israeli custody in detention facilities throughout Israel and in settlements and other military bases in the OPT. Of those detainees, at least 700 were being held under administrative detention orders. In the last quarters of 2005, IOF waged massive arrest campaigns in the West Bank, which targeted hundreds of Palestinian civilians, especially supporters of Hamas and Islamic Jihad. The largest of these campaigns was conducted at the end of September 2005, when IOF arrested at least 300 Palestinian civilians, including prominent religious, political, social, academic and media figures. It also included members of university student councils and candidates for the third phase of the local council elections, which were held in the West Bank on 29 September 2005.

In 2005, PCHR received increased reports regarding various methods of interrogation used against Palestinian detainees, including minors, held in Israeli jails and detention centers both inside Israel and in the OPT. The methods used constitute torture and ill treatment as defined both in the Convention against Torture and other international instruments. These methods include: *Shabeh*<sup>5</sup> for long periods (often up to 48 hours); tight handcuffing; tying the hands and legs with plastic chains that cause severe pain; blindfolding and slapping; sleep deprivation for long periods; solitary confinement; compulsory standing for long hours. Alongside these physical method of torture, authorities also used verbal intimidation and abuse.

The last quarter of 2005 witnessed worrying developments regarding Palestinian prisoners from the Gaza Strip, following the implementation of the Disengagement Plan and the declaration of an end to the military government in the Gaza Strip. IOF abolished the military court and the military prosecution office at Erez [Checkpoint and military base] in the northern Gaza Strip and transferred all cases related to Palestinian prisoners from the Gaza Strip to Beir al-Saba [Beer Sheva] Court inside Israel and the civil Attorney General. In an attempt to overcome international legal standards and thus justify continued detention of Palestinian prisoners, Israel invented the concept of the "illegal combatant" to describe Palestinian prisoners, who are in fact civilians protected under the Fourth Geneva Convention, and consequently justify their detention in accordance with a special law called "Illegal Combatants" issued in 2002. According to this law, the IOF Chief of Staff has the authority to issue an arrest warrant against a person if there is a basis to assume that such person is "an illegal combatant". On 31 October 2005, the Israeli Knesset approved in the first reading an amendment of the "Law Regulating Criminal Procedures (Authorities of Implementation and Regulation Related to Security Offences by Non-Citizens)". The amendment now allowed the Israeli General Security Service to detain Palestinians from the Gaza Strip for 96 instead of 24 hours before bringing them to court; prevented these Palestinians from receiving any visitors for 50 instead of 21 days; and allowed judges to extend the period of detention without the presence of detainees. This draft law includes granting wider authority to interrogators in order to interrogate citizens from the Gaza Strip. In addition to attempting to legally justify the interrogation of detainees from the Gaza Strip, these amendments constitute a flagrant violation of human rights and reflect racist attitudes towards Palestinian citizens, who will be subject to the Israeli Penal Law, but with wider powers being granted to interrogators.

In 2005, IOF continued to impose a total closure on the OPT as a form of collective punishment against Palestinian civilians. They continued to impose severe restrictions on freedom of movement of people and goods between the West Bank and the Gaza Strip. IOF imposed restrictions on entry and exit to the OPT at al-Karama International

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<sup>5</sup> *Shabeh* entails shackling the detainee's hands and legs to a small chair, angled to slant forward so that the detainee cannot sit in a stable position.

Crossing Point on the Jordanian border and Rafah International Crossing Point on the Egyptian border, the only outlets of the West Bank and the Gaza Strip respectively to the outside world. They also imposed restrictions at border crossings between the OPT and Israel, limiting the movement of Palestinian civilians between the West Bank and the Gaza Strip;<sup>6</sup> preventing students from the Gaza Strip from attending their universities in the West Bank; preventing family visitations; depriving hundreds of patients from the Gaza Strip of access to medical treatment in hospitals in the West Bank, including occupied East Jerusalem; and depriving Palestinian civilians of access to Islamic and Christian sites in Jerusalem, Bethlehem and Hebron.

Many Palestinian civilians, including medical cases, have been prevented from entering Israel. IOF have also imposed more complicated restrictions on internal movement in the West Bank and the Gaza Strip. Hundreds of checkpoints have been placed at the entrances of Palestinian communities in the West Bank in order to restrict the movement of Palestinian civilians from one community to another.

In light of the increasing number of Palestinian civilians who are victims of attacks by IOF, Israel made efforts to prevent Palestinian civilian victims from being compensated through the Israeli judiciary. On 27 July 2005, the Israeli Knesset approved amendment No.5 to the Civil Wrongs Law effectively stopping Palestinians in the OPT from seeking compensation in Israeli courts, on the basis of their residency. The amendment is contrary to Israel's international law obligations and demonstrates again the impunity that is granted to IOF by Israel. On 1 September 2005, nine human rights organizations in Israel and the OPT, including PCHR, filed a petition to the Israeli High Court demanding that the Court declare void the amendments to the Civil Wrongs Law. In the petition, the organizations emphasized that the Law grossly violates the fundamental principles of international humanitarian law and international human rights law, which apply in the OPT. The petitioners also argued that the articles of the Law de facto terminate monitoring of the Israeli military's activities in the OPT and discourage investigating and bringing those responsible for cases of death or injury before the courts. As a result, the Law is both immoral and racist. The Law thus violates the fundamental rights to life, equality, dignity and property, as well as the constitutional right of access to the courts.

In 2005, the impunity granted by Israel to IOF in the OPT was further evidenced. On 15 November 2005, the Israeli military southern command court acquitted an officer in the Israeli Occupation Forces (IOF) of charges relating to the killing of 13-year-old Iman al-Hams; the illegal use of his weapon; and the obstruction of court proceedings.<sup>7</sup> This

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<sup>6</sup> IOF have continued to close the "Safe Passage" between the Gaza Strip and the West Bank since the beginning of the al-Aqsa Intifada. The "Safe Passage" was opened in October 1999 according to the Wye River Memorandum of 1998 between the PNA and Israel. It was operated for one year only.

<sup>7</sup> Iman al-Hams, 13, from Rafah, was killed on 5 October 2004, when IOF positioned in a military post on the Egyptian border, south of Rafah, opened fire at her, as she was walking with her schoolbag.

Israeli court ruling strongly evidences the lack of justice in the Israeli judiciary system, especially the military judiciary. Investigations are usually conducted by IOF and cases are referred then to the military judiciary, thus undermining the credibility of investigations and court rulings on them. Hundreds of complaints submitted to the Israeli courts by human rights organizations, including PCHR, on behalf of victims have been ignored, and only a few cases have been seriously investigated. In this context, B'Tselem, the Israeli Center for Human Rights in the Occupied Territories, published statistics on 27 June 2005 which demonstrated that the Israeli police conducted investigations into 108 cases of killing and injuring Palestinians in the OPT out of thousands of similar cases. B'Tselem also found that indictments were handed out in just 19 cases, leading to two soldiers being convicted of killing Palestinians.

Denial of justice for Palestinian civilians is deeply rooted in the Israeli judiciary system, particularly the military judiciary. PCHR believes that the Israeli judiciary is used to provide a legal cover for crimes committed by IOF against Palestinian civilians and to avoid direct reference to international justice under the pretext of having a just Israeli judiciary.

Consequently and due to the exhaustion of national judicial mechanisms (in this case the Israeli judicial system), PCHR, in cooperation with international legal organizations, resorted to international legal mechanisms in an attempt to prosecute Israeli war criminals before the international judiciary. On 8 December 2005, the Center for Constitutional Rights and PCHR brought a class action lawsuit against Avi Dichter, the former Director of Israel's General Security Service, on behalf of the Palestinians who were killed or injured in a 2002 air strike in Gaza. The attack occurred just before midnight on July 22, 2002, when IOF dropped a one-ton bomb on al-Daraj, a residential neighborhood in Gaza City in OPT. The attack killed seven adults and eight children. In September 2005, PCHR, built a file of evidence with the help of Hickman & Rose Solicitors to pursue a case against Major General Doron Almog (retired) accusing him of perpetrating grave breaches of the Forth Geneva Convention, while he was the GOC Southern Commander of IOF.

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At the Palestinian level, in spite of the notable development in the process of democratic reform, including holding the presidential election and the elections for most local councils, this process faced many restrictions and obstructions by the PNA. Further human rights violations were also recorded, particularly in the context of the deterioration in internal security and the proliferation and misuse of weapons, which impacted on the rule of law.

As mentioned above, there were hopes that the PNA would move forward in the process of democratic reform by holding the legislative elections as planned on 17 July 2005, as

well as completing the local council elections. These were started in late December 2004 and were decided to be held in stages, the last of which was due to be completed by the end of 2005. However, the legislative elections were not held on the specified date and were postponed until 25 January 2006, and 2005 also ended without all stages of elections being completed.

The legislative elections were postponed for legal reasons related to the non-drafting of the new electoral law and others related to the implementation of the Disengagement Plan in the Gaza Strip. However, it was clear that internal conflicts in the Fatah movement, the PNA ruling party, were an undisclosed essential element in the postponement of these elections. In April 2005, PCHR expressed concerns that the legislative elections may not be held on the specified date as the Palestinian Legislative Council (PLC) failed to approve the new electoral law, 3 months before the specified date for holding these elections. The approval of this law was necessary to allow the Central Election Commission (CEC) to conclude its preparations to hold these elections.<sup>8</sup> On 3 June 2005, President Mahmoud Abbas issued a presidential decree that canceled the specified date of elections and decided that a new date would be specified for holding the elections upon the completion of necessary legal procedures.

On 13 August 2005, the Elections Law No. (9) of 2005 was ratified. It was published in the PNA official gazette on 18 August 2005. The new law expressed the political pluralism of Palestinian society. It increased the number of PLC members to 132 instead of 88. It adopted a mixed system of elections, under which 50% of members would be elected directly in electoral constituencies and the other 50% of members would be elected under the system of proportional representation (the list system), where the Palestinian territory is considered as one single electoral constituency. Positive discrimination in favor of women was adopted under the new law.

On 20 August 2005, Palestinian President Mahmoud Abbas issued a presidential decree specifying Wednesday, 25 January 2006, as a date for holding the legislative elections. At this report was being written, the legislative elections were held on time. International and local observers these elections were free, fair and impressive. PCHR monitored these elections in cooperation with 30 NGOs.<sup>9</sup>

In 2005, notable developments concerning local council elections took place, as the PNA continued its efforts to hold these elections in stages. PCHR considers these efforts positive, but expresses its reservations towards some practices, which obstructed the completion of these elections in 2005. According to the Palestinian cabinet's decision on 10 May 2004, local council elections would be held in three stages, starting in August

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<sup>8</sup> For more details, see PCHR's press release on 10 April 2005.

<sup>9</sup> Full coverage of these elections and their indications do not fall in the framework of this report, which covers 2005 only.

2004 and ending within one year, where circumstances allowed. However, these elections were rescheduled to be held in five stages, four of which were held between December 2004 and December 2005.

The first stage of local council elections was held in two phases on 23 December 2004 and 27 January 2005, and included 36 local councils. The first phase included 26 local councils in the West Bank, while the second included 10 local councils in the Gaza Strip. PCHR monitored the second phase, which was held in the Gaza Strip. It concluded that these elections were fair and transparent.

The second stage of elections of local councils was held on 5 May 2005. It included 76 local councils in the West Bank and 8 in the Gaza Strip. As an accredited monitoring organization, PCHR monitored the elections that were held in the Gaza Strip and concluded that the elections were fair and transparent. PCHR observers recorded a number of violations by competing parties or by candidates and their supporters. However, the electoral process was conducted peacefully and without major problems that might have damaged the integrity of the results. PCHR closely observed developments and tensions related to elections in a number of local communities. PCHR also monitored the legal challenges submitted to the electoral court by the Faith for al-Aqsa List [Fatah movement] against the Higher Committee for Local Elections (HCLE) and the district election commissions in Rafah, al-Boreij, Beit Lahia and al-Mughraqa, where the Change and Reform List [ Hamas ] had won the majority. The court ordered the repetition of elections in a number of polling centers in Rafah, al-Boreij and Beit Lahia. After close monitoring of the court sessions, PCHR expressed its shock at testimonies articulated by a number of officials of the executive offices of the HCLE, in a way that contradicted the results declared by the Committee, and supported demands to cancel the results and repeat the elections. PCHR pointed out that the violations mentioned in local communities, where the Change and Reform List had won the majority of votes, were not any-more serious than those recorded in other communities, where the Faith for al-Aqsa List had won the majority of votes - such as 'Abasan village. Neither were they more serious than violations recorded in the first stage of local elections, held on 27 January 2005, and the presidential election, which was held on 9 January 2005.

According to the court ruling, the HCLE specified Wednesday, 1 June 2005, as the day for repeating elections in a number of polling centers and stations in the aforementioned three local communities. However, the HCLE later postponed repeated elections to an unspecified date, as Hamas decided to boycott these elections. Since that time, this issue has remained outstanding, and it is not clear how it will be settled.

The first and second stages of elections demonstrated failures in Law No. (5) of 1996 for Election of Local Bodies Councils according to which these elections were held. In August 2005, the PNA passed Law No. (10) of 2005 for Election of Local Bodies

Councils, which adopts the principle of proportional representation instead of the principle of proportional majority adopted in the old law. Amending the law quickly was not unrelated to the results of the first and second stages of elections, in which Hamas had won the majority of votes in some towns, especially the larger ones such as Rafah, Qalqilya, Beit Hanoun and Beit Lahia. These amendments met demands by many civil society organizations, including PCHR, to adopt the principle of proportional representation. However, amending the law in such a quick manner was not driven by an absolute belief by legislators of the need to adopt a modern law, rather it was driven by future fears of elections, in which Hamas might win a majority, and to ensure future representation for the ruling party, Fatah , in local councils.

The third and fourth stages of local council elections were held in accordance with the new law. The third stage included 104 local councils in the West Bank. PCHR criticized the exclusion of local councils in the Gaza Strip from this stage.

On 15 December 2005, the fourth stage of local council elections was held. It included 37 local councils in the West Bank and 3 others in the Gaza Strip. By the end of the fourth stage, elections had been held for 265 local councils in the West Bank and the Gaza Strip. According to sources in the Ministry of Local Government, elections for 59 local councils, including Gaza, Khan Yunis, Jabalya and Nusseirat, which were supposed to be included in the fourth stage, had been postponed indefinitely.

2005 witnessed more Palestinian violations of human rights, for which the PNA are directly or indirectly responsible. The state of security chaos and the proliferation and misuse of weapons have constituted an outstanding challenge at the Palestinian internal level. Many attacks on the rule of law have been recorded, threatening the security and safety of Palestinian civilians. Such attacks have also included attacks on public and private property and killings resulting from the misuse of weapons; storing explosives in civilian populated areas; or using weapons and explosives during armed rallies by resistance groups. According to PCHR's documentation, 130 Palestinians (39 in the West Bank and 91 in the Gaza Strip) were killed in crimes and incidents that took place in the context of the spreading state of security chaos and the proliferation and misuse of weapons. In addition, at least 550 Palestinians were injured in the Gaza Strip. These figures demonstrate the serious deterioration in the security situation in the Gaza Strip. Regrettably, some law enforcement law officials, persons linked with Palestinian security services and armed groups affiliated to the ruling party were involved in these incidents. The Palestinian Attorney General failed to investigate these crimes and bring their perpetrators to justice, which contributed to further deterioration in the state of security chaos in 2005, which threatened not only the security and safety of Palestinian civilians, but also the legitimacy of the PNA.

PCHR is increasingly concerned over the pattern of kidnappings that escalated in the OPT in 2005. The PNA has failed to take effective measures to fight such crimes and

bring their perpetrators to justice. In 2005, at least 18 internationals were kidnapped in 10 separate incidents. Although all hostages were released without being hurt, such crimes reflect the state of security chaos and attacks on the rule of law in the PNA controlled areas. The kidnappers in all these incidents have not been prosecuted, even though their identities are known. PCHR has evidence that the PNA even succumbed to the kidnappers' demands in a number of these cases.

Following a 3-year suspension, the PNA resumed implementing death sentences in 2005, which raises deep concerns as dozens of civilians were sentenced to death in the past years and are still pending the implementation of these sentences. In 2005, the PNA carried out 5 death sentences in Gaza within a 6-week period. Four prisoners, who had been sentenced to death a few years previously, were executed on 12 June 2005, and a fifth prisoner was executed on 27 July 2005. According to PCHR's documentation, the PNA has carried out 13 death sentences since its establishment in 1994 and a further nine prisoners have been killed in other circumstances, including extra-judicial executions by gunmen who attacked prisons and court houses. Palestinian courts have handed down 73 death sentences since 1994.

It is significant that the State Security Court, which was established by the PNA in 1995, issued the majority of death sentences. PCHR has consistently criticised the existence of this court which lacks minimum standards for a fair trial – security officers act as judges; trials are summary and do not allow time for defense cases to be formed; verdicts and sentences delivered are not subject to appeal; and the law applicable in the court is unconstitutional.<sup>10</sup> PCHR has called for the abolition of this court and a review of its sentences by civil courts. In a step that was welcomed by PCHR, the Palestinian President Mahmoud Abbas issued a decision on 22 June 2005 to retry those persons who were sentenced by State Security Courts before the civil Judiciary. On 27 July 2003, the Palestinian Minister of Justice issued a decision abolishing the State Security Court system. PCHR welcomed the decision believing that this step would contribute to the promotion of the independence of the Palestinian judiciary and called upon the Palestinian President to issue a decree to entirely abolish the courts and cancel Presidential Decree No. 49 (1995), which established the courts.

Illegal arrests, including political arrests, have constituted a major violation of human rights perpetrated by the PNA since its establishment in 1994. A number of citizens have been arrested without legal warrants, and their detention has continued in violation of court rulings ordering their release. In 2005, illegal arrests, including political ones, continued - although at a lower pace. According to PCHR's estimation, at least 50 people have been detained in detention facilities of the PNA for political reasons. In the majority of these cases, citizens are detained for various reasons without charges, without being presented to courts and without appropriate legal procedures being followed.

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<sup>10</sup> The concerned law is the PLO Revolutionary Penal Law, which is not applicable in the OPT.

Continued illegal arrests and challenges of court rulings were part of efforts to undermine the judiciary, as in 2005, several developments undermining the rule of law and the independence of the judiciary took place. These developments included the failure of efforts made by the committee established by the PNA President on 14 March 2005 to develop the judiciary, and efforts made by the Executive – in cooperation with the PLC – to undermine the independence of the judiciary through enacting a new judicial authority law that undermines the authorities of the Higher Judiciary Council. On 9 November 2005, a new judicial authority law (Law No. 15 of 2005) was ratified without consulting the Higher Judiciary Council, in violation of the Palestinian Basic Law. On 14 November 2005, PCHR challenged the constitutionality of this law before the High Constitutional Court. On 27 November 2005, the Court decided that the law was unconstitutional and invalid from that date on. PCHR welcomed this decision, which constituted a precedent in the Palestinian judiciary. PCHR also considered the decision a triumph for the principle of the independence of the judiciary, as it put a stop to efforts made to undermine the Palestinian judiciary.

The PLC continued its work in 2005, in spite of attacks launched by IOF on the Palestinian people and their institutions, including restrictions imposed on the movement of PLC members between the West Bank and the Gaza Strip, and from various areas in the West Bank to PLC headquarters in Ramallah. Consequently, the PLC was not able to hold regular sessions and was forced to use video conferences to hold its sessions. Although there was a slight improvement in the PLC's performance in comparison with previous years, the PLC's performance in 2005 at the levels of legislation and accountability was disappointing. Failures of the PLC can be summed up in the following:

1. The end of the legal term of the PLC since 1999, which necessitates holding new parliamentary elections to renew the PLC's legitimacy.
2. Professional duality of PLC members, as some of them occupied executive positions and obtained financial rewards in violation of Law No. (10) of 2004 on the Rights and Duties of PLC Members, which allows them to be ministers but prohibits them from being "members of any consultative, supervisory or administrative body of any State agency".
3. The absence of PLC members from sessions; a number of important laws were approved with the presence of a limited number of PLC members.
4. Putting individual interests and personal considerations above the legislative process.

In 2005, there was a notable increase in violations of the right to freedom of expression and peaceful assembly. These violations were perpetrated not only by official bodies, but also by armed groups in the context of the state of security chaos and the proliferation and misuse of weapons. A number of international journalists were kidnapped. A journalist was arrested and another was violently beaten by PNA security officials. In addition, the Ministry of Interior issued a number of decisions and instructions that

imposed restrictions on the media, including the declaration issued on 29 July 2005 prohibiting the publication of news related to the Palestinian National Security Forces and police without informing the Ministry of Interior.

PCHR is concerned over extra-judicially killing of Palestinians killed as alleged collaborators with IOF. PCHR documented 7 killings in 2005; all of which took place in the West Bank, compared to 22 in 2004. It seems that the judicial developments with regard to the treatment of the issue of collaboration with foreign forces have contributed to the decrease in the number of Palestinian killed on this ground. The Gaza First Instance Court, which was established in accordance with Decision 130 issued by the Higher Judiciary Council on 3 May 2004, has continued to consider cases of collaboration with foreign forces. It has considered dozens of such cases. The establishment and operation of this court reinforces the rule of law and ensures the non-recurrence of extra-judicial killings based on collaboration with foreign forces.

## **Recommendations**

This section details PCHR's recommendations to the international community and the PNA. PCHR hopes that the international community will take PCHR's recommendations into consideration and take effective steps to enforce international law. PCHR also hopes that the PNA will work towards realizing these recommendations in the context of its responsibilities.

### **Recommendations to the International Community**

1. PCHR calls upon the High Contracting Parties to the Fourth Geneva Convention to fulfill their legal obligations, including to ensure Israel's respect for the Convention in the OPT in accordance with Article 1. PCHR believes that the international silence towards the grave breaches of the Convention which are perpetrated by IOF in the OPT serves to encourage Israel to act as a state above law and results in the perpetration of more grave breaches.
2. PCHR reminds the international community and the High Contracting Parties to the Fourth Geneva Convention that the Israeli occupation of the Gaza Strip remains effective in its physical and legal forms despite the implementation of the Disengagement Plan, which is a form of redeployment of IOF rather an end to occupation in the Gaza Strip.
3. PCHR believes that the High Contracting Parties are responsible for searching for and prosecuting Israeli responsible for grave breaches, some of which have been defined as war crimes, as the Israeli judiciary does not prosecute them and has even provided legal cover for these individuals in many cases.
4. PCHR calls upon international civil society organizations, including human rights organizations, bar associations and solidarity groups, to lobby for governmental action in respect of bringing Israelis responsible for the violations of international law to justice.
5. PCHR calls upon the international community to take effective steps to dismantle the Annexation Wall being constructed inside West Bank territory. PCHR particularly calls upon the United Nations to take measures that conform to the Advisory Opinion issued by the International Court of Justice, the highest international judicial body, in 2004, which considers the Wall illegal.
6. PCHR calls upon the European Union to activate Article 2 of the EU-Israel Association Agreement, which provides that both sides must respect human rights as a precondition for economic cooperation between the EU states and Israel. PCHR also calls upon all states to prohibit import of goods produced in illegal Israeli settlements in the OPT.
7. As Israel and its occupation forces have continued to impose severe restrictions on access of international solidarity groups to the OPT and Israel, PCHR calls for

ensuring the freedom of movement of international delegations visiting the OPT similar to the freedom enjoyed by Israeli citizens abroad.

8. PCHR reiterates that any political settlement not based on international human rights law and humanitarian law cannot lead to a peaceful and just solution of the Palestinian cause. Rather, such a settlement can only lead to further suffering and instability in the region. PCHR calls upon governments and civil society organizations to implement international law at the Palestinian level.

## **Recommendations to the PNA**

1. PCHR calls for taking effective measures to enhance the rule of law, end the state of security chaos and investigate relevant crimes, including the kidnappings of internationals, and bring their perpetrators to justice.
2. PCHR calls for holding elections for the remaining local councils as soon as possible, and concluding a formula acceptable to all concerned political factions to repeat elections of the local councils of Rafah, al-Boreij and Beit Lahia. PCHR suggests repeating the whole elections in these communities in accordance with the new law, according to which the third and fourth stages of local elections were held.
3. PCHR calls upon the PNA to adhere to international human rights standards and make sure that all measures it takes conform to international human rights standards and respect basic rights of citizens.
4. PCHR calls for a presidential decree to be issued to actually abolish State Security Courts, as the decision taken by the Palestinian Minister of Justice abolishing these courts has not been sufficient.
5. PCHR calls for abstaining from implementing death sentences and abolishing the death penalty in the Palestinian legislation.
6. PCHR calls for ensuring the independence of the judiciary, including through the enforcement of court rulings.
7. PCHR calls for judicial monitoring of prisons and detention facilities to ensure an end to illegal arrests.
8. PCHR calls for ensuring the right to freedom of expression, reconsidering related laws, including the Press Law of 1995, and enacting a law to organize the work of private televisions and radios.