

**Front Line Palestine:
Killings, Arbitrary Detention, Restrictions on Movement, Threats,
Harassment and Other Forms of Intimidation of Human Rights
Defenders in the Occupied Palestinian Territory**

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Published by Front Line, 16 Idrone Lane, Off Bath Place, Blackrock,
Co.Dublin, Ireland

ISBN 0-9547883-3-8

This report is available at a cost of €15 (plus postage and packing)

'It is from numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centres of energy and daring, those ripples build a current that can sweep down the mightiest walls of oppression and injustice.'

- Robert F. Kennedy

Acknowledgements

This report was researched and written by the Palestinian Centre for Human Rights (PCHR) and jointly edited by PCHR and Front Line. It is published by Front Line in English and Arabic. The report would not have been possible without the input, help and advice of many people. It is important firstly to acknowledge the human rights defenders themselves, their families and colleagues, and all those who helped us to bring this report together.

The report was written despite the heavy restrictions on travel throughout the Occupied Palestinian Territory (OPT), particularly within Gaza and those imposed when trying to enter and leave Gaza. Further restrictions on travel were imposed while crossing land borders in and out of Israel. Human rights defenders and other civilians are regularly arbitrarily detained while trying to move around the OPT.

The lead person working on the report was Eóin Murray, formerly an intern with Front Line, formerly Head of PCHR's International Unit. Eoin has now returned to Ireland where he is taking up employment as National Coordinator of the Ireland-Palestine Solidarity Campaign. A great number of others contributed to its conception and execution and provided advice on the structure, format and content. Chief among those were, Raji Sourani (Director of PCHR), Khalil Shaheen (Head of PCHR's Economic Social and Cultural Rights Unit and responsible for the areas on attacks against medical personnel), and Bassam al-Aqra (Head of PCHR's Training Unit) Jaber Wishah and Hamdi Shaqura and the staff in PCHR's Democratic Development Unit also made contributions to the text. At Front Line Natacha O' Brien (Researcher), Andrew Anderson (Deputy Director), and Mary Lawlor (Director) contributed to the review of the draft text. James Mehigan of the International Centre for Comparative Criminological Research at the Open University also contributed to the review of the draft text. Fionula Cregan (formerly of the Office of the Special Representative on human rights defenders and Front Line), also provided advice on cases as well as materials to be used in the report. Considerable moral support and technical advice was also provided by Alan Brady of

Honorable Society of Kings Inns in Dublin and Cate Osborne, now of UNOCHA in Jerusalem.

Unless otherwise stated all statistics and other field reports have come from the dedicated team of nine PCHR fieldworkers in the West Bank and Gaza Strip, under the coordination of Ibtesam Zaqout. Eye witness accounts and affidavits were sworn in front of the five members of the PCHR Legal Unit, Headed by Iyad Alami. Considerable support and information was also received from: Anne Massagee in al-Haq, Law in the Service of Man and Jessica Montell in B'Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories. However, responsibility for the final text rests with PCHR and Front Line.

The text was translated into Arabic by PCHR.

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Abbreviations

CEC	Central Elections Commission
CPT	Christian Peacemaker Team
EAPPI	Ecumenical Accompaniment Programme for Palestine and Israel
GSS	Israeli General Security Services
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICJ	International Court of Justice
IOF	Israeli Occupying Forces
ISM	International Solidarity Movement
OPT	Occupied Palestinian Territory
PCHR	Palestinian Centre for Human Rights
PLC	Palestinian Legislative Council
PLO	Palestine Liberation Organisation
PNA	Palestinian National Authority
PRCS	Palestinian Red Crescent Society
PSS	Palestinian Security Service
RSF	Reporters Sans Frontières
MSF	<i>Médecins Sans Frontières</i>
UDHR	Universal Declaration of Human Rights
UNRPR	United Nations Relief for Palestine Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

Executive Summary

Defending human rights in the Occupied Palestinian Territory (OPT) is a complex and dangerous task. The historical, political and legal framework of operation is disputed, although certain key understandings and conclusions can be drawn.

Human rights defenders face the challenging situation of operating to defend human rights violations resulting from the Israeli occupation as well as those committed by the Palestinian National Authority (PNA).

Throughout the Palestinian *Intifada* the situation for human rights defenders has deteriorated in parallel with the overall human rights situation in the OPT. Human rights defenders have been subjected to severe restrictions on their freedom of movement. This is a direct result of the checkpoint, closure and curfew policy imposed across the West Bank and the Gaza Strip. Further to this, human rights defenders have been subject to violations of the right to life and to injuries sustained in the course of their work. Human rights defenders have become the victims of mass arrest campaigns and some organisations have been subjected to sustained attacks which have hampered their ability to work effectively in pursuit of the goals enshrined in the Universal Declaration on Human Rights. Underlying all of this is the fact that many violations are state-sanctioned, or if not sanctioned at the highest levels of the Israeli political and military establishment, then condoned by the ongoing policy of impunity which permeates the military and judicial system in relation to the OPT.

This report observes a number of emerging threats against defenders - in particular in relation to the construction of the Wall inside the territory of the West Bank and the unilateral Gaza 'disengagement' plan which will place severe limits on the abilities of individuals and organisations to carry out their work inside the OPT.

The *Intifada* has stripped the PNA of much of its power and authority. The history of the PNA before 29 September 2000 did not bode well for its human rights record or on the level of affording special protection for human rights defenders. The collapse of

central authority, combined with international pressure, has ensured that some of the PNA's human rights violations have been restricted - if not stopped altogether - there remains serious concerns about measures it is taking which are designed to have a domestic and global political impact.

The report makes clear that serious action is required by the Israeli Government, by the international community and also by the Palestinian National Authority. In the absence of such action, the situation for human rights defenders will continue to decline.

Recommendations

To the Israeli government, military and judiciary

1. Guarantee the application of the principles contained in the UN Declaration on Human Rights Defenders.

Both the Palestinian National Authority and, especially, the Israeli Government and military must commit themselves to prioritizing the protection of human rights defenders. The principles contained within the Human Rights Defenders Declaration¹ should be incorporated into domestic legal systems and the full weight of the law should stand behind their application.

2. The Israeli government and military must recognize the de jure applicability of International Humanitarian Law and International Human Rights Law to the OPT.

The Advisory Opinion of the International Court of Justice (ICJ) has confirmed the de jure applicability of international humanitarian law – particularly the Fourth Geneva Convention – and human rights law to the OPT. Israel cannot continue to claim, through the treaty monitoring bodies or through other fora, that such laws do not apply to the OPT. Human rights defenders should be provided the guarantee of international legal principles as well as domestic ones. This will support the work they do against torture, in opposition to violence against women and in favour of all other civil, cultural, economic, political and social rights.

A Recognise the special position of Human Rights Defenders under the Fourth Geneva Convention.

The Fourth Geneva Convention, the primary legal text governing the OPT, makes specific provision for human rights defenders working in specific fields such as health. The Israeli Government is obliged by international humanitarian law to acknowledge the special

¹ See Appendix I for full title and text of the Human Defenders Declaration.

obligation to protect these workers in their efforts to ensure the application of the Convention.

B Recognise the scope and scale of Human Rights applicable to the OPT and recognize the role of Human Rights Defenders in working for these rights.

The various international conventions and treaties on human rights specify a broad range of civil, cultural, economic, political and social rights under the umbrella of human rights. Israel's failure to recognize their applicability to the OPT is contrary to its international obligations and further undermines the possibility of human rights defenders pursuing and achieving effective redress through international monitoring bodies.

3. End the climate of impunity attached to Human Rights Violations inside the OPT.

The continuing culture of impunity which permeates the Israeli military and judicial system has served to create a climate where human rights can be violated to an extraordinary degree with little or no legal action being initiated to prosecute the perpetrator, even when that perpetrator is well known. In this climate human rights violations are commonplace and this includes violations committed against human rights defenders (as documented in this report). In many situations the Israeli military, political and judicial system do not consider particular actions to be in breach of international legal standards and in fact have sanctioned them at the highest levels of state (torture, extra-judicial executions, and collective punishment, among others). If the work of human rights defenders is to be supported and protected then violations of these kinds, including those against human rights defenders, must be ended and the associated culture of impunity must also be ended.

4. End the policy of labelling Human Rights Defenders as 'terrorists' and publicly promote the work of Human Rights Defenders.

The continuing approach of the Israeli government has been to apply a policy of collective treatment towards all Palestinian civilians.

Attacks against civilians, including unlawful killings, also form part of an overall policy which routinely fails to distinguish between civilians and combatants. Human rights defenders have become particular victims of this policy. The Israeli government has explicitly and falsely labelled human rights defenders as ‘terrorists’ or as using their work as cover for ‘terrorists’. The policy of associating criticism and dissent with wide-scale attacks against the civilian population and against human rights defenders forms part of a common, global, strategy designed to deflect genuine criticism. It encourages the culture of impunity in attacks against human rights defenders discussed above.

5. Recognise the right of Palestinian lawyers to defend Palestinian clients.

Israel continues to prevent Palestinian lawyers from the OPT to practise law in Israeli courts even on issues which pertain to actions taken inside the OPT or to prisoners from the OPT in Israeli custody. It is imperative that human rights defenders are given the freedom to practise in the context of a fair and independent judicial system. In order to facilitate this Israel must allow Palestinian lawyers to practise in its courts and to defend their own clients.

6. Immediately repeal the Civil Wrongs Law

In 2005 Israel passed a law which effectively eliminated the possibility of any victim of a human rights violation from applying for compensation inside Israel. This law, which has been universally condemned by international, Palestinian and Israeli human rights organisations, will limit the opportunity for Palestinians, including human rights defenders, to build legal cases inside Israel. Thus human rights defenders will be prevented from carrying out their invaluable legal work to pursue justice through the domestic legal system. Israel must immediately repeal this law and allow Palestinian clients and human rights defenders to work through the legal system to attain justice.

]

To the Palestinian National Authority

7. Enact special domestic legislation which protects Human Rights and Human Rights Defenders.

The PNA must act, in the absence of sovereignty, to ensure that international human rights standards are fully incorporated into domestic legislation to the greatest extent possible. This should also include particular protection for human rights defenders. The implementation and application of these laws must be supported by legal, and where necessary, judicial mechanisms including an Independent Human Rights Monitoring Body as discussed below.

8. Establish an independent Human Rights monitoring body in conformity with the Paris Principles².

The PNA must establish an independent body which will monitor human rights violations committed in areas under the jurisdiction of the PNA and will have the power to investigate such violations and, where appropriate, put forth suggestions as to how to resolve human rights problems, in a fair and independent manner.

9. Ensure that restrictions against the media are introduced only in the context of an independent judicial process where evidence is presented and the right of appeal exists.

The continued approach of the PNA has been to limit media criticisms of its own actions. The PNA is obliged to ensure freedom of the press as part of the right to free speech. Further to this, especially because of the absence of international and national mechanisms for holding the PNA accountable for its actions, the media can serve a useful purpose as a human rights watch-dog.

² Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (The Paris Principles). These recommendations, which were endorsed by the Commission on Human Rights in March 1992 (resolution 1992/54) and by the General Assembly in its resolution A/RES/48/134 of 20 December 1993. <http://www.ohchr.org/english/law/parisprinciples.htm>

10. Ensure that those members of the security services, or those with associations to them, and any others involved in kidnapping Human Rights Defenders are brought to justice.

The deteriorating security situation inside the Gaza Strip has seen a number of incidents in which members of the security services, or armed factions linked to them, have been involved in kidnappings of international human rights defenders. It is the role and responsibility of the PNA to ensure that the rule of law is implemented and those responsible for such attacks are brought to justice.

To the International Community

13. To the High Contracting Parties to the Fourth Geneva Convention

Immediately act in line with the obligation under common Article 1 of the Geneva Conventions to ‘ensure respect’ for the Fourth Geneva Convention in the OPT, as further expressed in the ICJ Advisory Opinion of 9 July 2004.

To the European Union and its Member States

14. Pressure Israel to implement and apply Human Rights standards in the OPT

The European Union should utilise the framework of the EU-Israel Association Agreement to make significant progress towards Israel’s implementation and application of international human rights standards and use the possibility of firm action against Israel to enforce this.

The EU should also immediately call on Israel to implement the UN Declaration on Human Rights Defenders and to use the EU guidelines³ at the various levels stipulated to ‘provide practical support for human rights defenders at risk.’

³ *Ensuring Protection -EU Guidelines on Human Rights Defenders* available at <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf>.

Introduction

Front Line, in conjunction with local human rights defenders, regularly produces reports on countries where human rights defenders are at particular risk. In the past these reports have covered countries such as Brazil, Indonesia, Sierra Leone, Rwanda and the USA. This report includes the experiences of human rights defenders in the Occupied Palestinian Territory since 2002 and is being published in conjunction with the Palestinian Centre for Human Rights.

There are a wide variety of human rights defenders working in the OPT for the rights enshrined in the Universal Declaration on Human Rights. These include medical personnel, lawyers, fieldworkers and journalists. They face a wide range of risks and difficulties in carrying out their work and the report hopes to document some of those experiences. However, this breadth of risks and threats faced by defenders makes it difficult to report strictly thematically, by type of violation, or by the work of different defenders.

In general terms, however, defenders are faced with two types of threat which affect them. The first type results from a general policy imposed by the Israeli government against the Palestinian population as a whole which has an additional negative consequence for human rights defenders, in particular. An example of such a threat would include checkpoint closures which prevent human rights defenders from accessing their place of work. This may manifest itself in the format of a checkpoint closure which stops a fieldworker from reporting an incident or in the form of declaring an area a closed military zone and preventing an ambulance driver from attending to the sick or wounded. This type of threat not only affects the work of defenders in general terms but also has the consequence of escalating the specific threat level against defenders who may be compelled, by the nature of the work they carry out, to defy or circumvent military orders. The second type of threat arises when a human rights defender is specifically targeted for the work they are carrying out. This can, and does, result in the arrest/detention of or injury to a human rights defender or the damage caused to and

closure of a premises. Some further comments on methodology are contained within the text itself.

The report is split into four parts. Part I gives the context of the situation in the OPT. It deals with the historical, geographical, social and legal background to the occupation.

Parts II and III describe the experiences of human rights defenders under the Israeli Occupation (Part II) and under the Palestinian National Authority (Part III). Both of these parts describe attacks on specific types of human rights defenders, as well as descriptions of specific types of difficulties such as Administrative Detention or curfews and closures. However there is some overlap between these areas and some cases do not always fit neatly under one heading. The report hopes to find thematic similarities in the violations against defenders operating in the OPT but also to bear witness to the difficult experiences of many human rights defenders who carry out their work with little credit in the most extreme circumstances.

Part IV of the report details the experiences of two women human rights defenders in their own words. Women human rights defenders face specific and additional challenges in many countries. They face gender specific violations of their human rights. They must cross cultural barriers, often within their own community, in order to carry out their work. The OPT is no exception to this and in Part IV, Ibtesam Zaqout and Dunya El-Amal Ismail describe their experiences, and the difficulties they face as women human rights defenders.

This report was being finalized at a time of severe fluctuation in the human rights situation in the OPT. The effects of the Gaza ‘disengagement’ process have still not been clearly established, the construction of the Wall inside the territory of the West Bank and East Jerusalem will also certainly have severe consequences for the work of human rights defenders. The ongoing failure of Israel to comply with its obligations under international humanitarian and human rights law means that the peace process continues to falter before it begins and a political settlement involving the realisation of the Palestinian peoples’ right to self-determination is still beyond the horizon. As a result of all of these factors it is challenging to predict

the environment in which human rights defenders will operate over the coming years - however, what remains certain, is that their mission, to speak truth to power, will continue to be dangerous and challenging, irrespective of the threat posed.

Part I: Presentation of the Problem

*The human rights defenders in the Occupied Palestinian Territory operate under conditions that are absolutely incompatible with international norms and standards of human rights or the principles set forth in the Declaration. The environment is totally non-conducive for human rights defenders to conduct their work with facility or safety.*⁴

Human rights defenders in the OPT operate under complex and fluid circumstances. The continuing Israeli occupation of Palestine and the ongoing military activity has forced dramatic changes in the landscape of human rights defence.

Defenders are faced with the second challenge of dealing with the Palestinian National Authority (PNA) which retains some limited legal and, occasionally, physical control over certain areas of the land occupied by Israel in 1967. The PNA continues, even after the passing of long time leader Yasser Arafat (in November 2004), to commit human rights violations which compel defenders to take action. The PNA joins many governmental institutions from across the world in participating in attempts to clamp down on legitimate activities under the veil of security. Human rights defenders have, in many cases, been the first victims of such clampdowns.

The intent and scope of this report is to provide an assessment of the deteriorating human rights conditions which human rights defenders have been faced with since the start of the *Intifada* and to focus specifically on the threats and difficulties faced by human rights

⁴ Jilani, H. (2005), *UN Representative on Human Rights Defenders Ends Visit to Israel and Occupied Palestinian Territories*, Geneva: United Nations, available at <http://www.unhchr.ch/hurricane/hurricane.nsf/0/1D032EA1FE6FFA89C12570970049CFA6?opendocument>.

defenders in their work. The report will focus on the problems faced by human rights defenders trying to operate within the context of an ongoing military occupation and the insecure and often hostile environment which this results in. It will continue to examine the problems faced by those who work, within peaceful means, to defend the principles of the Universal Declaration of Human Rights (UDHR) against the background of the legal quagmire of concurrent jurisdiction from both the Israeli occupying authorities and the PNA.

The report will examine a number of specific cases as well as patterns of threats and obstacles to the work of monitoring and upholding the principles of the UDHR.

The report details cases in which human rights defenders have been killed, attacked, threatened, abused, prosecuted or intimidated because of their work. Human rights defence, under the circumstances of an ongoing occupation, takes a variety of forms but each one carries specific risks and threats with it. Basic human rights, as provided for by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are constantly under threat - consequently human rights defenders, including lawyers, ambulance drivers, charity workers and journalists find that the opportunity to carry out their work is restricted and that they come under threats of both a violent and legal nature.

Lawyers seeking to travel to their work are restricted by the heavy closures imposed on the West Bank and Gaza. Ambulance drivers and medical staff trying to operate in conflict situations find themselves under attack and prevented from attending to the injured. The PNA regularly restricts the work of the media while also allowing organisations with close affiliations to the security services to target defenders with impunity. Alongside these incidents a number of prominent individuals become targets as a result of their peace activism or statements on human rights and democracy.

This report intends to focus on a number of prominent cases but also on some of the many cases of human rights defenders which have garnered little or no attention. The work of human rights defenders is often conducted away from the focus of international attention,

under extremely hostile conditions. The report will focus on threats to human rights defenders from both the Israeli forces, the occupying power, and the PNA, a body which holds nominal and occasionally substantive legal responsibility in some parts of the West Bank and Gaza. The report will focus on the difficulties faced by human rights defenders since the start of the second *Intifada*, September 2000, although reference will be made to earlier violations and threats.

The report seeks to explore the different ways in which people are defending human rights in the OPT. It includes not only human rights workers, lawyers and journalists but also medical staff working for the rights to life and health. The report also focuses on two, of the very many, women human rights defenders working in the OPT today. Their success as human rights defenders has been challenged not only through threats from Israeli and Palestinian authorities but also their very status as women - in a deeply patriarchal social environment - means that they have had additional challenges and obstacles in working for human rights.

1. Defining Human Rights Defenders

‘A human rights defender is a person who works, non violently, for any or all of the rights enshrined in the Universal Declaration of Human Rights.’

This is the definition used by Front Line - The International Foundation for the Protection of Human Rights Defenders to determine its work for the protection of human rights defenders. In 1998, the United Nations General Assembly adopted resolution 53/144, *United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights on Fundamental Freedoms*, which became known as the Human Rights Defenders Declaration.⁵ The Declaration recognizes ‘the right and responsibility of individuals, groups and associations to promote

⁵ The full text of the Human Rights Defenders Declaration is included in Appendix I.

respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels'.⁶

Hina Jilani, the UN Special Representative on Human Rights Defenders, has resisted the pressure of some governments to adopt a more restrictive definition of a human rights defender. She seeks to use a broad interpretation of the Human Rights Defenders Declaration to take account of the different circumstances and environments in which human rights defenders work and the various roles played by individuals and organisations.

This report will focus on individuals and organisations who are working to defend the broad spectrum of human rights including economic, social and cultural rights and also civil and political rights. In the context of the Israeli occupation and Palestinian *Intifada* the defence of human rights is a complex task and one in which sometimes unexpected actors find themselves on the front line of defending human rights.

Human rights defenders in the OPT include individuals who work in the media seeking to expose information about human rights violations. In the context of a conflict where the information war is almost as important as the actual conflict itself these individuals are part of an overall campaign to both speak truth to power and to bring the truth to the public arena. The attacks against the press documented in this report are attacks which have been carried out because the attackers have something to fear from the truth being exposed. The attacks for which the Israeli authorities have been responsible are motivated by a desire to hide the truth about the extent of the violations of international law in the OPT. The attacks for which the Palestinian Authority, or rogue elements connected to the PNA, have been responsible arose because they felt that the work of these journalists exposed the systematic mismanagement of democratic structures.

Lawyers and fieldworkers for human rights organisations have also come increasingly under attack. Human rights lawyers in the OPT have sought to represent - in both the Israeli and Palestinian courts -

⁶ Article 1 of the Human Rights Defenders Declaration.

cases to achieve restitution or compensation for victims of violations of international humanitarian law and also to apply for court orders which will prevent violations of international law occurring. Palestinian lawyers have had severe restrictions placed on their ability to operate both within the Palestinian courts and also in the Israeli courts. They use fieldworkers as their 'eyes and ears' on the ground to collect the details of violations and to reach out to victims, offering them both support and an opportunity for their stories to be heard in a wider arena. Fieldworkers, who also facilitate international delegations, are subject to restrictions on their freedom of movement as well as regularly operating in insecure environments to collect information to pass to the outside world.

Human rights defenders who are working for economic, social and cultural rights through organisations such as the Palestinian Red Crescent Society (PRCS) and the United Nations Relief and Works Agency (UNRWA) have also come under attack. Such organisations work on a programme of service provision and international advocacy for the civilians in the OPT. The PRCS, and its international sister organisation the International Committee of the Red Cross (ICRC), provide humanitarian services such as food supplies (the right to food) and medical services (the right to life). The ICRC also has a special position under international humanitarian law as the guardian of the Geneva Conventions. UNRWA also works as a service provider employing Palestinian staff who have a role in the provision of educational services, food supplies and health services.

Their staff members, from the highest to the lowest administrative levels, have been subjected to attacks to their physical wellbeing as well as attacks on their integrity which are designed to undermine their international and local credibility.

This report will also focus on those staff members who work as medical personnel in defence of the right to life. They work on a daily basis under the very real threat of attack. The report will also deal with human rights defenders who have heavy restrictions placed on their operational ability through the widespread and systematic closures and curfews imposed across the OPT.

The provision of humanitarian services by local and international organisations has been essential for the welfare of the civilian population. These organisations have taken on tasks that are the responsibility of the occupying power, by providing charity to a civilian population which is living through what the World Bank labelled ‘one of the deepest recessions in modern history ... exceeding the scale of economic losses suffered by the US in the Great Depression, or Argentina during the recent financial collapse’.⁷ This crisis further compounds the necessity of charitable work in the OPT. Despite this necessity human rights defenders have come under physical attacks as well as attacks on their operations through the closure of bank accounts and the freezing of funds.

The Palestinian Academic Society for the Study of International Affairs recorded 150 charitable organisations active in provision of food or medical aid, forty-six community centres, cooperative unions or trade unions, ninety-nine cultural centres, eighty-eight international NGOs, eighty-four women’s organisations and fifty-six human rights organisations working on the law, legal representation and restitution.

⁷ Between September 2000 and late 2002 Palestine suffered a 40% decline in real per capita GDP. GDP losses during 1929 and 1933 in the US were some 25-27%. Between 1998 and 2002, real per capita GDP in Argentina fell by 28%, while in 2002 the poverty rate rose by a half – from 38% to 57% of the population. In Iraq, GDP dropped by 31% in 2003.

Disengagement, the Palestinian Economy and the Settlements; The World Bank, 23 June 2004, p1 available at <http://www.worldbank.org>.

2. Human Rights in the OPT: The Context

The Historical Context

During the period up to 1948 the area of Palestine existed under the authority of the British Mandate as established by the League of Nations in 1922. The British Government had outlined a commitment in 1917, known as the Balfour Declaration, which declared the right of the Jewish people to a homeland in the area of historic Palestine. This goal, the establishment of the state of Israel, had been declared as a goal of the Zionist movement in Theodore Herzl's text *Der Judenstaat*.

In 1937 a commission of enquiry acknowledged the failure of the British Mandate and recommended a partition plan which would involve the northern twenty per cent of the area of Palestine becoming a Jewish state and the remainder becoming an Arab state. However the Arab population rejected the plan and continued with a rebellion against the Jewish settlers and the British, which was generally met with harsh reprisals. A similar partition plan was recommended in Resolution 181 of the United Nations General Assembly. Under the plan Jerusalem and Bethlehem would come under UN control and a Jewish state would consist of 5,700 square miles of fertile coastal land (fifty-seven per cent of Mandatory Palestine) and the Arab state would consist of 4,300 square miles of mostly hilly land.

Fighting broke out between Arab and Jewish forces and after the declaration of sovereignty by Israel on 14 May 1948 the military forces of five Arab armies invaded initiating what is now known as the first Arab-Israeli conflict.

During the *Nakba* (disaster) of 1947/8 the UN estimates that 726,000 Palestinians were pushed from their villages and their homes by Zionist forces.⁸ These refugees mainly moved to the areas of the Gaza Strip, the West Bank, Jordan, Lebanon, Syria and many also travelled to the USA or Europe. These were the first Palestinian

⁸ Philo, G., and Berry, M. (2004), *Bad News from Israel*, London: Pluto Press, 22-23.

refugees.⁹ To cope with the expulsions of Palestinians from their land the UN General Assembly, in November 1948, established the United Nations Relief for Palestine Refugees (UNRPR) to extend aid and relief to Palestine refugees and coordinate efforts of NGOs and other UN bodies. This became the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) under UN General Assembly Resolution 302 (IV), of 8 December 1949, as a subsidiary organ of the UN.

During 1949 Israel negotiated separate armistice lines with each of the Arab states involved in the conflict. This placed the area of the Gaza Strip and the West Bank under the control of Egypt and Jordan respectively. In 1956, following an attack by Israeli, British and French forces in the area around the Suez Canal in Egypt a further conflict broke out.

On 5 June 1967, an event known to Palestinians as the *Naksa* (the disaster), Israel began a series of attacks against Egypt and later on against Jordan and Syria. The war resulted in Israeli occupation of the West Bank, the Gaza Strip, the Sinai Peninsula, and the Golan Heights – an area later referred to as the Occupied Arab Territories.¹⁰ UN figures indicate that the Israeli military, between 1967 and 1969, destroyed 7,554 Palestinian homes.¹¹ Another 430,000 residents were forced to flee their homes in the areas recently occupied by Israel.

The consequences of this war have assumed primary significance in the contemporary context as, in the aftermath of the 1967 conflict, the UN Security Council formulated and adopted Resolution 242. This resolution has become the internationally accepted standard for the resolution of the conflict - it details the need for a just settlement of the refugee issue and the ‘inadmissibility of acquisition of territory by war’. This resolution has been the negotiating basis for

⁹ See Finkelstein, N. (2001), *Image and Reality in the Israel-Palestine Conflict*, London: Verso for a detailed critique of the position of Israeli historians such as Benny Morris.

¹⁰ Denoting Israeli occupation of the Sinai and the Golan Heights as well as the area now referred to as the OPT.

¹¹ Philo, G., and Berry, M. (2004), *Bad News from Israel*, London: Pluto Press.

subsequent peace talks, including the Oslo Accords. The status of the territory occupied was most recently confirmed in the recent Advisory Opinion of the International Court of Justice which established that '[A]ll these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying power.'¹²

The occupation of the West Bank, including East Jerusalem and the Gaza Strip by Israel during this war established the origins of the current conflict and the legal framework within which this conflict operates. In 1968 Yasser Arafat became Chairman of the Palestine Liberation Organisation (PLO), later recognised by the international community as the legitimate representative of the Palestinian people. This concept germinated from the 1974 decision of the UN to grant the PLO observer status. The PLO posts representatives to embassies and representative offices to eighty-eight states as well as being represented at the League of Arab States, the Organisation of the Islamic Conference and the UN.

The official Israeli position maintains that the territory of Palestine, which was taken during the 1967, is not in fact occupied. Rather the Israeli authorities insist that these territories are disputed. Further to this, the Israeli position has always been to consider the areas of the West Bank and the Gaza Strip as empty of any large population centres. This position has been maintained to the present day. Israeli politician Benyamin Netanyahu argued recently that 'two-thirds, if not three quarters [of the West Bank] are uninhabited land.'¹³ His comments reflect an insistence by elements in official Israel that ignores not only the Palestinian population but also their relationship with land and resources in order to justify extensive, further, appropriation by Israel.

¹² *Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, A/ES-10/273, para.78. Available at <http://www.icj-cij.org>.

¹³ Strasler, N., 'Netanyahu's Peter Principle', *Haaretz*, 31 March 2005.

Available at

http://themarket.msn.co.il/eng/archive/arc_article.jhtml?ElementId=ns20050331_01e&origin=ibo

It was as a result of the territory conquered by this war that East Jerusalem was annexed as part of Israel. Israeli historian Avi Shlaim notes that,

The annexation of east Jerusalem was the first and most dramatic assertion of Israel's claim to sovereignty over its ancient homeland ... On the 18 June [1967] the Government decided to annex east Jerusalem and the surrounding area. On the 27 June, Israeli law and administration were extended to Greater Jerusalem, which included the Old City.¹⁴

On this very point the International Court of Justice (ICJ) observes that,

[T]he Security Council ... condemned those measures and, by resolution 298 (1971) ... confirmed in the clearest possible terms that 'all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem...are totally invalid and cannot change that status'.¹⁵

The first Palestinian uprising, or *Intifada* began in the Jabalya Refugee Camp in the northern area of the Gaza Strip on 9 December 1987. The origins of the *Intifada* were rooted in 'poverty, in the miserable living conditions of the refugee camps, in hatred of the occupation and, above all, in the humiliation that the Palestinians had to endure over the preceding twenty years.'¹⁶ Human rights violations and violations of international humanitarian law became widespread over the course of the *Intifada*. House demolitions, collective punishment, restrictions on freedom of movement, torture, arbitrary arrest, imprisonment without trial, settlement building and killings of and attacks on civilians (including attacks against children) were all prevalent.¹⁷

¹⁴ Shlaim, A. (2001), *The Iron Wall: Israel and the Arab World*, New York: Norton, p251.

¹⁵ ICJ Advisory Opinion, para. 75

¹⁶ Op. cit. No. 14, p451.

¹⁷ PCHR has continued to document these violations over the course of the Intifada. The violations have also been documented by a variety of

The *Intifada* ended with the process which culminated in the Oslo Accords. As a result of the 1993 Oslo Accords a Palestinian autonomous entity in the OPT, the Palestinian National Authority, was established. This entity was supposed to be a precursor to the conclusion, on the 5 May 1999, of final status negotiations which most Palestinians had anticipated would result in a fully-fledged Palestinian state with comprehensive sovereignty in the international system. Although the PNA never developed this status it did assume some of the tasks of the occupying power, including the limited judicial and social functions.

The PNA was given various degrees of control inside the West Bank and Gaza Strip. The OPT was divided into non-contiguous areas which would have internal security control and municipal power held by Palestinians (Area A – 18% of the West Bank), joint partial security responsibilities for the PNA (Area B – 22% of the West Bank) and, finally, areas which would remain under the direct Israeli control, including all of the settlements and East Jerusalem (Area C – 60% of the West Bank). Israel retained supreme authority for external defence throughout the entirety of the OPT, and can take ‘all necessary’ steps to this end, including in Area A. In Areas A and B the PNA assumed limited responsibilities and began the process of establishing limited mechanisms of state. The PNA created a Ministry for Justice, multiple ministries which dealt with security affairs and others which focused on health and education.

The second *Intifada* began in September 2000 and led to a further upsurge in human rights violations. In April 2004 the Palestinian Centre for Human Rights (PCHR) presented a memorandum to the Consuls General of the European Union which observed that,

[S]ince September 2000, these violations have escalated both in frequency and gravity. Israel’s activities in this period have been characterized by excessive and disproportionate use of force; destruction of civilian property and civil infrastructure; the demolition of

international organisations such as FIDH, Amnesty International and Human Rights Watch and remain publicly available on their respective websites.

Palestinian homes; unlawful killings and injuries, including extrajudicial executions and political assassinations; arbitrary arrest and detention; torture and ill treatment; closures and curfews; unlawful transfer of civilians; unlawful confiscation of land and property; use of human shields; large scale military attacks in civilian areas.¹⁸

In addition to this PCHR has observed distinctive democratic failures on behalf of the PNA who have failed to ensure the establishment of an independent judiciary, attacked the work of journalists and media institutions, frozen the bank accounts of a number of legitimate Islamic charitable societies, enforced the death penalty in a number of cases, continued with the operations of the state security courts and have implemented a number of extrajudicial assassinations. PCHR observed in its annual report for 2003 that:

There was also no improvement in 2003 in respect of violations of human rights by the Palestinian Authority, its security services and other state agents ... the Palestinian Authority remains largely responsible for the deteriorating human rights situation in respect of its areas of authority.¹⁹

It is against the background of this deteriorating human rights situation that defenders have been carrying out their work, focusing on basic needs and fundamental freedoms.

The Geographical and Social Context in which Human Rights Defenders are Operating

This report is focused entirely on the role of human rights defenders in the OPT. The geographical unit is defined by the borders of the area which Israel occupied in 1967. This unit is considered, in international legal terms, to be the self-determination unit of the

¹⁸ *The EU's Failure to Act: Israeli violations of International Human Rights Law and Humanitarian Law in the OPT, Memorandum to the Consul Generals of the European Union*, 3, available at <http://www.pchrgaza.org/files/Reports/English/Memo%20to%20EU%20states%20April%202004.pdf>

¹⁹ PCHR (2003), Annual Report, 10-11.

Palestinian people.²⁰ It includes the West Bank, occupied East Jerusalem and the Gaza Strip. The West Bank is a hilly area, 5860 sq km to the west of the Jordan River and to the East of Israel. The Gaza Strip is a largely flat area of 365 sq km, which borders the Mediterranean to the west. The area of East Jerusalem has been occupied and under the administrative and effective control of Israel since 1967 also.

The area is known by a collection of different names: the Israeli military and authorities refer to the West Bank as ‘Judea and Sumeria’ and refer to the collective area (excluding occupied East Jerusalem) as the ‘disputed territories’. Ardi Imseis, states that

[R]ecently the United Nations has begun to refer to the areas collectively as the ‘Occupied Palestinian Territory’ a deliberate usage of the singular form of the term [Territories] apparently for the purpose of underscoring the contiguous nature of what is regarded as the self-determination unit of the Palestinian people. See, e.g., G.A. res. ES-10/6, U.N. GOAR, 54th Sess., Supp. No. 49, U.N. Doc. A/ES-10/6 (1999).²¹

In keeping with this practice, the West Bank, East Jerusalem and the Gaza Strip, is referred to collectively as the Occupied Palestinian Territory (OPT) throughout this report.

The Israeli Government's intensive policy of settlement expansion, considered to be illegal under international law, has had considerable effect on the territorial ‘facts on the ground’ in the West Bank and the Gaza Strip. Throughout the *Intifada* Settlements, and related military bases, buffer-zones and road systems, controlled over forty per cent of the most fertile and most scenic land in the whole Gaza Strip. In the West Bank the settlements are being de facto annexed to Israel itself through the construction of a large wall inside the

²⁰ UN Security Council Resolution 242 of 22 November 1967, S/RES/242 (1967) available at: <http://domino.un.org/unispal.nsf/0/59210ce6d04aef61852560c3005da209?OpenDocument>.

²¹ Imseis, A. (2003), *On the Fourth Geneva Convention and the Occupied Palestinian Territory*, 44:1 Harvard International Law Journal 67.

territory of the West Bank. Whole Palestinian villages will be encircled by the wall which aims at annexing up to fifty-four per cent of Palestinian territory in the West Bank.²² The land taken by settlements is strategically significant as it facilitates greater access to water supplies, making them more fertile in the arid hills of the West Bank.

The Legal Context

1. Human Rights Mechanisms which Apply to Israel and the Occupied Palestinian Territory.

The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (hereafter 'the Convention') is the primary legal document which applies to the Gaza Strip and the West Bank, including East Jerusalem. The applicability of the Convention has been reaffirmed by a wide variety of international organisations, including the United Nations (through both the Security Council and the General Assembly), the International Committee of the Red Cross and meetings of the High Contracting Parties to the Convention as well as a number of prominent international human rights groups such as Human Rights Watch and Amnesty International. Perhaps most significantly, the principal judicial organ of the UN, the International Court of Justice, ruled in July 2004 that the Convention is *de jure* applicable in the OPT and that the high contracting parties have a clear legal obligation to ensure that Israel respects its provisions. Despite this considerable body of

²² The quantity of land which will be finally annexed by the Wall is hotly disputed. Mandel and Licht, the Israeli State Attorneys argue that only 3.3% of the West Bank lies on the Israeli side of the actual route of the Wall authorized by Attorney General Menachem Mazuz. The authors complain that The Hague judges cited the figure of 16.6%, and reproach them for this inaccuracy. However PCHR figures, assessed using predictions on likely routes of the Wall indicate that 54% of the territory of the West Bank will be annexed. This includes a calculation which accounts for: the Ariel settlement bloc (2.1%), the Jordan valley (28.8%), Palestinian land which will be on the Israeli side of the wall, including the area of East Jerusalem (7.1%) and other Israeli settlements (8%).

international opinion Israel has continued to hold contradictory positions on the applicability of the Convention to the OPT.

At various points Israel has argued that the Convention does not apply, as Article 2 requires that the territory occupied must have belonged to a High Contracting Party to the Convention. On other occasions Israel has announced that it would respect the ‘humanitarian’ provisions of the Convention in its activities in the OPT but continued to refuse to accept its de jure applicability. However, more recently, the State and the High Court both referred specifically to the Convention during a High Court review of an Israeli military order which permits the transfer of Palestinians from the West Bank to the Gaza Strip. The respondents in this case (the Israeli military Commanders in the West Bank and the Gaza Strip) argued that the,

[B]elligerent occupation of [the West Bank] and the Gaza Strip should be considered as one territory, and therefore the orders amounted to merely assigned residence which is permitted under international law (Article 78 of the Fourth Geneva Convention).²³

Thus permitting the occupying power to submit a protected person to a period of ‘assigned residence’ for ‘imperative reasons of security’. In its judgment, the Israeli High Court stated that, ‘for the purpose of the petitions before us we are assuming that humanitarian international law - as reflected in the Fourth Geneva Convention ... applies in our case’.²⁴

Despite the various contradictory positions assumed by the Israeli government it is generally assessed that the Convention is the primary legal framework for humanitarian and human rights norms in the OPT. Article 27 of the Convention acts as the fundamental guiding principle for the provision of human rights norms detailing that ‘Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs.’ Article

²³ HCJ 7015/02 Ajuri v. IDF Commander, 2002 IsrLR, 2.

²⁴ Ibid. 13.

27 also details fundamentals rights on the basis of ‘health, age and sex’ guaranteeing that the protected persons will not receive ‘any adverse distinction based, in particular, on race, religion or political opinion.’

The Hague Regulations of 1907 also apply and specifically prohibit collective punishment and the confiscation and unlawful destruction of private property (Articles 50, 46, 23(g) respectively). The Hague Regulations are considered part of customary international law and apply, without dispute, to the OPT.

The Israeli government refuses to recognise the applicability of international human rights law, particularly the ICCPR and the ICESCR and the Convention on the Rights of the Child.²⁵ The Convention Against Torture is considered to be customary international law and its application is accepted by Israel, though not in the OPT or to prisoners who are detained inside Israel from the OPT.²⁶

In defence of its non-application of human rights instruments Israel relies on the argument that the Conventions apply only to the jurisdiction of the State Party. It further suggests that the OPT are outside the scope of its territorial jurisdiction. However the ICJ Advisory Opinion on the construction of the Wall in the West Bank found, in the case of the ICCPR, that

²⁵ The International Court of Justice has cited the following, in paragraph 110 of its Advisory Opinion: ‘In 1998 Israel stated that, when preparing its report to the Committee, it had to face the question “whether individuals resident in the occupied territories were indeed subject to Israel’s jurisdiction” ... Israel took the position that “the Covenant and similar instruments did not apply directly to the current situation in the occupied territories”’.

²⁶ In 1987 a former Israeli Chief Justice, Moshe Landau, in a report on the use and practice of torture by security offices in the *Shabak* found that torture was widely used by Israeli officials to extract confessions, despite their claims to the contrary. Despite this he decided that a set of guidelines, which remain secret, should apply to interrogation by Israel’s security services of Palestinian prisoners under the principle of permitting ‘moderate physical pressure’ – a term which many have considered a codeword for granting impunity for acts of torture against Palestinian prisoners.

[W]hile the jurisdiction of States is primarily territorial, it may sometimes be exercised outside national territory. Considering the object and purpose of the [ICCPR], it would seem natural that, even when such is the case, States parties to the Convention should be bound to comply with its provisions.²⁷

The Court referred, in its judgment, to the conclusions of the UN Human Rights Committee which found that all of Israel's actions 'fall within the ambit of State Responsibility ... under the principles of public international law'.²⁸ In deciding whether or not the ICESCR was applicable the Court was unable to refer to the Covenant's own definition of its scope of applicability, as none exists. However, again acknowledging the claims of Israel that the Covenant is not applicable, the Court argued that some elements of international law fall under the scope of humanitarian law exclusively, some under the scope of human rights law exclusively and some under a mixture of the two. The Court asserted that territory occupied by Israel for thirty-seven years effectively fell under its territorial jurisdiction and that, as such, the ICESCR remains applicable. Following on from this the Court draws on Article 2 of the Convention on the Rights of the Child, which states that, the Convention shall be applicable 'to each child within their [the States party's] jurisdiction'.²⁹

To date, however, Israel denies the applicability of any of the Covenants and has effectively rejected the entire findings of the Court. In the only official government response formulated at the time of writing two lawyers from the Israeli State Attorney's office argued that 'the ICJ was not able to reach a supportable conclusion'.³⁰

²⁷ International Court of Justice, *Advisory Opinion on the Legal Implications of the Construction of a Wall on the West Bank*, para. 109, available at http://www.icj-cij.org/icjwww/idocket/imwp/imwp_advisory_opinion/imwp_advisory_opinion_20040709.htm

²⁸ ICJ, *Advisory Opinion*, para. 11

²⁹ *Ibid.*, paras. 112-113.

³⁰ State Attorney's response to the ICJ Advisory Opinion, para 550.

Translated by PCHR from the Hebrew version. See PCHR, *Securing the*

The PNA's position in relation to international human rights instruments is somewhat confused and legally uncertain. The PLO is recognised as the legal representative of the Palestinian people, having observer status at the UN while the PNA remains subordinate to Israel, the occupying power. On the 29 June 1989 the Swiss Government received a written letter of intent to adhere to the Geneva Conventions. However the Swiss Government informed the High Contracting Parties that it was not in a position to adjudicate because of what it called the uncertain status of Palestine within the international community.³¹ The PNA retains an obligation to prosecute, within the limits of its capabilities, those responsible for attacks in violation of international humanitarian law. Despite this the PNA is not accountable, as Israel is, to any of the UN's human rights organs such as the Commission on Human Rights or the treaty monitoring bodies. It does not receive criticism nor does it respond to any, or engage in any debate in the international arena about its international obligations.

In place of this legitimate role for international engagement on human rights foundations a vibrant civil society has developed which provides detailed and ongoing critiques of the failures of the PNA. Internationally, organisations such as Amnesty International and Human Rights Watch have extended and undertaken work on the PNA. On the domestic front the human rights organisations which were, and continue to be, so vocal in critiquing the Israeli occupation, also extended their roles to include the PNA. Many organisations were established which focused on critiquing the legal work of the Palestinian Legislative Council (PLC), the State Security Courts and other functions of the PNA.

Wall from International Law – An Initial Response to the Israeli State Attorney,

<http://www.pchrgaza.org/Interventions/Securing%20the%20Wall.pdf> .

³¹ International Committee of the Red Cross, States party to the Geneva Conventions and their Additional Protocols, Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977

,7, available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party_gc/\\$File/Conventio ns%20de%20Geneve%20et%20Protocoles%20additionnels%20ENG.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party_gc/$File/Conventio ns%20de%20Geneve%20et%20Protocoles%20additionnels%20ENG.pdf).

The State Security Courts have been seen by most observers to pose one of the key threats against the Palestinian population, and, in particular against human rights defenders. These Courts, which were established in 1995, have been responsible for the arrest, detention and torture of prominent human rights defenders including **Raji Sourani**, then Director of the Gaza Centre for Rights and Law and **Dr. Iyad al-Sarraj** of the Gaza Community Mental Health Programme. In 1995 both men were arrested and detained by the PNA, through the medium of the State Security Courts, for direct criticism of the PNA's behaviour in the aftermath of the Oslo Accords.

The PNA has, in general terms, used the *Intifada* as a justification for the further delay in implementing political and democratic reform founded on human rights principles. Much of this defence is indeed justified by the collapse of the PNA's security and social apparatuses as a result of attacks by the Israeli military. However political activity on an internal level has continued and the PLC has continued to promulgate legislation. The various degrees of success and, largely, failure to implement human rights standards into Palestinian law cannot be excused by the ongoing *Intifada*. Practices which fail to meet international standards, including the wide variety of human rights violations, are also inexcusable.

2. The Legal Status of Human Rights Defence

As observed previously, the UN, through the Human Rights Defenders Declaration, calls for specific protection of those who are engaged in the defence of human rights. Despite this, however, both Israel and the PNA have imposed formal restrictions on the right to defend human rights or have imposed restrictions which limit the work of those engaged in human rights defence through financial or legal means.

In the context of Israel this can include a variety of examples, all of which are discussed in the relevant sections of this report. The restrictions placed on Palestinian journalists effectively means that they are unable to observe and report on human rights abuses committed by Israel in many parts of the OPT. In addition to this,

Israel has also altered compensation laws in order to make the job of human rights lawyers representing Palestinians increasingly difficult.

The PNA has also imposed legal restrictions on the operations of lawyers working in the field of human rights. Further to this they have forced a number of press organisations to shut down their operations because of criticism of the PNA itself or because criticism of the occupation was not politically palatable to the PNA at that particular moment in time. Finally the PNA has, through the office of the Attorney General, frozen the bank accounts of a number of charitable organisations involved in the defence of human rights across the OPT.

Neither Israel nor the PNA has made explicit reference to the Human Rights Defenders Declaration in domestic legislation. However, the UN Declaration was adopted by consensus at the UN General Assembly and both have engaged in correspondence with the Special Representative on the situation of human rights defenders regarding various matters brought to their attention. Unfortunately their answers and their actions have rarely been satisfactory.

It is important to observe the special position which some human rights defenders, namely medical staff and staff of the ICRC/PRCS, are given under the Fourth Geneva Convention. The Commentary by the ICRC on the Fourth Geneva Convention treats Article 10 of the Convention (on the role of the ICRC and other associations) as being ‘an invitation to all men of good will to continue [their] work’, which is ‘namely charity, or in other words the spirit of peace.’³² The Convention also places certain obligations on the right to work, and obligations on the occupying power to protect those involved in medical work and their premises (Articles 18 and 20).

³² Pictet, J. (ed.), (1958), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 99.

3. The Environment in Which Human Rights Defenders Operate

The general environment in the OPT is hostile to human rights defenders and their work. The atmosphere of daily incursions and military attacks from ground and air combined with the curfews and sieges imposed on many areas of the OPT for long periods of time (some areas in Gaza were completely sealed off by the Israeli authorities for three years) is one that makes the work of a defender extraordinarily difficult.

Lawyers, fieldworkers and medical staff - among others - find themselves subjected to trying circumstances, in which; clients can not visit or be reached, they are shot at while trying to access certain areas to carry out their work, their premises are attacked and equipment and/or documentation is seized and/or destroyed.

Against this background is the continuing information war being fought by both sides. Human rights defenders play an important role in ensuring that information on human rights violations reaches the outside world. In such a politically charged conflict independent and objective information on human rights violations is essential. As with any information the credibility of the source must be beyond question for it to be believed.

Perhaps with this in mind the Israeli Foreign Minister, Silvan Shalom, during the course of an interview with an Israeli newspaper claimed that, 'Palestinians who have carried out attacks hide in human rights offices ... most human rights offices in the West Bank and Gaza Strip provide shelter for Palestinian terrorists.'³³

Such unsupported comments, whilst clearly more slanderous polemic than reasoned argument, are particularly dangerous as they can be understood as an incitement or attempt at justification for violent attacks on human rights defenders. These comments are also disturbing in the context of the ongoing global 'war against terror' and Israel's eagerness to associate itself with the campaign. The

³³ *Yediot Ahronot*, 21 May 2003, <http://www.arabynet.com>.

Foreign Minister's comments were clearly designed to try to undermine the credibility of Palestinian human rights organisations.

Such denigration has multiple purposes. Firstly, it aims to undermine the validity of information provided by human rights organisations. Secondly, it aims to transform human rights organisations into legitimate military targets for the state of Israel, so justifying raids and attacks on the premises and staff of human rights organisations.

The tactic of libelling a human rights defender is not an uncommon one. Citing Israel among ten other states that used this tactic to persecute human rights defenders Hina Jilani suggests that, 'Such slanderous attacks have aimed at discrediting the aims, work and integrity of defenders in order to undermine financial and public support for their activities.'³⁴

Statements such as Shalom's increase the risk of action against donors to human rights groups by anti-Palestinian organisations, particularly in the USA. Many independent US based donor organisations, as well as organisations such as Human Rights Watch and National Public Radio have been forced to fend off a series of criticisms for being too 'pro-Palestinian' and have been accused of supporting 'terrorism'. Donor organisations have had to work hard to defend the money which they supply to assist the work of human rights defenders in the OPT.

The climate of funding for human rights organisations is already marred by the collapse, due to financial irregularities, of the West Bank based organisation LAW. The perception has developed, without foundation, that all human rights organisations have problems with financial management. Coupled with this is the increasing pressure on donors from the US in light of the Executive

³⁴ Jilani, H., (2004), *Promotion and Protection of Human Rights: Report Submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders*, Geneva: Human Rights Commission, Sixtieth Session, E/CN.4/2004/94, 17, available at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2004.94.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2004.94.En?Opendocument).

Order on Terrorist Financing (E.O. 13224)³⁵ - which stipulates that no funding may be given (through USAID) to any organisation which supports 'terrorism'. USAID now request all organisations to sign a declaration that they will not support terrorism.³⁶ The vague wording of this statement has been a source of concern for many organisations; particularly those who provide support to Palestinian prisoners or victims of collective punishment attacks against the families of those who have carried out suicide or other attacks against Israel. The question of funding has a severe impact on the legitimate and necessary focus of human rights defenders in the OPT.

The Israeli 'war on terror' is consistently used to justify a range of human rights violations - in the name of 'security' and 'military necessity'. The position of human rights defenders is no different in this regard. Human rights and humanitarian law place human security at the core foundation of their existence. Any development of a 'security' response must be considered within a solid framework of humanitarian law and human rights law. A violation of humanitarian principles does not guarantee a more secure environment - rather it will ensure long term insecurity for all parties involved. This imbalance has allowed Israel to justify extensive detention of human rights defenders and attacks on their premises.

Attacks against the premises of human rights defenders are not unusual - indeed they are so commonplace that they generally go unreported and unnoticed. As a general rule these attacks are seen to be part of the general human rights problems faced by Palestinian civilians rather than, in particular, as attacks against efforts to defend human rights. So commonplace was the destruction and attacks against civil society institutions, particularly in the West Bank during 'operation defensive shield', in 2002 that Israeli journalist Amira Hass described the events, and the consequences, like this

It's a scene that is repeating itself in hundreds of Palestinian offices taken over by IDF [Israel Defense Forces] troops for a few hours or

³⁵ Full text available at: <http://www.state.gov/s/ct/rls/fs/2002/16181.htm>.

³⁶ Full text available at:

http://www.usaid.gov/wbg/misc/2004.Certification_Regarding_Terrorist_Financing.pdf.

days in the West Bank: smashed, burned and broken computer terminals heaped in piles and thrown into yards; server cabling cut, hard disks missing, disks and diskettes scattered and broken, printers and scanners broken or missing, laptops gone, telephone exchanges that disappeared or were vandalized, and paper files burned, torn, scattered, or defaced - if not taken. And it's all in rooms full of smashed furniture, torn curtains, broken windows, smashed-in doors, walls full of holes, filthy floors and soiled bathrooms. Here and there, the soldiers left obscene graffiti or letters full of hatred, but compared to the data that was destroyed or taken, the insults read like poetry. Even the overflowing toilets look more like human weakness compared to the organized vandalism reflected in the piles of smashed computers.

It's not merely the expense of the hardware that has to be replaced. The loss is immeasurable in shekels or dollars. Years of information built into knowledge, time spent thinking by thousands of people working to build their civil society and their future or trying to build a private sector that would bring a sense of economic stability to their country.

Either way, the scenes of systematic destruction show how the IDF translated into the field the instructions inherent in the political echelon's policies: Israel must destroy Palestinian civil institutions, sabotaging for years to come the Palestinian goal for independence, sending all of Palestinian society backward. It's so easy and comforting to think of the entire Palestinian society as primitive, bloodthirsty terrorists, after the raw material and product of their intellectual, cultural, social and economic activity has been destroyed. That way, the Israeli public can continue to be deceived

into believing that terror is a genetic problem and not a sociological and political mutation, horrific as it may be, derived from the horrors of the occupation.³⁷

Hass' condemnation of these events, which are so commonplace that they are rarely if ever noticed by the international community, is a stark reminder of the extent to which attacks against human rights defenders have become 'normalized' over the course of the *Intifada*. It is against this backdrop that many individuals risk their personal security and integrity to further the cause of human rights in the OPT.

A. Impunity

The system of impunity for those responsible for human rights violations, orchestrated at the highest levels of the Israeli state, has posed particular problems for human rights defenders trying to challenge the Israeli occupation and associated violations.

The state of Israel has sanctioned torture, extra-judicial executions, collective punishment and other serious human rights violations. At the same time, as is discussed later in this report, the state of Israel has instigated a comprehensive legal system to prevent Palestinians from attaining access to justice.

Simultaneously the Israeli military operates an ineffective, inefficient and unjust investigations system which does not involve 'initiating impartial investigations'.³⁸ The system of asking soldiers to provide the only testimony and evidence in cases has resulted in the poor investigation of, or the failure to investigate, numerous cases of attacks against human rights defenders.

In very few cases are the perpetrators brought to justice. As Human Rights Watch observes it is often in a few rare cases where considerable international pressure is brought to bear that a full

³⁷ Hass, A., 'Operation Destroy the Data', *Haaretz*, 24 April 2002.

³⁸ Human Rights Watch, (2005), *Promoting Impunity: the Israeli Military's Failure to Investigate Wrongdoing, Summary*, New York: Human Rights Watch, available at http://hrw.org/reports/2005/iopt0605/1.htm#_Toc106249162.

investigation yields any results. One such example of this is the case of British human rights defender Tom Hurndall, a case also dealt with in this report.

The system of impunity employed by Israel results in an increase in the dangers presented to human rights defenders and further restrictions on their activities.

Part II: Human Rights Defenders Under the Israeli Occupation

1. Medical Personnel³⁹

PCHR has observed the severe threat faced by those defending the right to life within the OPT in the form of medical personnel, the vast majority of whom work for the Red Crescent or UNWRA. These defenders face both types of threat identified in the introduction to this report,

- they may be negatively affected by the general policy of closure which is imposed across the OPT;
- they may face specific threats because of having to pass through checkpoints or into combat areas.

Certain methodological standards have been applied by Front Line and PCHR in assessing and recording these threats, which are, broadly, taken from the period between 01 September 2002 to the 31 December 2004.

- Medical or emergency personnel must be on duty at the time.
- Their role as medical or emergency support units must be clear, through the display of clearly identifiable signs for relief, including the red cross or crescent (which are given special privileges in international humanitarian law) or the sign of the UN or other recognised relief agencies.
- They must be on the premises, or in a vehicle, attached to a medical establishment, such as a clinic hospital or ambulance,

³⁹ PCHR produces special periodic reports on violations against Palestinian medical personnel which are available on <http://www.pchrgaza.org>.

which clearly identifies itself as such or whose location is well established and would be known to military units operating in the area.

Given the escalated level of threat faced by these defenders during times of military operations PCHR has elected to include details of attacks against them during two of the bloodiest incursions during the *Intifada*, specifically Rafah and Beit Hanoun in the Gaza Strip in 2004. Examples of the consequences which threats against the defenders has on victims of human rights violations are also included in the text.

Medical workers are also particularly vulnerable to the accusation that they are shielding, assisting or harbouring ‘terrorists’ in the course of their work. One illustration of that involved the accusation by Israel that UNRWA ambulances were carrying military equipment. On 1 October 2004 the Israeli military released video footage which they claimed proved that UNRWA medical staff were involved in supporting military operations against Israel. The footage purported to show three members of an ambulance medical crew carrying a home-made rocket at an unspecified location and time. The allegation was later proven to be wholly discredited and was retracted by the Israeli Government.⁴⁰ However similar accusations and incidents have continued to be levelled at medical teams working across the OPT. These attacks are encouraged by a 2002 ruling by the Israeli Supreme Court, sitting as the High Court of Justice, which Physicians for Human Rights described as being ‘confined to a generalised comment by the High Court regarding the IDF’s commitment to humanitarian law’.⁴¹

Alan Dershowitz, author of the primary text in favour of current Israeli policies, *The Case for Israel*, has argued that ‘ambulances are often used to transport explosives and suicide bombers’ and that

⁴⁰ The full UNRWA response to this unfounded allegation can be found at <http://www.un.org/unrwa/news/releases/pr-2004/hqg30-04.pdf> .

⁴¹ Physicians for Human Rights - Israel, (2002), *Legacy of Injustice*, .Tel Aviv: Physicians for Human Rights – Israel, 61-63, cited in Finkelstein, N. (2005), *Beyond Chutzpah: The Misuse of Anti-Semitism and the Abuse of History*, Berkeley, CA: University of California Press, 128-129.

‘Palestinian terrorists [sic] ...use[d] ambulances’.⁴² His case is challenged by US Jewish academic Norman Finkelstein who, having examined ‘thousands of pages of documentation from human rights organisations’ illustrates that Dershowitz’s case is without foundation.⁴³ B’Tselem, the Israeli information centre in the Occupied Territories, insists that ‘despite repeated requests...the IDF has not presented any evidence to support this contention [that ambulances are used for military purposes], not even in response to petitions filed in the Supreme Court.’⁴⁴

These unsupported allegations against medical workers have inevitably contributed to a climate which makes attacks against them seem more acceptable to members of the Israeli armed forces. When combined with the climate of impunity pervasive throughout the armed forces this has had demonstrable and dangerous consequences for the security of human rights defenders in the OPT.

A. Killings of Medical Personnel

The Israeli military has continued to disregard the protection afforded to medical personnel under international humanitarian law. Medical personnel and vehicles are clearly marked and distinguishable, which means that many attacks against them by the Israeli military have not been accidental. The number of medical personnel killed by the Israeli military since the beginning of the current *Intifada* has mounted to at least nineteen.

1. Israeli Military Shoot Dead Two Palestinian Medical Personnel in al-Wafaa' Hospital in Gaza City

On Wednesday night, 5 February 2003, the Israeli military killed two Palestinian medical personnel who were on duty in al-Wafaa' Hospital in Gaza city. This action was perpetrated by the Israeli military as part of the escalation of Israeli illegal military actions in

⁴² Dershowitz, A. (2003), *The Case for Israel*, Hoboken, NJ: Wiley: 184, cited in Finkelstein, N. (2005), 128-129.

⁴³ Finkelstein, N. (2005).

⁴⁴ B’Tselem, (2003), *Harm to Medical Personnel: The Delay, Abuse and Humiliation of Medical Personnel by Israeli Security Forces*, Jerusalem: B’Tselem, cited in Finkelstein, N. (2005), 130.

the OPT. The killing of the two medical personnel came less than twenty-four hours after Israeli soldiers had violently beaten a French doctor working with *Medecins sans Frontieres* at al-Tuffah checkpoint (which separated the al-Mawasi area from Khan Yunis in the southern Gaza Strip). The doctor had been attempting, along with his colleagues, to enter the area, which was at that time perpetually isolated from the rest of the Gaza Strip, to attempt to provide medical aid for its residents.

According to PCHR's preliminary investigations, at approximately 23.40 on Wednesday, 5 February 2003, the Israeli military moved into al-Sha'af area in the northeast of Gaza City. They surrounded a four-storey house, in which four families, numbering forty-one people live, owned by Mohammed Salah al-Ghoula, approximately 60 metres away from al-Wafaa' Hospital. The Israeli military then destroyed the door, broke into the house and searched it. During the house raid, at approximately 23.55, an Israeli soldier fired a bullet at a window on the first floor of the hospital, which is clearly marked in Arabic and English. The bullet hit a nurse in the chest and exited to hit another nurse in the chest as well, thereby killing the two:

1. **'Abdul Karim Hamed Anwar Lubbad**, 22, from Jabalya;
and
2. **'Omar Sa'ad al-Din Hassan**, from the al-Zaytoun neighbourhood in Gaza City.

According to a janitor in the hospital, who had accompanied the nurses, they had gone to check on a patient who was crying out in pain. As soon as they entered the room, a shot was heard. The two nurses fell onto the ground. They were bleeding. Doctors made efforts to save their lives, but Lubbad died immediately and his colleague died shortly after him.

2. A Fireman Killed - Journalists and Paramedics Injured

In a major onslaught against the Gaza Strip, on Thursday, 6 March 2003, the Israeli military killed eleven Palestinians, mostly civilians, including three children and an old man, when they invaded the northern Gaza Strip town of Jabalya and its refugee camp. Five of the victims, including a fireman, were killed by one tank shell, while they were trying to put out a fire that had broken out in a house. In addition, about seventy-five Palestinians, including two journalists and four medical personnel, were injured; more than ten of them seriously. A number of ambulances were also severely damaged.

At approximately 05.30, the Israeli military fired several artillery shells at a 450 square-metre, four-storey house, in which six families counting twenty-one people live, owned by **Ahmed Mohammed Faraj Saleh**. The shells hit stores located under the house, burning them. Firemen were not able to reach the house until 06.45. A number of Palestinian civilians gathered to help firemen extinguish the fire. Immediately, an Israeli tank fired a shell at them, although firemen and fire engines were clearly marked. Five Palestinian civilians, including a fireman and two children, were killed. The fireman was **Naji Isma'il Abu Jalila**, 24.

A number of gunmen confronted the Israeli invasion. Israeli combat helicopters fired at them, killing one.

Approximately seventy-five Palestinians were injured. This number includes two journalists: **Ahmed Jadallah** and **Shams 'Oudetallah Shana'a**, from *Reuters*, and four medical personnel: **'Awad Ahmed Abu Marasa**, a paramedic; **Yusri 'Aayesh al-Masri**, an ambulance driver; **Jihad 'Abdul Karim Abu 'Ataya**, director of Jabalya ambulance station; and **Mohammed Shihda al-Muqayad**, a paramedic. Ambulances faced difficulties in reaching the affected areas. Three ambulances, including an UNRWA ambulance, were damaged.

B. Dozens of Wounded Palestinian Medical Personnel

During the reported period from 1 September 2002 to 31 December 2004, at least 200 medical personnel were wounded by the Israeli

military, some by heavy and medium calibre bullets and tanks shells, and others were severely beaten by Israeli soldiers. Thus, the number of Palestinian medical personnel wounded by the Israeli military since the beginning of the current *Intifada* has mounted to at least 450. Dozens of medical personnel are severely disabled from serious wounds they sustained by the Israeli military. Most of them sustained wounds in the upper part of the body. Almost all of these medical personnel were wounded while on duty. Some of them were transferred to hospitals outside the OPT due to the lack of necessary medical equipment.

The Israeli military have not made any effort to ensure the safety and security of Palestinian medical personnel while on duty. Further, the Israeli military have constantly failed to investigate such attacks and hold those responsible for them accountable.

The Israeli military have disregarded calls by UNRWA and international human rights organisations to comply with provisions of the Fourth Geneva Convention and allow medical personnel to operate in the OPT without restrictions, and they have continued their attacks on medical personnel, causing more casualties.

Israeli attacks against Palestinian medical personnel violate international human rights law and humanitarian law. The impact of such attacks are not limited to medical personnel, but also affect the rights of the wounded and sick. The inability of Palestinian medical personnel to move freely and quickly has resulted in dozens of deaths among sick and wounded civilians. Subsequently, at least sixty-eight patients have died due to the obstruction of their evacuation to hospitals by Israeli forces. Dozens of pregnant women have been forced to give birth near military checkpoints, as the Israeli forces denied them access to hospitals. According to the Palestinian Ministry of Health, the Israeli military have obstructed the evacuation of patients to hospitals in a minimum of 1,200 cases. Attacks by the Israeli military on Palestinian medical personnel peaked during widespread offensives on towns in the Gaza Strip.

The following details are of some cases in which Palestinian medical personnel were wounded by the Israeli military.

At approximately 07.00, on 7 October 2002, the Israeli military positioned in military posts in the vicinity of 'Gan Aur' and 'Gadid' settlements, southwest of Khan Yunis, and 'Neve Dekalim' settlement, west of the town, opened fire at Khan Yunis refugee camp and al-Nimsawi and Baten al-Samin neighbourhoods. Mohammed Farhan Shaloula, a 23-year-old Palestinian civilian, was killed by a bullet to the back. Seven others were wounded. Bullets and artillery shells also hit Nasser Hospital, approximately 600 metres east of 'Neve Dekalim' settlement. Four Palestinian civilians, including two members of the hospital staff, were wounded. The defenders wounded in these incidents were:

1. **Nafe' Burhan al-Bura'ei**, 22, hospital staff, critically wounded by a bullet to the head while near the department. He was evacuated to Shifa' Hospital in Gaza and then to an Israeli hospital;
2. **Jibril 'Aabed**, 45, also hospital staff, wounded by a bullet to the chest;

In his testimony to PCHR, **Jibril 'Aabed**, a driver at Nasser Hospital, said:

I was called to hospital at approximately 01.30 on Monday, 7 October 2002, after the hospital declared a state of emergency when IOF [Israeli Occupation Force] invaded parts of Khan Yunis. I carried out my duties until Israeli tanks withdrew from those areas. At approximately 08.15, while I was in the facility designed for ambulances in the eastern part of the main building of the hospital, I felt that a bullet hit me in the chest. I also heard sounds of bullets hitting walls. Immediately, those who were near me moved me to the reception department, where I received medical treatment.

On 21 November 2002, Israeli forces that had moved into the villages of Khuza'a and 'Abasan, east of Khan Yunis, opened fire at a number of Palestinian ambulances that came to offer help to the wounded. Three ambulances were damaged and two more paramedics were wounded:

1. **Ahmed 'Ali Jasser**, 28, wounded by a bullet to the left thigh, while he was inside a PRCS ambulance and;
2. **'Emad al-Din Mohammed Jodei'an Abu Jamous**, 25, wounded by shrapnel in the head, while he was inside an ambulance of the Qura'an and Sunna Society.

On 2 March 2003, the Israeli military that had moved into Khan Yunis opened fire indiscriminately on Palestinian houses in al-Nimsawi neighbourhood. A Palestinian civilian, 'Abed Rabbu D'ib 'Abed Rabbu, 52, was injured. He bled to death while waiting for medical teams to arrive at the scene. His house is located in al-Nimsawi neighbourhood, approximately 100 metres away from Nasser Hospital. Palestinian medical personnel were not able to reach the area due to the intensive Israeli shelling and because the Israeli soldiers denied them access to the affected house. 'Abed's body was evacuated to hospital at approximately 07.00, after the Israeli military had withdrawn from the area. Two staff members of Nasser hospital were wounded as a result of intense shelling in the area: **Mahmoud Mohammed al-Bardawil**, 35, a nurse; and **Ahmed Salman al-Faqa'awi**, a worker.

On 10 October 2003, the Israeli military conducted a wide-scale incursion into the Rafah refugee camp, adjacent to the Egyptian border in the southern Gaza Strip. Under cover of intense shelling and gunfire from tanks and helicopters, the Israeli military invaded the area, one of the most densely populated in the Gaza Strip. During the two-day incursion, eight Palestinians were killed, including three children, and fifty-three were wounded; twenty seriously. Women, children and elderly people were among the casualties. An ambulance driver, **Rajaa' Salah 'Omar**, 30, was seriously wounded by a bullet to the back. Israeli forces destroyed 170 Palestinian houses, a number of civilian facilities and aspects of the civilian infrastructure in the area.

On 28 January 2004, the Israeli military killed eight Palestinians, including three children, and injured four others, including a PRCS ambulance driver who was wounded while trying to evacuate one of the other wounded during a wide-scale incursion into al-Zaitoun neighbourhood in the south of Gaza City.

On 21 March 2004, the Israeli military killed five Palestinians injured nine others, and destroyed five houses in Khan Yunis. A Palestinian ambulance driver, **Ayman Salman Abu Draz**, 38, was among those who were injured. He was hit by shrapnel, from a bullet, to the chest.

On 21 April 2004, the Israeli military moved into the northern Gaza Strip town of Beit Lahia. They opened fire at Palestinian civilians and property. As a result, nine Palestinians, including two children, were killed and at least fifty others were injured, including twenty-five children and an ambulance driver and a paramedic from the PRCS. The Israeli military also opened fire at an ambulance of the Palestinian Ministry of Health. The ambulance was damaged, but no casualties were reported.

On 10 July 2004, **Mohammed Saleh Juha**, 19, from al-Zaitoun neighbourhood in Gaza City, a paramedic of the Palestinian Medical Service, was wounded by a bullet to the chest, when he was providing medical aid for the wounded during an Israeli military incursions into al-Zaitoun and Sheikh 'Ejlin neighbourhoods in Gaza City.

C. Attacks on Paramedics to Prevent them Working During Wide-Scale Offensives

During wide-scale offensive on Palestinian communities, the Israeli military used various means of aggression against Palestinian medical crews in the field to prevent them from evacuating the wounded and patients to hospitals and from removing the bodies of the dead. Subsequently, the health conditions of the wounded deteriorated and a number of them died.

1. Rafah

On 13 May 2004, the Israeli military initiated a wide-scale offensive on the southern Gaza Strip town of Rafah and its refugee camp, during which they committed a series of serious violations of human rights.

The UN Special Representative on Human Rights Defenders, Hina Jilani, and three other UN experts issued a statement condemning the Israeli attack on a verifiably peaceful demonstration in Rafah. The attack, which killed eight people and injured many more, was made while the crowd were marching in protest against Israeli violations of human rights (which included extensive killing and injury to civilians, use of human shields and house demolitions, among others).⁴⁵

During this offensive, the Israeli military launched a series of attacks on Palestinian ambulances and medical crews, which resulted in a failure by Israeli forces to live up to their obligation to allow access, and prevented medical personnel from evacuating the wounded to hospital and removing bodies of those who were killed from the street. A number of the wounded remained bleeding for several hours without ambulances being able to attend them, so they died. Television screens around the world showed an UNRWA paramedic being shot at by the Israeli military while he was trying to evacuate a Palestinian gunman who was seriously wounded by the Israeli military in Tal al-Sultan neighbourhood on Tuesday morning, 18 May 2004. The paramedic survived, but the UNRWA ambulance was damaged.⁴⁶

The Israeli military also held a number of ambulances for several hours and imposed severe restrictions on the movement of others, in violation of international humanitarian law, which ensures freedom of movement of medical crews and vehicles. A number of ambulances were damaged.

Palestinian and international medical organisations expressed grave concerns regarding the health conditions in Rafah during this wide-scale offensive as the Israeli military launched a series of attacks on ambulances and medical crews. There were also serious concerns about the lives of patients, children and pregnant women in the

⁴⁵ United Nations, (2004), *UN Experts Echo Concerns About Events in the Gaza Strip*, Geneva: United Nations, available at <http://www.unhchr.ch/hurricane/hurricane.nsf/0/CCBFCD440854EEDDC1256E9B0067A1D5?opendocument>.

⁴⁶For more details, see the paramedic's testimony at p 45 below.

affected areas, as the Israeli military attacked and imposed severe restrictions on the movement of ambulances and medical crews.

No soldier was prosecuted as a result of any Israeli investigation which was conducted into any of the attacks against Palestinian ambulances or medical crews even though they were clear violations of international humanitarian law and some of them were widely broadcast in the media.

The following cases are among the most significant attacks by the Israeli military against Palestinian ambulances and medical crews during the wide-scale offensive on Rafah:

- An UNRWA nurse who accompanied an UNRWA ambulance into Tal al-Sultan neighbourhood described to PCHR's field worker in Rafah how he survived the Israeli gunfire when he was attempting to evacuate a wounded man, saying:

At approximately 04.00 on Tuesday, 18 May 2004, a physician and I travelled in an UNRWA ambulance to Tal al-Sultan neighbourhood after we had received information that a number of people were wounded as a result of an Israeli air strike. We were able to evacuate four of the wounded to Abu Yousef al-Najjar Hospital. At approximately 04.45, we were informed that two people were wounded in Bader camp in Tal al-Sultan neighbourhood, one of them was inside a house whilst the other was in the street. Immediately, we went to the area. We asked a resident of the area and he told us that he had been hearing the agony of a person for several hours. He walked near the ambulance to guide us. We moved a few metres and we could see a young man lying on the ground. The ambulance was fired at, but we were not hurt. The driver moved forward until we came about 5 metres away from the young man. In the meantime, shooting at us intensified, so the driver was forced to travel back and take shelter. We called the director of the UNRWA clinic in Rafah and he asked us to protect ourselves. We also called the director of UNRWA radio operations and he asked us to protect ourselves as best as we can. Then, we called the

Palestine Red Crescent Society to help us. Actually, they sent four ambulances to the area. The ambulances were accompanied by a *Reuters* vehicle. We all moved in a convoy with our lights turned on. However, we were fired at, so we were forced to retreat. We got out of the vehicles and had shelter behind walls. We were able to enter a house belonging to the Barhoum family, where we could evacuate a young man who had been already wounded in the abdomen. Israeli soldiers continued to fire at us from a neighbouring house. It was 05.00, and we moved the young man to an ambulance of the Palestine Red Crescent Society. The other young man was still on the ground and we were only 5 metres away from him. I took position between two ambulances and moved towards the young man. I became about 2 metres away from him, but Israeli soldiers fired at me intensively, so I retreated. The young man was holding a gun and was wearing a green shirt and blue trousers. He was motionless. Soon, I decided to attempt again to pull him. I was able to catch his leg and pull him, but Israeli soldiers fired at us. He was hit by at least ten bullets. One of the bullets hit him in the leg that I caught. I felt a bullet passing near my face, so I retreated. ... I attempted again to pull him and I was able to bring him between two ambulances. His gun remained in the place. We carried him into one of the ambulances. We checked him and we discovered that he was dead. We transported his body to Abu Yousef al-Najjar Hospital. There, he was identified by people as Ziad Shabana. Our ambulance was hit by a number of bullets.⁴⁷

- The Israeli military attacked an ambulance of the Palestinian Ministry of Health in al-Brazil neighbourhood. Israeli bulldozers covered the ambulance with ruins of destroyed houses and tanks hit it. In his testimony to PCHR on this attack, a member of the medical crew said:⁴⁸

⁴⁷ The nurse's name is kept confidential upon his request details are kept with PCHR's Fieldwork Unit.

⁴⁸ His name is kept confidential upon his request details are kept with PCHR's Fieldwork Unit.

At approximately 12.00 on Thursday, 20 May 2004, we went to al-Brazil neighbourhood to evacuate a woman and her three children who were injured and were inside a house. When we arrived at the area, I saw a number of Israeli military vehicles positioned in the area. We stopped approximately 50 metres away from the house where the woman and the three children were present. The driver pressed the horn to call residents of the house to bring the wounded out, as we were not able to move closer to the house due to the presence of Israeli military vehicles. No one got out of the house. The driver was talking on the phone with the coordination official of the Ministry of Health informing him about the situation. The official asked us to wait until the Israeli military allowed us to move forward. However, five minutes later, the Israeli tanks fired at us. The ambulance was not damaged, but we were forced to move 20 metres back. A few minutes later, I saw a bulldozer and a tank coming towards us. I also saw another tank and bulldozer behind us. We were then surrounded by tanks and bulldozers. One of the bulldozers started to place sand barriers in front of the ambulance, while the other bulldozer was demolishing houses and putting the ruins behind the ambulance. We became surrounded by hills of sand and ruins. Soon, one of the bulldozers hit electricity towers and they fell onto the ambulance. In the meantime, the other bulldozer was putting more sand and ruins in front of the ambulance. My colleagues and I were trapped in the ambulance. Whenever we tried to open the doors, Israeli tanks fired at us. We were extremely terrified as we felt that they would kill us. We informed the coordination official about these developments. We remained in this situation for three hours. At approximately 15.00, the coordination official informed us that we could leave the area. Then, the bulldozers started to remove sand barriers, and then we heard the driver of one of the bulldozers calling on us to leave the area. The driver tried to move forward, but he could not due to the large amounts of sand on the road. He tried several times to move, but he could not. I indicated to the driver of one of the bulldozers that he should push us and he did. We immediately travelled towards Abu Yousef al-

Najjar Hospital. The ambulance was severely damaged, and the women and the children remained in the house all that time.

- The Israeli military imposed severe restrictions on the movement of ambulances. PCHR has documented at least fifty cases in which the Israeli military restricted access of ambulances to the wounded during the incursions. In one of these cases, the Israeli military held three ambulances in Tal al-Sultan neighbourhood for more than fifteen hours. In his testimony to PCHR on this case, '**Adnan Ahmed Mustafa al-Nawajha**, 33, an ambulance driver at Abu Yousef al-Najjar Hospital in Rafah, said:

At approximately 05.00 on Tuesday, 18 May 2004, we moved into ambulances towards Tal al-Sultan neighbourhood as we were informed that a number of people were wounded as a result of Israeli shelling near Bilal Ben Rabah Mosque. We evacuated a number of these people to the hospital. We went back to the area to evacuate more people. As soon as we arrived at al-Quds Street, which leads to the mosque, Israeli tanks and bulldozers intercepted us. I turned around and entered Tal al-Sultan public clinic in the area. Another ambulance followed me. A third ambulance of the Palestine Red Crescent Society was not able to enter the clinic, so its medical crew left it and took shelter in a neighbouring house. We all entered a room, where an emergency medical crew was working. We were twelve individuals in the room. We saw the Israeli tanks destroying the road. We contacted the Palestinian liaison and the ICRC to intervene to allow us to get out of the clinic, but nothing happened. At approximately 07.00, an Israeli bulldozer demolished the fence of the clinic. At approximately 16.00, the Palestinian liaison informed us that we were allowed to exit. As soon as we travelled in the ambulances, an Israeli tank fired a shell at us, but we were not hurt. We moved back to the clinic extremely terrified. At approximately 20.00, we were informed by the Palestinian liaison that we were allowed to exit and that the Israeli military were threatening to attack us if we remained inside the clinic. We got out on foot, according to the instructions, towards the

street, where an ambulance was waiting for us. Then, we travelled back to the centre of the town.

- In his testimony to PCHR about the difficulties that were encountered by medical personnel during the Israeli military offensive on Rafah, a volunteer paramedic said:

At approximately 17.00 on Thursday, 20 May 2004, I started my work in evacuating the wounded to hospitals and removing bodies of those who were killed in the affected areas. At night, we went to al-Brazil neighbourhood as we were informed that our entrance into the area, to remove three bodies, was coordinated with the Israeli side. When we arrived at the area, an Israeli tank opened fire at us. We were in six ambulances. We were forced to moved back. Ten minutes later, the Ministry of Health informed us that we would be allowed to enter the area as our entry was coordinated with the Israeli side. Israeli military bulldozers were demolishing houses. We were not able to reach the bodies as an Israeli tank closed the road. We informed the Ministry of Health. Five minutes later, the tank moved towards a neighbouring house and we were able to reach the bodies. The victims were in their twenties and they were hit by several bullets throughout the body. We evacuated them to Abu Yousef al-Najjar Hospital.

2. Beit Hanoun

During the wide-scale offensive on Beit Hanoun in summer 2004, the Israeli military obstructed the work of Palestinian medical crews although their movement in the area was often coordinated in advance between the Palestinian Ministry of Health and the Israeli military.

Describing the difficulties encountered by Palestinian medical crews during the Israeli offensive on Beit Hanoun, **Naji Ibrahim Abu Namous**, an ambulance driver, said,

We evacuated thirty-one pregnant women who were in labour to al-'Awda Hospital in Jabalya and Shifa Hospital in Gaza City. Although the transportation of these women was coordinated in advance, IOF intentionally obstructed their evacuation to hospitals. They conducted prolonged checking for ambulances, which sometimes exceeded two hours, and provoked medical crews. The same was also applied to patients.

The Israeli military also fired at a number of ambulances. In his testimony to PCHR describing a number of these cases, **Ziad 'Abdul Dayem**, an ambulance driver, said:

We were responsible for the evacuation of the wounded and patients from Beit Hanoun Farm, although it was extremely dangerous as IOF fired at ambulances in the area. Nevertheless, we were able to evacuate them to Kamal 'Edwan Hospital in Beit Lahia. In some cases, coordination for the evacuation of patients took several hours. IOF also fired at a number of ambulances. On 25 July 2004, a wounded Palestinian was brought to Beit Hanoun Clinic. He was in a critical condition, so there was a need to transfer him to Kamal 'Edwan Hospital in Beit Lahia. We contacted the Ministry of Health in order to coordinate our movement. Nearly fifteen minutes later, the Ministry instructed me to move. We took the wounded man into the ambulance and travelled through the agricultural road, but Israeli tanks forced us to travel back. We resorted to a dirt road, which leads to the Beit Hanoun Checkpoint Road (Erez road). When we arrived at a branch road that leads to Salah al-Din Street, an Israeli tank stopped us. Israeli soldier ordered the medical crew to get out of the ambulance and inform civilians in the area to move their cars away. They also threatened to shoot anyone who may come into the road or leave it. Although Israeli soldiers knew that the wounded man was in a serious condition, they obstructed our passage. Nearly forty-five minutes later, I contacted the Ministry of Health and claimed that the wounded man died in an attempt to ensure faster passage. Then, Israeli soldiers ordered the ambulance driver to move the back of the ambulance

towards the back of the tank and open the rear door. As soon as the door was opened, an Israeli soldier pointed his gun at the wounded man. Immediately, I closed the door. Israeli soldiers ordered us to turn off our mobile phones. They also insulted the ambulance officer and ordered him to move towards the tank. I felt that they would kill him. The Israeli soldiers also ordered the physician and the nurse to get out of the ambulance, but I refused to make them get out and contacted the Ministry of Health again. I informed the Ministry that I would leave the area at my responsibility. Israeli soldiers fired near the feet of the ambulance officer to terrify him. Soon, I saw an ambulance and a jeep of UNRWA coming from the direction of the Beit Hanoun Crossing (Erez). I stopped them. Israeli soldiers realized that they would not be able to do anything, so they allowed us to leave the area. It took us nearly two hours to transport the wounded man to Kamal 'Edwan Hospital.

The Israeli military also attacked clinic and medical centres, endangering medical crews. In his testimony to PCHR on one of these attacks, **Khaled Mustafa al-Za'anin**, a physician at Beit Hanoun Clinic, said:

On 25 July 2004, IOF fired at the clinic. A Palestinian civilian was wounded by a bullet to the chest. We offered him first medical aid and then transferred him to Kamal 'Edwan Hospital in Beit Lahia. Soon, IOF positioned in a neighbouring house fired at the clinic again. We were forced to lie on the ground or have shelter behind walls.

D. Violation of the Right of Medical Units and Transports to Free Movement

International human rights and humanitarian law provides for the free movement of persons. Article 13 of the UDHR provides that 'everyone has the right to freedom of movement and residence within the borders of each state'. Article 12 of the ICCPR provides that 'everyone ... shall have the right to liberty of movement and freedom to choose his residence'. Medical personnel should have the right to freedom of movement to ensure they have access to patients

and wounded to provide appropriate medical care. Article 21 of the Fourth Geneva Convention of 1949 provides:

Convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected in the same manner as the hospitals provided for in Article 18.⁴⁹

Article 23(1) of the Convention provides:

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

Israeli military forces have continued to violate the right of Palestinian medical personnel to freedom of movement. They have obstructed the passage of many ambulances that have attempted to evacuate the wounded. The Israeli military have enforced severe restrictions on the movement of Palestinian medical personnel, threatening the lives of many Palestinian civilians, including the wounded, sick, pregnant women and children.

The ICRC continue to demand that the Israeli military respect international humanitarian law, particularly the Fourth Geneva Convention of 1949, and allow free movement for medical personnel. Efforts made by the ICRC to pressure the Israeli military to allow entry of food and medicines into Palestinian villages and refugee camps, which had been under Israeli military siege, failed. As a result, the ICRC was forced to cancel its humanitarian activities in some areas. In several statements, the ICRC expressed concern for the restrictions imposed by the Israeli military on the movement of

⁴⁹ Article 18 stipulates that civilian hospitals shall under no circumstances be the object of attack.

ambulances of the Palestine Red Crescent Society and the humanitarian mission of the ICRC in the OPT.

- On 30 October 2003, three ambulances of the Palestinian Union of Medical Relief Committees were thoroughly searched by Israeli soldiers at Hawara and Za'tara checkpoints, south of Nablus. Two of the ambulances were transporting medicines and medical equipment, while the third was evacuating a pregnant woman to a hospital in Nablus.

According to preliminary investigations conducted by PCHR, at approximately 09.00, two of the ambulances moved from Ramallah towards Nablus and Jenin. They were transporting medicine and medical equipment to two medical centres. At approximately 10.00, the ambulances arrived at Za'tara checkpoint, south of Nablus and were stopped and thoroughly searched by Israeli soldiers, during which time the medicine and medical equipment was damaged. Approximately half an hour later, Israeli soldiers at Hawara checkpoint, south of Nablus, stopped another ambulance of the Palestinian Union of Medical Relief Committees, which was transporting a pregnant woman, **Hanan Khalil Malek**, 30, from Beeta village to Rafidya Hospital in Nablus, as she was suffering acute haemorrhaging. Israeli soldiers searched the ambulance and made it wait for more than two hours, during which time the patient's condition deteriorated.

- At approximately 08.10 on 2 November 2003, Israeli soldiers at Hawara checkpoint, south of Nablus, stopped and searched an ambulance of the Palestinian Union of Medical Relief Committees that was travelling from Nablus to 'Assira village, south of the city. Approximately two hours later, they forced the ambulance to travel back, informing the medical personnel that the checkpoint was closed.
- Also on 2 November 2003, Israeli soldiers at Beit 'Eiba checkpoint, west of Nablus, stopped and searched an ambulance of the Palestinian Union of Medical Relief Committees that was travelling from Nablus to 'Azzoun and Habla villages in Qalqilya. Approximately two hours later, they forced the

ambulance to travel back, informing the medical personnel that the checkpoint was closed.

- On Friday afternoon, 23 September 2005, **Mohammed Hamed Mahmoud Abu 'Eisha**, 75, died as Israeli soldiers took up positions near 'Ramat Yishai' settlement post in Tal Rumaida neighbourhood in the centre of Hebron preventing an ambulance from entering the neighborhood to evacuate him to hospital. Abu 'Eisha suffered from a heart attack. In his testimony on the incident to PCHR, Lawyer **Yahia Hassan Abu Zaina** said:

At approximately 14.00 on Friday, 23 September 2005, Mohammed Hamed Mahmoud Abu 'Eisha felt severe pains in the chest when he was on his way back home after the Friday Prayer. His family asked IOF medical crews for help, but they did not respond. The family called an ambulance of Palestine Red Crescent Society, but IOF prevented it from attending the patient. The family and neighbours were forced to carry him and walk on foot towards the hospital. He died before they were able to bring him to the ambulance that was waiting at the entrance of the neighbourhood.

2. Unlawful Killings and Injuries of International Human Rights Defenders

A. Attacks and Injuries

Since the start of the *Intifada* five international human rights defenders have been killed by the Israeli military. These five worked in various forms and organisations, including Channel 4 (UK), UNRWA and the International Solidarity Movement. **James Miller**, a UK national, was a journalist shot in Rafah while making a documentary about house demolitions. **Ian Hook**⁵⁰, an Irish and UK

⁵⁰ As this report was going to press an inquest by a UK Coronor's Court established that **Iain Hook** was killed 'unlawfully'. Hook is one of 13 UNRWA staff members to be killed by the Israeli military but the only non-

national, was shot while working for UNRWA in their Jenin headquarters. **Brian Avery**, a US citizen, was shot in the head and severally injured by Israeli troops in Jenin, at a time of complete quiet

The cases of **Tom Hurndall** and **Rachel Corrie** illustrate the killing and impunity culture which permeates the Israeli military. They also serve to illustrate the way in which external pressure, from the families of victims and significantly, foreign governments, can have an effect on the actions of the Israeli military-political complex. In the case of Tom Hurndall considerable pressure was placed on the Israeli authorities by the British Foreign Office and this, combined with the tireless campaign organized by his family, seems to have had some impact in the progress of a case against one soldier.

In the case of Rachel Corrie's death there has been a lukewarm to lacklustre response to the killing from the US State Department, and, despite commitments received from their local Representatives in Congress, the family has not seen any significant signs of pressure from them either.

In addition to this there have been countless cases of international human rights defenders being shot at by soldiers or attacked by Israeli settlers. On 22 April 2002 **Caoimhe Butterly**, an Irish citizen, was shot in the leg by an Israeli soldier while volunteering for the ISM in the West Bank city of Jenin. On 5 April 2003, also in Jenin, Israeli troops fired at Brian Avery and another ISM volunteer from an armoured personnel carrier. They were standing still, wearing bright red medic vests with their hands over their heads, when soldiers opened fire without any warning shots. On 29 September 2004 two members of the Christian Peacemaker Team (CPT), both US citizens, were attacked and badly beaten by Israeli settlers. The CPT members were beaten with clubs and chains near the village of *Tuwani* while carrying out accompaniment work in the Hebron area. The two, **Chris Brown** and **Kim Lamberty**, were seriously injured in the attack. On 9 October 2004 a delegation from Amnesty International, while accompanying the CPT and members

Palestinian to-date. Details available at http://news.bbc.co.uk/2/hi/uk_news/england/suffolk/4534620.stm .

of the NGO Operation Dove, were once again attacked by a group of Israeli settlers in a town near Hebron. Amnesty International reports that the attackers first threw stones at the delegation and then attacked them with sticks causing serious bruising.

The CPT, who volunteer to escort Palestinian children to school, past Israeli settlements (in order to try and prevent the children being attacked by settlers), are themselves subject to regular attacks by the settlers. Amnesty International has ascertained that the attackers, on both occasions, came from the nearby Israeli settlements of *Havat Maon*. No prosecution has been brought against them by the Israeli police, rather a further crackdown on local Palestinian civilians has taken place. The campaign of intimidation has been effective and the Israeli military informed the internationals and Palestinians that the army would not be at hand to protect the children from attack if international accompaniment continued. In response the internationals reluctantly withdrew their services. Two days later Amnesty reports that the settlers attacked the children as they walked to school. The nearby army patrol failed to intervene to stop the attack.⁵¹ On Saturday the 30 October 2005 the author of this report and members of the Ecumenical Accompaniment Programme for Palestine and Israel (EAPPI) were stoned by settler children in Hebron while accompanying a delegation from an Irish political party. The delegation and the EAPPI team members were also prevented by the Israeli military from walking with Palestinian schoolchildren on their usual route to school.

Similar attacks against international human rights defenders have continued, and indeed intensified, throughout 2005.

While each of the above cases, and the numerous others similar in nature, warrant an open and transparent investigation by the Israeli authorities - no such investigation has been forthcoming. Indeed the culture of impunity which is accorded to soldiers at all ranks in the Israeli military is also accorded with alarming regularity to any

⁵¹ Amnesty International, (2004), *Israeli Settlers Wage Campaign of Intimidation Against Palestinians and Internationals Alike*, Press Release, 25 October 2004, available at <http://web.amnesty.org/library/Index/ENGMDE150992004?open&of=ENG-ISR>.

settlers who attack Palestinians and internationals - human rights defenders or not.

The purpose of the ISM was to supply individuals who wanted to witness and assist in trying to prevent the extensive human rights violations which were occurring in the name of Israeli security. Over the course of the first three years of the *Intifada* many thousands of people in delegations were brought on tours of the OPT and many of them elected to stay with Palestinian families in order to try and prevent house demolitions or other violations. Their role was immediately controversial and they were the focus of much criticism.

Throughout 2004 and 2005 PCHR's Fieldworkers in the West Bank have continued to document attacks against Israeli, international and Palestinian solidarity activists protesting against the construction of the Wall inside the West Bank.⁵²

B. The Killing of Tom Hurdall

*The things I've seen were really hard. The situation is deteriorating in Palestine, people are dying all the time; life is cheap. But why? The line is crossed for me when I see the Israeli forces causing unnecessary pain, destroying houses and injuring children.*⁵³

Tom Hurdall was twenty-one years old when he was killed by an Israeli sniper while volunteering for the International Solidarity Movement in the Rafah refugee camp in the south of the Gaza Strip, near the border with Egypt. An aspiring photo-journalist who was motivated to travel across Iraq and Palestine in the face of considerable adversity - his case is one of the most prominent incidents of wilful killing over the course of the *Intifada*.

Hurdall came to Rafah to volunteer as a member of the controversial direct-action and human rights monitoring group the

⁵² Such attacks are documented each week in PCHR's Weekly Report on Israeli Human Rights Violations available at <http://www.pchrgaza.org> which often includes a special section about attacks against defenders under such circumstances.

⁵³ Tom Hurdall's diary entry.

‘International Solidarity Movement’. His arrival in the OPT followed a tour of Iraq, where he volunteered as a human shield and Jordan where he volunteered in a refugee camp.

While in Rafah, he stayed with a variety of families whose homes were under threat of demolition. This placed him in considerable personal danger. The strategy of the Israeli military is to try to frighten many families from their homes using tactics that include shooting the homes (and on many occasions their occupants) or using tanks and bulldozers in close proximity to the home. Many families abandon these homes, becoming refugees for the second or third time. Many others stay, refusing, in the words of one refugee from the Jabalya Refugee Camp in the north of the Strip, to ‘make the same mistake again - to allow ourselves to be pushed off our land’.⁵⁴

The nature of Tom’s defence of human rights varied. The purpose of the ISM volunteers was dual - to observe and witness the daily violations committed by Israeli forces as well as to try and prevent them where possible. In a letter to the parents of Tom Hurndall one volunteer remarked, ‘[a]nyone can join if they believe in the programme, in human rights, in women’s rights, in youth rights’.⁵⁵

Tom provided the following details in his diary about some of the work he had been carrying out and the danger it placed him in.

Our job is to confirm that the [water] pumps [in Rafah refugee camp] continue to pump water. Palestinian engineers put themselves in danger of being shot when they come to do this themselves. We’ve got a better chance. Still, it’s a strange idea that every evening people are shot and killed for ignoring the curfew, while in the dark to the north-west there are Israeli settlements. A few hundred metres away there are army snipers, and each one of us can appear in a sniper’s telescopic sight. It is possible to say with certainty that they are watching us, and my life is in the hands of an Israeli

⁵⁴ Interview with ‘Sabri’, Jabalya Refugee Camp, 29 July 2004.

⁵⁵ Letter from Garth Stead to Sophie and Anthony Hurndall, 23 April 2002. Available at <http://www.tomhurndall.co.uk/resources/letter-to-the-parents-of-tom-from-an-eye-witness.pdf>.

marksman or settler. I know that I will probably never know what hit me, but that is part of my role – to be as exposed as possible.

The initial policy of the Israeli military towards the ISM was to view them as an annoyance. At the height of the movement there were hundreds of internationals who were coming, on either a short or long term basis, to witness the human rights violations committed by the military. However the relative success of some of the ISM activities, in respect of keeping water pumps pumping, observing the behaviour of the military at checkpoints or preventing the demolition of homes meant that the organisation was quickly transformed, in the minds of Israeli political-military planners, to an organisation which was interfering in both the planning and operational stages of house demolitions and other violations across the OPT.⁵⁶

Tom Hurndall's role in the organisation was as a volunteer who would observe, photograph, write about and try, where possible, to peacefully prevent military operations which the organisation (represented by individuals on the ground) did not feel were justified or appropriate. In the town and refugee camp of Rafah this could mean anything. Rafah is a microcosm of many of the worst human rights abuses which have taken place over the course of the *Intifada*. By the time a cease-fire was declared between the leaders of the Palestinian factions and the Israeli military the people in Rafah had witnessed the large-scale destruction of their homes. The number of houses completely destroyed in Rafah is 1476 (out of 2712 in the Gaza strip) while there have been 1087 homes partially destroyed, but rendered uninhabitable, (out of 2187 in the whole Gaza Strip)⁵⁷. The Israeli military state that Rafah is one of the key areas where weapons smuggling takes place. In a report released in 2004, Human Rights Watch refuted Israel's arguments that house demolitions were

⁵⁶ According to the Israeli Ministry for Foreign Affairs 'ISM members take an active part in illegal and violent actions against IDF soldiers. At times, their activity in [the West Bank] and the Gaza Strip is under the auspices of Palestinian terrorist organizations.'
<http://www.mfa.gov.il/MFA/Government/Communiques/2003/Details+of+April+30-+2003+Tel+Aviv+suicide+bombing.htm>.

⁵⁷ These statistics were collected by PCHR and are correct as of 29 September 2005.

necessary to prevent smuggling. HRW details military methodology in use in other border areas, such as the DMZ in Korea and the US-Mexico border that are more efficient (at identifying tunnels) and more cost effective.⁵⁸

On 11 April 2002 Tom Hurndall, working in coordination with a number of other members of the ISM, went to an area in Rafah Refugee Camp known as Block O. Their intention was to mount an operation against the continuing Israeli house demolitions in the area by erecting a tent structure where the ISM members could stay in order to make a quick response to any reported incident.

A number of children were playing near an earth mound when further shooting broke out. Tom Hurndall noticed that among a group of children who were fleeing from the scene, three of them remained unable to move because they were afraid. At this point the story becomes confused. The Israeli military initially made the claim that Tom was a member of a Palestinian armed faction who had opened fire on the Israeli position. They suggested that his shooting was a result of that. However eyewitness reports dispute this version of events. In the words of Anthony Hurndall, Tom's father:

Tom approached the three children in broad daylight and turned to grab another girl. There had been about fifteen shots in the space of two minutes, and then came the final shot which hit him. He fell when he was wearing his orange jacket. [The orange fluorescent jacket was worn by all ISM volunteers as a form of uniform which served the purpose of increasing visibility] That was unmistakable.

Other eyewitness testimonies corroborate the evidence collated over a painstaking three months by Anthony Hurndall.

The initial response of the Israeli military was that Tom Hurndall was caught in an exchange of fire with armed Palestinians. However, according to the testimony of eyewitnesses there was no exchange of fire and the Israeli position was not under attack.

⁵⁸ Human Rights Watch, (2004), *Razing Rafah: Mass Home Demolitions in the Gaza Strip*, New York: Human Rights Watch available at <http://www.hrw.org/reports/2004/rafah1004/>.

Tom Hurndall was returned to the UK in May 2003 in a coma from which he did not recover. He died in a London hospital on 13 January 2004. His family has consistently worked hard to find out what happened to their son and to prevent impunity being granted to members of the Israeli military.

I want the Israeli soldiers responsible for harming Tom to know that they can't shoot people with impunity. We want to pave the way for Palestinian people to have some legal redress when they are shot and injured by the Israeli army just like my son was.⁵⁹

The Israeli military agreed, under pressure from the British Government and the family of Tom Hurndall, to open an investigation in October 2003. However the family have experienced severe obstruction at every level from the Israeli authorities. The inquiry conducted has never been open or transparent and has produced a startling number of different versions of the events, each one removing any responsibility from the military, and in particular the chain of command. The initial army statement indicated that the Israeli soldiers had 'returned fire' in a way which was 'justified, restrained and professional'.⁶⁰ In the aftermath of Tom's death the military revised charges which they had brought at an earlier stage against the individual soldier, Sgt Idier Wahid Taysir al-Hayb. He was charged with manslaughter. During the course of the trial the Israeli military prosecutor used the version of events established by the Hurndall family in the formulation of his prosecution.⁶¹ Family members, including Tom's brother Billy, were denied entry to Israel to watch the case. In a letter to the family from the Israeli authorities Billy was told that he represented a 'security risk' to Israel. The Metropolitan Police in London, who tried to conduct an investigation into the case have also been prevented from doing so. Tom Hurndall's family believe that the manslaughter charge does

⁵⁹ Interview with Sophie Hurndall Sunday, *al-Jazeera*, 30 November 2003.

⁶⁰ Fishman, A., and Leshem, G. *The Intifadas: 'Operational Military Case Study, Poorly Investigated, Forgotten and Buried'*, From *Yedioth Ahronoth*, 23 January 2003.

⁶¹ Details on the trial from an interview with Michael Sfard, an Israeli human rights lawyer, on the 15 May 2005.

not represent a fair picture of the events as they occurred that day. The family also disagrees with the decision of the Prosecutor not to prosecute further up the military chain of command. They believe that the general pattern of attacks against international human rights defenders, and ISM members in particular, indicated that in fact it was military policy rather than the actions of one soldier which led to the killing of Tom.

I'll be satisfied with nothing less than the most serious penalty for the soldier ... and for all of those up the chain of command who were responsible for trying to stop the truth coming out.⁶²

Suspicious exist that the Israeli military is trying to remove command responsibility for the incident and the subsequent misrepresentation of events. Questions have also been raised as to whether duress was used to extract a confession from the soldier charged with the killing. The army has pointed to the fact that it has also charged the soldier with using cannabis on duty as well as emphatically highlighting the fact that the soldier charged is an Arab-Bedouin. The Hurndall family has suggested that the leaking of these details to the press were designed to distract attention from a culture of impunity which exists within the Israeli military. Such impunity is compounded by the fact that the Israeli military does not receive testimony from Palestinian civilians in the course of any investigations – a policy which determines a limited number of eye-witness reports all of which will come from soldiers who were involved with or close to the incident. During the trial, Sgt. al-Hayb admitted he had lied when he said Tom Hurndall was carrying a gun, but said he was under orders to open fire even on unarmed people'.⁶³ Sgt al-Hayb was convicted of manslaughter in June 2005 and sentenced to eight years in prison. This is one of the rare cases in which the person responsible for a war crime against a human rights defender has been brought to justice.

⁶² Interview with Sophie Hurndall, *Guardian*, 15 January 2004.

⁶³ Human Rights Watch, (2005) *Promoting Impunity: the Israeli Military's Failure to Investigate Wrongdoing*, New York; Human Rights Watch, available at <http://www.hrw.org/reports/2005/iotp0605/>.

In seeking to publicize not only the tragic death of Tom but also to openly question this culture of impunity the family members have transformed themselves into human rights defenders in their own right. In May 2004, against the background of a large-scale military incursion into Rafah town and refugee camp known as ‘Operation Rainbow’, Sophie Hurndall was honoured at the EMMA TV Awards with the award of ‘Public Figure of the Year’. During her acceptance speech she called for a moment of silence to remember the fifty-five victims of the Israeli incursion into Rafah earlier that month.

Perhaps if any positive outcome is to be found in the death of this young human rights defender it is the fact that so much publicity has been attached to the case. This publicity, generated by the strong passion for justice of the Hurndall family, has caused severe cracks in the wall of silence that grants Israel and its military forces international impunity.

C. The Killing of Rachel Corrie

You just can't imagine it unless you see it - and even then you are always well aware that your experience of it is not at all the reality: what with the difficulties the Israeli army would face if they shot an unarmed US citizen, and with the fact that I have money to buy water when the army destroys wells. – Rachel Corrie

The complete misrepresentation of the facts initiated by the Israeli military in the case of the death of Tom Hurndall is widely recognized to have been exposed as a result of pressure from of a variety of sources: the family of Tom Hurndall, the British media and the British Foreign Office. However, despite similar pressure from the family of Rachel Corrie, the media in the United States of America and the State Department have been less interested in pursuing her case although the scale of the tragedy and the injustice is no different.

The effect of her surroundings clearly had a deep impact on Rachel whose writing reflected an ever-present sense of disgust at the events she was witnessing and trying to prevent. She described her role in the ISM, and her predicament, in one of her emails to her mother saying:

You can always hear the tanks and bulldozers passing by, but all of these people are genuinely cheerful with each other, and with me. When I am with Palestinian friends I tend to be somewhat less horrified than when I am trying to act in a role of human rights observer, documenter, or direct-action resister. They are a good example of how to be in it for the long haul.

While in Rafah, her main role was escorting children to school in areas where they were regularly shot at (children make up approximately thirty-three per cent of all deaths in the OPT - many of them are shot in school or on their way to and from school). Rachel considered that her 'special status' as a white US citizen would allow her to make an impact on the situation while being granted a certain amount of immunity, a fact she acknowledged in a number of e-mails. However the immunity from attack did not include Rachel Corrie.

Eyewitness affidavits given to PCHR lawyers only hours after the incident illustrate clearly the series of events. These eyewitness reports are supported by photographs which also provide strong evidence which contradicts the claims made by the Israeli authorities.⁶⁴

On 16 March 2003 Rachel and eight other ISM volunteers were demonstrating to stop house demolitions in the al-Salaam area of Rafah refugee camp. At around 16.45, Corrie was standing in front of a house waving at the driver to stop. She was wearing the trademark bright orange jacket of the ISM and communicating with the driver through a megaphone. The rest of the ISM group was standing approximately 15 - 20 metres away from her. The eyewitness reports indicate that Rachel walked up to the small pile of earth that had been created as the bulldozer advanced towards her. As the bulldozer did not stop she turned around and as she moved to get away she fell over and was covered by earth as the bulldozer continued to move forward. The bulldozer stopped after a few

⁶⁴ These photos are available on the PCHR website at <http://www.pchrgaza.org/images/2003/rachel/rachel.htm>.

metres, then raised its plow and reversed. At this point Rachel again became visible to her colleagues, who had been screaming, shouting and gesturing at the driver to stop the bulldozer. The Israeli military did not offer any medical assistance. A Palestinian ambulance arrived shortly after and took Rachel to the Najjar Hospital in Rafah where she was pronounced dead.

The Israeli military has made a variety of subsequent claims about the cause of death. However in their final analysis, revealed in a report released to the Corrie family, the military claimed that Rachel had most likely been killed by debris falling upon her, not by the bulldozer. They also claimed that the bulldozer driver did not see her and closed the investigation. Despite calls by a number of political representatives in the US, the US government has buried the investigation, preferring to rely on the credibility of the Israeli investigation. This is despite the fact that on 19 March, Richard Boucher of the US Department of State said in reference to Rachel:

When we have the death of an American citizen, we want to see it fully investigated. That is one of our key responsibilities overseas, is to look after the welfare of American citizens and to find out what happened in situations like these.⁶⁵

Commitments such as these, however never materialized into action and the proposed investigation has not been carried out. Nor has any considerable pressure been exerted on the Israeli authorities by the US State Department, or any other official arm of the US government.

In a fashion similar to the family of Tom Hurndall the Corrie family have been transformed by the reports they received from Rachel and the events surrounding her death. They have begun an active campaign to seek justice for the killing of their daughter. This campaign has also involved actively campaigning against war and against human rights violations in the OPT and Israel itself. The family took a trip to Rafah to visit the spot where Rachel was killed

⁶⁵ Full statement available at <http://www.state.gov/r/pa/prs/dpb/2003/18844.htm>.

and spent much time with Palestinian friends of hers. However in a cruel, but apparently intentional irony, Cindy and Richard Corrie themselves came under threat from the Israeli military while inside the very house that Rachel had died trying to protect. Cindy Corrie describes it:

We visited the site of Rachel's death. The home she was protecting still stands. Because of its location along the border strip in an area where bulldozers are frequently working, the Israeli military wanted twenty minutes notice before our arrival, wanted to have a description of the vehicle we would come in, the license plate identification, and the number of people in the car. We complied. Prior to driving to the border area, we called our assigned contact in the IDF [Israel Defense Forces] and provided all of this information. The Israeli military knew who was coming to Dr. Samir's home. But shortly after our arrival, as we were preparing to join the family for lunch, Palestinians in our group anxiously alerted us to activity outside. An armoured personnel carrier had taken a position across the street, approximately thirty yards from the door. When Craig looked through a crack in the garden (the same crack from which Dr. Samir had on 16 March witnessed Rachel's killing), he saw a bulldozer heading straight for the house.

I felt as though we had been trapped. Craig immediately called back to our IDF [Israel Defense Forces] contact to report what was happening and how we felt about it. About five minutes later he received a call back from the captain wanting to know, 'Where are they now?' By this time, the bulldozer had changed course and was, instead of approaching the house, moving sideways to it. This seemed a shockingly aggressive and provocative action by the Israeli military, considering that they absolutely knew who we were and why we had come⁶⁶.

⁶⁶ The home Rachel Corrie was killed defending has subsequently been demolished.

The story of Rachel Corrie, and that of her family, is one which leaves many other questions unanswered. The Israeli military has refused to release the full text of the report produced by the military investigator into Rachel's death. Instead the military has preferred to rely on selective quotations to support its case. In so doing it has effectively granted impunity to the driver of the bulldozer on 16 March. Such impunity can only be considered to be part of a systematic policy of impunity for members of the Israeli military who commit grave breaches of international humanitarian law. These breaches are encouraged and facilitated by the refusal of the military to engage in full, open and transparent investigations. Without such investigations and the development of a culture of prosecution, including prosecution up the chain of command as appropriate, serving members the Israeli military will continue to breach the law and the role and position of human rights defenders will continue to remain under serious threat.

On 2 May 2005 PCHR and the US-based Centre for Constitutional Rights added Palestinian plaintiffs to a lawsuit taken against Caterpillar Inc. on behalf of the Corrie family seeking compensation through the US Court system, under the Alien Tort Claims Act and other laws. The failure of the Israeli military and the US Government to pursue a complete, open and honest investigation has sparked the decision of the two organisations, and the plaintiffs, to take the case to an international level. The case, however, was dismissed on 22 November 2005 on the basis that the US Court does not have the right to interfere in a matter of US Foreign policy.⁶⁷

⁶⁷ Cynthia Corrie v. Caterpillar Inc., case No. C05-5102-FDB, US District Court, western District of Washington at Tacoma, Order Granting Caterpillars Motion to Dismiss, 17.

3. Closures, Curfews and Restrictions on Freedom of Movement

*It's a very simple equation – because of the occupation I can't go to the West Bank to see colleagues. I can't travel to Israel to represent my clients. I am lucky if I can get out of Gaza to tell people about what is happening here. That is what closure means - complete restriction on my ability to operate as a human rights lawyer.*⁶⁸

In her 2003 report the UN Special Representative on Human Rights Defenders identified particular times when human rights defenders become more vulnerable. In addition to this she identified certain rights which are fundamental if human rights defenders are to be permitted to carry out their work. One of these rights is freedom of movement - or, for a human rights defender, the right to access areas where human rights violations are reportedly being committed. Hina Jilani has identified that the risk factor for human rights defenders increases when they are trying to move around - often with the intention of gathering information on human rights violations or attending conferences to meet with other defenders or trying to carry out work in their capacity as human rights defenders.

In the OPT this problem is a particularly acute one, which affects all Palestinian civilians. The lack of freedom of movement - otherwise known as closure or curfew - has been identified by the World Bank as precipitating 'one of the deepest recessions in modern history ... exceeding the scale of economic losses suffered by the US in the Great Depression, or Argentina during the recent financial collapse'.⁶⁹

The system of closure and curfew is instigated through a number of different mechanisms, always enforceable through military means. In the Gaza Strip, for example, until 'disengagement' the Israeli military was able to impose closures on all external borders,

⁶⁸ Raji Sourani, Director PCHR, 4 January 2005.

⁶⁹ World Bank, (2004), *Disengagement, the Palestinian Economy and the Settlements*; Washington DC: World Bank, 1, available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/WESTBANKGAZAEXTN/0,,menuPK:294391~pagePK:64026187~piPK:141126~theSitePK:294365,00.html>.

including the Rafah international crossing point. Rafah international crossing point is the only access point from the Gaza Strip to the outside world and, despite 'disengagement' Israel has maintained effective control over the passage of individuals through the crossing point.⁷⁰ The other main checkpoint which leads out of Gaza is the Beit Hanoun (Erez) crossing point with Israel which is almost completely closed to Palestinian civilians, including Palestinian workers who are employed in Israel. The closure and subsequent destruction of the runway and radar tower at Rafah international airport meant that Palestinian civilians were forced to rely on the Rafah land crossing border to move in and out of the Gaza Strip. Until 'disengagement' the military also imposed a series of closures across the Gaza Strip that divided it into three parts. The coastal road, the only north-south artery in Gaza (as a result of the permanent closure of the main Salah al-Din road) is often closed at the Netzarim settlement block. Having passed this checkpoint civilians and human rights defenders had to pass Abu Houli- al-Matahen checkpoints in the centre of the Gaza Strip. Access to the checkpoint was controlled only by a traffic light and surrounded by military watchtowers. The checkpoint protected a settler-only road leading to Israel. When the checkpoint itself was open it was not uncommon for the military to arrest people as they traveled through the checkpoint or to detain large groups of people in a 'security' zone in between the two checkpoints. With the exception of the UN and the ICRC at certain times during the *Intifada* only private, yellow, Palestinian taxis were allowed to pass through. This severely limited the opportunity for human rights defenders, especially those without significant resources from international organisations, to travel in bullet proof cars through these dangerous checkpoints where attacks by the Israeli military and Palestinian armed groups were not uncommon.

In the West Bank there are a number of permanent and a number of mobile checkpoints in operation at any one time. These checkpoints

⁷⁰ Up-to-date information on the closure and opening of Rafah international crossing point is available through the PCHR website, for example, PCHR, (2005), *Gaza Strip Border Crossings Agreement Reinforces IOF's Control over the Strip's Economy and the Movement of Civilians*, PCHR: Gaza. available at <http://www.pchrgaza.org/files/PressR/English/2005/134-2005.htm>.

are stationed with soldiers on patrol externally, conducting close-up checks on cars and individuals. It is at checkpoints such as these that many of the arrests or attacks on human rights defenders take place. In 2004 there were, on average, 700 checkpoints and physical barriers in place between and surrounding the various villages of the West Bank.⁷¹

Curfew is another system of imposing restrictions on the free movement of the civilian population. Two types of curfew may be in operation at any one time. Firstly there is the system of 'self-imposed' curfew. This is the type of curfew that is necessitated by the presence of heavy Israeli military activity in a particular town or village. In particular this is likely to involve the positioning of snipers on the top of all high buildings. These snipers will shoot any person seen moving during certain times of the day or throughout the night. Secondly there is a curfew which is imposed by a military order. Such a curfew means that no Palestinian should leave the building they are in at the time of the curfew's imposition, until, such time as it is lifted - this may be many days or weeks later. Curfews are common during times of intense military activity, though as in the town of Bethlehem, they may be imposed and re-imposed almost continuously for long periods of time. This makes it difficult for human rights defenders, particularly fieldworkers, to engage in collecting and collating evidence to establish the events going on around them.

The most commonly cited problem facing human rights defenders across the OPT is that of closures and curfews. As noted earlier the Israeli military have instigated a series of military checkpoints across the West Bank and the Gaza Strip that place restrictions on freedom of movement of all Palestinian civilians. This policy of collective punishment is one which affects all aspects of society and, in particular, human rights defenders.

⁷¹ United Nations Office for the Coordination of Humanitarian Affairs, (2005), *Humanitarian Situation in the Occupied Palestinian Territory in 2004*, New York: UNOCHA, 14, available at <http://domino.un.org/UNISPAL.NSF/0/de9906e4d567199a85256fda00549d88?OpenDocument>.

Throughout the second *Intifada* in the Gaza Strip the Israeli military has imposed almost complete closure on all Palestinians wishing to travel to Israel through the Beit Hanoun (Erez) checkpoint. They also established military structures which allowed them to cut the Gaza Strip into three parts and prevent any movement. This measure was often imposed during military incursions. It is at these times that human rights organisations have observed the highest number of violations and so the necessity of accessing these areas was great. Further to this, the Israeli military imposed a complete closure on a number of completely isolated areas inside the Gaza Strip. These areas, such as al-Mawasi (in the southern Gaza Strip), were inside settlement areas and were sealed off completely to those who do not hold magnetic identity cards which prove they are a resident of the area. Palestinian human rights defenders were completely forbidden from entering any of these areas while international human rights defenders from UNRWA and the ICRC had severe restrictions and limitations placed on their ability to enter.

Across the West Bank the problem of closure is extremely acute. Temporary and permanent roadblocks and checkpoints have been established at the entrances and exits of all major towns and municipalities and further 'spontaneous' checkpoints are erected at random times on the roads connecting villages and towns. UNOCHA estimate that an average of at least 700 physical barriers on movement have been imposed each year throughout the *Intifada* in the West Bank alone.⁷² Many cities and towns in the West Bank are also subject to extended periods of curfew which prohibit any movement during night hours. These periods of curfew can be extended for weeks or even months on end with only a few short hours permitted for civilians to purchase essential supplies.

The Israeli military state that the purpose of the checkpoint and curfew system is to prevent suicide attacks inside the territory of Israel and to prevent attacks against Israeli settlements inside the West Bank and the Gaza Strip. However the ICJ generally refuted the use of the principle of self-defence for such violations of international law.⁷³

⁷² UNOCHA, (2005).

⁷³ In para. 137 of its Advisory Opinion the Court states that 'from material available [the Court] is not convinced that the specific course Israel has

A. How Do Checkpoint Closures Effect Human Rights Defenders?

As observed in the introduction closure affects human rights defenders by, simply, preventing them from having access to their work. It is clearly identifiable as being part of a policy imposed against the entire Palestinian civilian population which has a particular detrimental effect on the work of human rights defenders. If a human rights defender who works as a fieldworker cannot gain access to the area in which violations are being committed then they cannot effectively monitor those violations. A similar theory applies for journalists. If a lawyer cannot go to a Court, Palestinian or Israeli, to represent his clients then he cannot make a case for legal restitution or compensation.

Further to this the presence of military checkpoints to enforce the closure regime escalates the threat level likely to be faced by those defenders who must pass through them as part of their work - this is evident in some of the arrests of defenders detailed in this report as well as the physical attacks against journalists and medical workers which have occurred when they were at or nearby checkpoints while trying to carry out their work.

Over the coming years two major elements of Israeli military policy will negatively effect the work of human rights defenders in the OPT - they include the wall being constructed inside the territory of the West Bank and the Gaza 'disengagement' plan.

B. The West Bank Wall

The effect of the wall being constructed inside the territory of the West Bank will be to divide the territory into three distinct enclaves. Almost every aspect of civil life will be detrimentally affected including business, university life, medical work and the monitoring

chosen for the wall was necessary to attain its security objectives. The wall...gravely infringe[s] a number of rights of Palestinians...[which] cannot be justified by military exigencies or by the requirements of national security or public order'.

of human rights violations. On the very basic level human rights defenders will be unable to move between different areas of the West Bank and so the current system will be institutionalised and transformed by the Wall.

Secondly the complete isolation of East Jerusalem from the rest of the West Bank will be enforced through a permit system forbidding East Jerusalem ID holders from travelling to commuter towns such as Ramallah, where many of them work. This will have drastic effects on the functioning of many organisations – sixty per cent of UNRWA staff in the Ramallah office live in Jerusalem and will be prevented from moving to their workplace.

C. The Gaza ‘Disengagement’

Already human rights defenders from the Gaza Strip are the most isolated within the OPT. Complete closure of the Erez checkpoint prevents them from travelling to Israel and the severe limitations placed on travel to the West Bank (which must, if permitted, be conducted via Egypt and Jordan) are compounded by the restrictions on movement to the outside world resulting from the closure of the Rafah international crossing point (the only access point for Gazans to the rest of the world.)

Much ado has been made about the Gaza ‘disengagement’ plan – a unilateral action by Israeli Prime Minister Ariel Sharon, in 2005, which involved the re-deployment of the Israeli military to the borders of the Gaza Strip and the removal of settlements and settlers from the Gaza Strip. The plan itself is likely to cement the restrictions on freedom of movement and institutionalise the restrictions which developed over the course of the *Intifada*. The Gaza Strip will also pose intensified challenges for Israeli citizens who have an interest in working there. Already staff in organisations such as B’Tselem face severe problems in gaining access to their fieldworkers. Such closures also prevent Israeli human rights defenders from seeing the effect of the *Intifada* in particularly hard hit areas such as Rafah. Over the coming years human rights defenders anticipate that the ‘disengagement’ plan will result in further isolation and will continue to prevent them from carrying out their work.

D. The Palestinian Elections, Human Rights Defence and Closure

*The Special Representative's analysis suggests that defenders are particularly vulnerable to violations while publicising human rights concerns, peaceful demonstrations, participation in conferences and meetings, and during electoral periods.*⁷⁴

The death of President Yasser Arafat in November 2004 propelled the Palestinian political scene towards the holding of elections. Presidential elections were held on 9 January 2005. In the run up to the elections there were 30,000 local election monitors and almost 1000 international election monitors registered with the Central Elections Commission (CEC).⁷⁵ Throughout the campaigning process these monitors attempted to report on a number of aspects of the campaign as part of their contribution to the development of a democratic Palestinian society:

- (i) Israeli violations of human rights which may adversely affect the atmosphere in which the election was held;
- (ii) Israeli violations of human rights which may directly affect the candidates, and subsequently the result, of the election;
- (iii) Israeli violations which affected the right of the monitors to operate.

In particular election monitors observed a number of fundamental problems in keeping with the previous checkpoint and closure arrangements imposed by the occupation authorities.

⁷⁴ Jilani, H., (2004), *Promotion and Protection of Human Rights: Report Submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders*, Geneva: Human Rights Commission, Sixtieth Session, E/CN.4/2004/94, available at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2004.94.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2004.94.En?Opendocument).

⁷⁵ Interview with Majdi AbuZayed, Director of the Gaza Branch of the Central Elections Commission, 28 January 2005.

1. Election Monitors Were Severely Restricted in Travel Between the West Bank and the Gaza Strip

No Palestinian election monitors were allowed to travel between the West Bank and Gaza Strip. The usual restrictions were applied despite requests being processed through the CEC. In fact the CEC themselves were often prevented or delayed in moving between the West Bank and the Gaza Strip. This applied throughout the registration, campaigning, polling and counting periods. This closure prevented monitors from Gaza from observing the final counting process which was held in Ramallah - many independent monitoring bodies and organisations in the Gaza Strip were forced to rely on second hand information and reports to verify the integrity of the final counting process.

International election monitors remained free to travel but were still subjected to substantial delays and arbitrary closures at the Erez checkpoint.

2. Election Monitors Were Completely Restricted From Travelling Into the Sealed Areas of the Gaza Strip

Inside the sealed areas of the Gaza Strip, such as al-Mawasi and al-Saiafah while the registration and campaigning process was taking place no election monitors were permitted to observe the process inside the sealed areas. An EU delegation was given permission to enter the areas during the campaigning process. On the final day of the election, polling day, international (but not Palestinian) observers were permitted to enter al-Mawasi to observe the electoral process. Although some independent monitoring organisations were able to use monitors from inside these areas the process was restricted in scope and full training was not available to them.

E. Movement and Other Restrictions on International Organisations and their Personnel

International organisations, and international staff members of those organisations, involved in defending human rights in the OPT have also been subjected to a series of attacks and heavy restrictions on freedom of movement. In this sense they have continued to be

victims of Israel's collective punishment policy, have faced severe threats when operating in areas during military activity and have been targeted in order to prevent them from entering into the Gaza Strip for extended periods of time.

These restrictions have hampered the organisations' operational abilities and have forced significant and serious reassessment of budgets and planning across the board. Restrictions on freedom of movement have hampered programme delivery and effectiveness. At the same time more prominent human rights defenders, particularly the heads of large agencies, have come under sustained personal attacks by the Israeli military and political establishment. In particular the UNRWA has had its staff targeted.

The Fourth Geneva Convention prescribes clear rules regarding humanitarian organisations, their services, duties and the duties of the Parties to the conflict (including the Occupying Power) in respect of these organisations. In article 10, the Convention recognizes certain types of organisations. The International Committee of the Red Cross is, of course, the primary humanitarian organisation dealt with in this and the other three Conventions and Additional Protocols. This article also refers more generally to 'any other impartial humanitarian organisation'. As further clarified in Pictet's Commentary, those organisations must be humanitarian, i.e. concerned with the condition of human beings irrespective of military, political, or other identities. The organisations must also be impartial. The Commentary further details the types of activities which these organisations are authorized to conduct. Activities may include,

1. representations, interventions, suggestions and practical measures affecting the protection afforded under the Convention;
2. the sending and distribution of relief (foodstuffs, clothing and medicaments), in short, anything which can contribute to the humane treatment provided for under Article 27;⁷⁶

⁷⁶ Pictet, J. (ed.), (1958), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 97.

The Commentary further details, in reference to Article 30,

The Convention requires the Parties to the conflict to grant all facilities to ...relief organisations. That means that it will not be enough merely to authorize them to carry out their work; their task must be facilitated and promoted. It is the duty of the authorities to take all necessary steps to allow approved organisations to take rapid and effective action wherever they are asked to give assistance. Among examples of such measures can be mentioned the provision of facilities for delegates to move about and carry on correspondence, to have free access to all places where protected persons are living, transport facilities, and facilities for distributing relief, etc.⁷⁷

Article 61 expressly details the obligation of the Occupying Power, Israel, to facilitate the ‘rapid distribution of these consignments’.

However, it must be noted that irrespective of the presence and services of humanitarian organisations, the primary agent responsible for the welfare of the protected persons, including provision of relief, is the Occupying Power; as Article 60 specifically affirms ‘Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56, and 59’.

On 7 August 2002, the UN Secretary General, Kofi Annan, appointed Catherine Bertini as Personal Humanitarian Envoy to address the humanitarian needs arising from the ongoing violence in the region since September 2000. Ms Bertini’s visit later in August 2002 concluded with an agreement by the Israeli authorities to a minimum set of standards on humanitarian issues in the OPT. These minimum standards included commitments on health, water, fishing rights and access for Palestinian workers. In addition, the Israeli authorities agreed to ‘fully facilitate the activities of international organisations’.⁷⁸

⁷⁷ Pictet J. (ed.), (1958), 218.

⁷⁸ List of commitments available here:

http://www.humanitarianinfo.org/opt/docs/UN/OCHA/Monitoring_Report_Jan_March03.pdf

The Bertini Commitments were noted as providing only a minimum set of standards that did not in any way detract or limit the obligations of Israel as the Occupying Power under the Fourth Geneva Convention and other relevant provisions of international humanitarian law.

In addition to the Bertini Commitments, specifically in respect of UNRWA, the Israeli authorities are also bound by the Comay-Michelmore Agreement (signed in 1967), to facilitate UNRWA's operations throughout the OPT. The Agreement refers specifically to the free movement of UNRWA international staff and UNRWA vehicles.

1. Entry to Israel

Entry to Israel itself is the primary way to access the Gaza Strip, with the exception of Rafah crossing point (which, nonetheless, involves passport and security checks by Israeli soldiers). To this end the Israeli military have successfully used Ben Gurion airport to prevent access to Journalists, humanitarian and aid workers as well as legal observers from IGOs and NGOs. In 2002 an employee of UNAIS, **Victoria Metcalfe**, was deported from Israel because of her ongoing work on human rights in the Gaza Strip. There are countless other incidents, many of which go unrecorded because the Israeli authorities do not allow individuals contact with lawyers or organisations inside Israel or the OPT before deportation. Solidarity groups, in particular, have been targeted by the Israeli border police and have been turned away, often in their hundreds. UNRWA staff have been deported as well, despite being holders of a Blue Passport. **Ardeshir Baiki**, also of UNAIS, was detained on multiple occasions for extended periods of time in Ben Gurion airport and on one occasion subjected to intensive questioning about the exact nature of his work as a psychiatrist. The interrogation involved questions such as 'what is the difference between schizophrenia and multiple personality disorder?'

A PCHR Press Release documented the deportation of two international staff members in 2002, simultaneously it observed the

sheer scale of numbers of people who were being refused entry by the Israelis:

Authorities at Ben Gurion airport in Tel Aviv have for the second day in a row refused entry to a PCHR staff member. **Eva Rinsten**, a Swedish lawyer coming to work for PCHR, was early this morning denied entry and send back to Sweden only one hour after her arrival at approximately 05.30. Ms. Rinsten arrived at approximately 04.00 today on a KLM flight. She was interrogated, denied entry and immediately put back on the same KLM flight she came with.

Yesterday morning PCHR International Legal Officer Victoria Metcalfe, a British citizen, was denied entry, detained for more than ten hours in a holding cell at the airport before being sent back to the UK. Both Ms. Rinsten and Ms. Metcalfe have told PCHR, that a number of foreigners trying to enter Israel were denied entry and deported along with them. Similar reports from local and international NGOs and individuals prove that Israeli authorities in recent months have escalated the practice of denying entry to foreign human rights workers, activists and journalists; including two Belgian citizens seeking to visit the Occupied Palestinian Territory on 10 April and thirty-eight French activists on 8 April. Three days ago 200 Italian activists were refused entry.⁷⁹

Ben Gurion airport is an effective barrier to entry in and of itself. However, in 2003 the restrictions being placed on entry to the Gaza Strip intensified. A clearance policy was introduced which required internationals to fulfill certain requirements in respect of organisational support, support from their embassy and waiting patiently for clearance by Israeli security (five days minimum before entry). Furthermore a number of internationals and their organisations were asked to sign a disclaimer disassociating themselves from the International Solidarity Movement (ISM) and

⁷⁹ PCHR, (2002), *Two PCHR Staff Members Deported by Israeli Authorities in Two Days*, Gaza: PCHR, available at <http://www.pchrgaza.org/files/PressR/English/2002/78-2002.htm>.

the work of that organisation. The disclaimer also absolved the Israeli military of any responsibility for injury or death of any international inside the Gaza Strip.⁸⁰ Only through the collective boycott imposed by various organisations at the time were the Israeli military forced to stop distributing the waiver. In the meantime hundreds of international staff members were prevented from entering the Gaza Strip and projects were subjected to severe delays. Nonetheless, as late as February 2005 PCHR is aware of staff from Norwegian Peoples' Aid who were told they should sign the waiver before they entered the Gaza Strip. The staff refused and were delayed by eight hours trying to enter the Gaza Strip. The tight restrictions on entry to Gaza are maintained to this day, despite the recent Gaza 'disengagement'.

2. UNRWA

UNRWA is the largest UN agency operating inside the OPT. It employs 50,000 Palestinians and approximately 1,000 international staff members, mostly based in its Gaza headquarters and in the other operational centres across the OPT, Syria, Lebanon and Jordan. Because of its special role – established to aid and assist Palestinian refugees through the provision of educational services, healthcare, housing and food-aid UNRWA has developed a unique relationship among international agencies with Palestinian refugees. In the Gaza Strip, where seventy per cent of the population are refugees from the 1948 and 1967 conflicts, UNRWA effectively acts as the main public service provider.

UNRWA ambulances transport the sick and wounded, UNRWA teachers educate children and housing inside the refugee camps is provided for those who lose their homes.

UNRWA staff have been the particular focus of individual and collective attacks by the Israeli occupying forces. The primary obstacles to the organisation are those of movement restrictions and threats to staff safety. Although these movement restrictions continued to escalate, particularly in the Gaza Strip, throughout the

⁸⁰ Full text of waiver available at: <http://electronicintifada.net/cgi-bin/artman/exec/view.cgi/7/1452>

Intifada they reached their peak in the summer of 2004. In 2004 UNRWA was forced to evacuate its entire international staff to Amman and Jerusalem as a result of continuous incursions by the Israeli military into the northern Gaza Strip area and the complex movement restrictions which were associated with those incursions. On 21 July 2004 UNRWA Commissioner General, Peter Hansen, evacuated about half of the staff and then on 4 August 2004 evacuated the rest of his international staff. The decision came because of the high level of threat and the general pattern of attacks and restrictions against UNRWA staff, including food convoys coming under fire (on 14 July, 2004 for example).

UNRWA staff have been repeatedly subjected to movement restrictions and harassment at the Beit Hanoun (Erez) checkpoint. These restrictions have included imposing severe delays on staff traveling in and out of the Erez checkpoint or imposing unworkable security procedures which contradict the UN security requirements.⁸¹ Such unworkable security procedures are imposed by the Israeli military in full knowledge of the implications of their activities. Staff have been abused by the Israeli military and their safety has been put at risk for no apparent reason.

Such restrictions have impacted hugely on UNRWA's ability to effectively deliver and manage its emergency programme to Palestinian civilians.

⁸¹ Such an arrangement might include preventing people from driving through the checkpoint. For security reasons UN staff are only allowed to drive across and are forbidden from walking across. An imposition of a ban on driving effectively removes their ability to travel.

F. Medical Staff - Movement Restrictions

Threats and movement restrictions of medical workers have a severe impact on the right to health, the right to life and on the right to free movement.

In the period of 28 June 2003 until 22 October 2004 the PRCS recorded 597 cases of ambulances being delayed or denied passage. PRCS defines such a delay as being fifteen minutes or longer. The PRCS goes on to state that in many parts of the West Bank and the Gaza Strip complete closures simply prevented their ambulances from moving at all. This meant that the actual number of ambulances which were prevented from reaching their location could 'stretch into the thousands'.⁸²

The wounded and sick enjoy particular protection under the Fourth Geneva Convention in Article 16. The Commentary on the Convention clarifies the obligation by arguing that High Contracting Parties and parties to the conflict have an obligation to assist the sick and wounded, as the PRCS states 'to defend and support them ... The permanent disruption at roads and a stringent restriction on the freedom of movement in the OPT are anything other than supportive to humanitarian aid workers'.⁸³ Such support is enshrined in Article 63 of the Convention which stipulates that: '... recognized National Red Cross ... Societies shall be able to pursue their activities in accordance with Red Cross principles'.

G. Fieldworkers

Fieldworkers are the eyes and ears of any human rights organisation. They are responsible for the collection and collation of data upon which human rights information is built and analysis supplied. Organisations such as UNRWA, B'Tselem and PCHR have fieldworkers in the West Bank and the Gaza Strip while most other

⁸² Information from the PRCS comes from the PCRS report *Humanitarian Duty: Violations of International Humanitarian Law Against the Palestinian Red Crescent Society*, al-Bireh: Palestinian Red Crescent Society, 14-15, available at <http://www.palestinercs.org/Downloads/Reports/In%20Depth%20Report.pdf>.

⁸³ Ibid. 16.

organisations have smaller contingents in only the Gaza Strip or the West Bank. Fieldworkers operate, literally, on a daily basis on the front line of human rights defence

In an environment such as the one under the occupation, fieldworkers come under increasing pressure to provide accurate and timely information which can be used to establish long term records of what happened in particular violations but also to verify and/or challenge official Israeli versions of what happened. Fieldworkers often operate in an environment where military activity is taking place at that moment in time. Their lives, more than most human rights defenders are at severe risk. However one of the key aspects of the role of a fieldworker is the ability to access information - otherwise it cannot be transmitted and analysed.

Closure affects fieldworkers in very particular ways. They are prevented, in the first instance, from accessing certain areas - known as closed military zones - where the Israeli military does not want any immediate witnesses to its activities and is keen to exclude Palestinian militant groups from having access. Further to this, fieldworkers are prevented from attending their offices to file reports on the situation. This has an impact on the cost of fieldwork where it must be carried out with mobile phones which are increasingly expensive to use as extensively as required and often unreliable due to an overburdened and inadequately maintained telecommunications network.

In the case of PCHR, restrictions on freedom of movement prevent the Head of the Fieldwork Unit, **Ebtessam al-Aydi**, from meeting and receiving information from her staff in the West Bank on a regular basis. Similar restrictions apply to **Jessica Montell**, Director of B'Tselem, who, as an Israeli citizen, is forbidden to travel to the OPT without express permission from the Israeli military. The restrictions on her traveling to the Gaza Strip to meet her fieldworkers were, at the time of going to print, still in place despite intensive lobbying by Israeli and other organisations.

B'Tselem has two fieldworkers in the Gaza Strip. The problem is compounded by the fact that neither one of the fieldworkers is being allowed to leave the Gaza Strip to meet with B'Tselem staff in

Jordan or Egypt. This places severe restrictions on the capacity of the organisation to effectively manage these staff and to ensure effective communication which will allow for the most accurate provision of information on events as, or after, they unfold. In 2005 B'Tselem fieldworkers, **Mazen al-Majdawli** and **Zaki Kuhail** have been denied permission to leave the Gaza Strip on a number of occasions for 'security reasons'. The decision to prevent them both from traveling outside Gaza comes despite the lifting of restrictions on men between the ages of sixteen and thirty-five leaving the Gaza Strip which had been in place for extended periods of time throughout the *Intifada*. Coupled with the restrictions on the ability of almost all Israeli human rights defenders to access the Gaza Strip this presents itself as part of a larger policy which results in preventing human rights defenders from Israel and Palestine cooperating closely.

Across the West Bank fieldworkers of organisations such as al-Haq, Al-Dammeer and others have been unable to implement many aspects of their work because of being unable to access or transmit information as a result of closure. These restrictions are set to increase as what Raji Sourani calls 'the Bantustanisation' of the West Bank continues with the completion of the West Bank wall.

4. Administrative Detention: Human Rights Defenders in Israeli Detention Facilities

A. Background

There are currently 7500 Palestinian prisoners in Israeli detention. The vast majority of them are men but the figure also includes women and children. Since the occupation of Palestine began in 1967 over 650,000 Palestinians have been detained by Israel. Prisoners are detained under military detention orders and regulations and then subsequently tried by Israeli military courts, located at military bases throughout the OPT. It is rare that the military tribunals fall within the parameters established for a fair trial under international law.

About 1000 prisoners are detained, at any one time, under the Israeli system of Administrative Detention, although this number can rise at

any time if an intensive arrest campaign occurs. The Administrative Detention system allows Palestinian prisoners to be held for trial without charge for extended periods and is renewable by a military court.

Conditions for most prisoners are appalling - it is common to keep twenty prisoners in a cell 5 metres long, 4 metres wide and 3 metres high, for periods of up to twenty-three hours per day. Prisoners are kept in a variety of detention centres and interrogation centres throughout Israel and the OPT. Prisoners are often transferred to locations away from their families and homes, in clear breach of the Fourth Geneva Convention, which states that prisoners should be detained in the areas which are occupied. Such transfers of protected persons outside of an occupied territory are also grave breaches. Conditions in respect of exercise, food, toilet facilities and hygiene are generally extremely poor. Detainees are often denied the right to adequate health care and are often subjected to extended periods of torture.

While severe limitations were placed on its use, torture was effectively condoned in the decision by the Israeli High Court of Justice, on 6 September 1999, which failed to criminalize torture and even explicitly envisioned its legalization by the Knesset⁸⁴. The Public Committee Against Torture in Israel (PCATI) observed in 2001:

[T]hat each month dozens of Palestinians interrogated by the GSS [Israeli General Security Services] are exposed, to one extent or another, to methods of torture and ill-treatment. GSS interrogators cut the detainees off from the outside world (incommunicado detention), exhaust them, inflict pain upon them, frighten and humiliate them. This is achieved through a combination of sleep deprivation; prolonged shackling in painful positions; slapping, hitting and kicking; exposure to extreme heat and cold; threats, curses and

⁸⁴ HCJ 5100/94 The Public Committee Against Torture in Israel v. The Government of Israel et al., para. 37, available at http://www.law.yale.edu/outside/pdf/Alumni_Affairs/torturedecision.pdf.

insults; complete isolation from the outside world for days and weeks; and detention under sub-human conditions.⁸⁵

Torture is particularly difficult to prove given that prisoners can be denied access to legal representation for 90 days of their 180 day detention period. Confessions extracted while prisoners are under extreme conditions of duress are admissible in Courts. Torture methods include sleep deprivation, having the bodies of prisoners shackled, tied or handcuffed in extremely uncomfortable positions for extended periods of time, at times while the prisoners head is covered with a urine soaked sack. Prisoners are exposed to loud music or deprived of light and then exposed to intense artificial light. Tear gas canisters are fired inside cells and prisoners are also be subjected to very long periods of solitary confinement. All of these methods may be used in combination with each other could be construed as behaviour amounting to torture or cruel, inhuman and degrading treatment.⁸⁶ In general terms members of the *Shabak* or Israeli General Security Services (GSS) act with complete impunity. No GSS agent has been charged since 1994 when the Israeli Ministry for Justice assumed responsibility for their actions.

Israel's legal system is generally out of step with international legal standards. The Fourth Geneva Convention and the Convention Against Torture are both considered customary international law. It is also considered that breaches of these instruments are breaches *erga omnes* obligations under international law. However the Israeli legal system facilitates, condones and permits:

- Prisoners being held without their family being informed;

⁸⁵ Public Committee Against Torture in Israel, (2001), *Flawed Defense: Torture and Ill-Treatment in GSS Interrogations Following the Supreme Court Ruling*, Jerusalem: Public Committee Against Torture in Israel, 5, available at

<http://www.stoptorture.org.il/eng/publications.asp?menu=7&submenu=1>.

⁸⁶ For an excellent graphic illustration of torture methods inflicted on Palestinian prisoners see Sacco, J. (2001), *Palestine*, Seattle: Fantagraphics. Further research material and illustration is available at <http://www.addameer.org/detention/torture.html> as well as the Public Committee Against Torture, an Israeli NGO which campaigns against torture in Israel at <http://www.stoptorture.org.il>.

- Prisoners being held without access to legal counsel (for up to ninety days);
- Prisoners being held without being informed of what charge they are being held on (for up to twelve days).

Military orders are always considered by Israel to take precedence over international law, in violation of both the letter and the spirit of international law.⁸⁷ The remit of the military tribunals and their capacity to hand down sentences in trials reaches far beyond the capacity allowed for Israeli civil or criminal courts. Minimum and maximum sentencing requirements are far higher for Palestinian prisoners than they are for those accused in Israeli criminal trials.

Lawyers and human rights activists face a number of difficulties in relation to Palestinian prisoners. Firstly, they face the risk of arrest and detention by the Israeli authorities. Secondly, if arrested, they are subjected to the same humiliating conditions as other Palestinian prisoners. Thirdly, as discussed in the chapter on restrictions on freedom of movement, lawyers are unable to visit prisoners or to represent the prisoners in the Israeli court system. Also secret evidence files are used against prisoners in Administrative Detention which makes it almost impossible to construct a proper defence.

This chapter outlines a number of individual cases where human rights workers have been detained by the Israeli authorities and subjected to Administrative Detention. Administrative Detention is the system where detainees are kept without charge and secret files are used against them in Court. The possibility of constructing a legal defence against these secret files is virtually impossible and the Administrative Detention system ensures that Palestinians, including human rights defenders, can be kept without a fair or free trial for extended periods of time, being subjected to the harsh conditions outlined above.

⁸⁷ ‘...when the penal legislation of the occupied territory conflicts with the provisions of the Convention, the Convention must prevail’, Pictet, J. (ed.), (1958), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 336.

B. Al-Haq and Administrative Detention

1. Operation Defensive Shield

On 29 March 2002 the Israeli military launched a campaign across the towns and cities of the West Bank which was known as 'Operation Defensive Shield'. The operation consisted of an intensive series of incursions into all PNA-controlled areas of the West Bank which saw curfews being imposed in almost all cities and towns in the West Bank as the Israeli military took control over all aspects of life in these areas. House to house searches were common, as was the use of human shields during them. Attacks against human rights defenders including journalists and medical personnel escalated dramatically with large numbers of shootings and injuries being matched with the increased threat of being prevented from gaining access to areas where military operations were being carried out.

Against this background traditional human rights organisations found that the volume of their own work increased dramatically as they sought to research and report on the scale of violations that were occurring against Palestinian civilians. The Ramallah-based organisation al-Haq developed a contingency plan to deal with further incursions which involved feeding information from local Ramallah residents to international media and human rights organisations.

On the night of 30 March 2002 al-Haq's media officer, long time human rights defender **Yaser al-Disi**, was in the office organizing this coordination of information. He had spent two days in the office, sleeping there at night, in order to try and facilitate the number of requests for information about what was happening inside the besieged town of Ramallah. Snipers had taken over the rooftops of most of the high buildings in the towns and consequently people were unable to move around the streets.

Just before dark the electricity in the town was reconnected for a short time. As he stooped to plug in his mobile phone charger al-Disi heard voices and footsteps entering his building. It quickly became apparent that soldiers had attacked the building and were conducting

searches in each room. Seeking advice from other al-Haq staff members al-Disi turned on all the lights in the office. He heard the soldiers knocking at the door and went to open it in order to make it clear that he posed no threat to the soldiers. Before he could do so however, the soldiers had opened the door and fifteen of them entered the office. Working on the assumption that his work as a human rights defender, which was clear from his surroundings, would reduce any threat, al-Disi waited while the soldiers searched the office. While waiting he was detained by two soldiers.

Minutes later an Israeli officer approached him and addressed him in Arabic, asking him about a bomb which had been found in the office.⁸⁸ Shocked and confused al-Disi explained that al-Haq was a human rights organisation not a military one. The officer was dissatisfied with this answer and ordered al-Disi to be arrested. The soldiers complied, handcuffing him and taking away his identity card. He was then blindfolded with a white cloth before being forcibly led into a military vehicle.

He was taken to a school that Israeli soldiers had taken over in the town and placed into a room. Other prisoners were later brought into the room each of them deprived of sleep and food. On 1 April at around 12.00 al-Disi was taken to a military detention centre. While he was being processed at the Centre a soldier took his mobile phone and it was not returned to him on his release.

On 14 April al-Disi was brought in front of a military court without access to a lawyer or any knowledge of charges which were brought against him. He was issued with a three-month Administrative Detention order, which was to be reviewed one week later, in light of evidence, which the prosecutor had yet to collect for a charge that had not been defined.

Al-Disi reappeared in court again on 21 April and the decision as to his detention was deferred for another week. By the time the third hearing arrived al-Disi had lost much hope. As he was being pushed

⁸⁸ It later transpired that the bomb, which al Disi had no knowledge of, was an Israeli one. It is common for fieldworkers in all human rights offices to collect spent ordnance from military attacks as part of their work to build evidence in cases of human rights violations.

into the Court he spotted a lawyer from Addameer who offered to represent him. Despite this representation the Judge sentenced al-Disi on the basis of confidential information which was not supplied to him or his lawyer. The Administrative Detention was confirmed as being in place from 31 March until 10 July.

In the al-Haq report on the events surrounding al-Disi's arrest and subsequent detention, *Screaming in the Dark*, al-Disi himself goes on to discuss in considerable detail the period of his Administrative Detention. He details the squalid conditions which prisoners were kept under as well as the constant insecurity resulting from threats by the soldiers in the Ketziot prison (known to Palestinians as 'Ansar 3'), in the Negev desert. The lack of medical facilities, overcrowding and lack of adequate hygiene facilities, such as toilets and showers meant that the entire experience was deeply disturbing. He details how the only contact allowed by the military was from lawyers, human rights organisations and the ICRC.

On his release day soldiers confiscated al-Disi's notebook on the basis that no written materials were allowed to be taken out of the prison. Despite this he has composed a remarkable first hand account of the inside life of an administrative detainee. The 28-year-old, a journalist by training, was released on time, unlike many of the prisoners he had met during his detention period. He continues his work for the implementation of human rights in the OPT.

2. Ziyad Muhammad Shehadeh Hmeidan

Ziyad Hmeidan, 31, has been a fieldworker with al-Haq since 2000. He lives in al-Khass village near Bethlehem. Ziyad was detained on 23 May 2005 by the Israeli military at Qalandia checkpoint between Ramallah and Jerusalem, while on his way back to Bethlehem from Birzeit University where he is a postgraduate student.

Ziyad spent twenty-five days in detention without any formal charges being brought against him, or being informed of the reasons for his detention. He was eventually given Administrative Detention for a renewable six-month period. In the interim period between his arrest and his trial the Israeli authorities have taken measures to inhibit and deny his access to a lawyer; first through transferring him between different detention facilities and then, through an order issued in a hearing on 30 May preventing his access to counsel for eight days. This order, and indeed his subsequent Administrative Detention, has been justified by security reasons, which have not been disclosed to Ziyad or his legal counsel.

Ziyad's detention began when two members of the al-Haq staff were also passing the Qalandia checkpoint. They observed that he had been handcuffed and spoke to him. Ziyad informed them that he given his Palestinian Identity Document (#999602097) to Israeli forces. They ran a computer check and then detained him. Ziyad was able to speak to the al-Haq staff members for about half an hour. At this point the military took him to a holding cell because, they stated, it was getting too cold.

Initial contacts made by al-Haq suggested that Ziyad might be taken to Beit El DCO⁸⁹. However, two days later, al-Haq learnt that he had initially been transferred to an open-air facility, believed to be part of the Atarot Israeli military facility, and had then been transferred to Etzion detention centre.

At this stage, Ziyad was given permission to communicate with lawyers from other human rights organisations visiting the prison.

⁸⁹ A District Coordination Office (DCO) is a central office where Israeli and Palestinian security forces coordinate their work.

Through them, al-Haq learnt that Ziyad had not been subjected to any physical abuse, and had been interrogated for around two hours on 24 May on subjects unrelated to security or political issues, such as his marital status.

At that time, Ziyad had been informed that he would have a hearing on 31 May, which several staff members from al-Haq planned to attend. However, al-Haq subsequently discovered that Ziyad had first been transferred to the East Jerusalem Moscobiyya interrogation centre, also known as the Russian Compound, on 27 May and had been interrogated there for approximately three days. Al-Haq then learnt that the hearing, which was scheduled for 31 May, had taken place a day earlier, thus preventing any staff members from attending.

At the hearing, Ziyad's detention was extended for a further eighteen days. Soon thereafter an 'Order Prohibiting Meeting with Counsel' was also issued for a period from 13.30 on 30 May until 23.59 on 5 June.

The order, which has its legal basis under Israeli law in Military Order 378 of 1970, is in contravention of international legal protections safeguarding the rights of detainees. The UN Human Rights Committee made it clear in its 1998 periodic review of Israel's compliance with the treaty,

The Committee considers the present application of Administrative Detention to be incompatible with articles 7 and 16 of the Covenant, neither of which allows for derogation in times of public emergency. The Committee takes due note that Israel has derogated from article 9 of the Covenant. The Committee stresses, however, that a State party may not depart from the requirement of effective judicial review of detention. The Committee recommends that the application of detention be brought within the strict requirements of the Covenant and that effective judicial review be made mandatory.⁹⁰

⁹⁰ Concluding Observations of the Human Rights Committee: Israel. 18 August 1998. CCPR/C/79/Add.93. (Concluding Observations/Comments), para 21, available at

Upon learning about the hearing, al-Haq employed the services of Israeli lawyer Leah Tsemel, who has extensive experience defending Palestinian detainees. Despite the order preventing Ziyad access to a lawyer, Leah was able to meet Ziyad on 5 June. She reported that he was in good health and had not been subjected to ill-treatment or torture. Her office submitted an appeal for Ziyad's release, on the grounds that no charges had been brought against him. While Leah was able to meet with Ziyad, two al-Haq lawyers were subsequently prevented from doing so, ostensibly because they were not his legal representatives.

The appeal for release was heard on 14 June, at Ofer military court. At that time the prosecution submitted classified information, which Ziyad's counsel was not permitted to see. On the basis of that evidence the judge dismissed the appeal and a hearing on the extension of Ziyad's detention, which was due to expire in two days, was scheduled for 16 June.

Initially, al-Haq was informed that Ziyad's detention had been extended for a six-month period by a military court on 16 June. However, al-Haq subsequently learnt that the Deputy Military Commander of the West Bank had ordered the extension, and that the order would be considered before a military court later in the month.

The hearing on the order was held on 28 June and the order was confirmed. The judge stipulated that the time Ziyad had spent in detention should count towards the initial six months of detention.

On 3 July, Ziyad was transferred to Ketziot/Ansar 3 prison. The prison, located in the Negev Desert, is little more than a series of tents in the middle of the desert, and is infamous for its poor conditions.

Additionally, Ziyad's family has been unable to visit him. Initially, they were denied permission. A visit was then scheduled for 13 July

through the ICRC, but it was cancelled in the wake of the Netanya bombing on the 12 July. Ziyad's family has been informed that they would not be allowed to visit him before August.

Ziyad, who is married and has two young children, is the main source of support for his elderly parents and several of his siblings who are currently in school or university.

No information on why Ziyad is being held has been released. All interrogations have focused on apolitical and non-security related questions, and no charges have been brought against him.

Further, the possessions Ziyad had with him at the time of his arrest have not been given to him. When he was transferred from Moscobiyya, he asked about his books and papers, but he was given only the money he had on him at that time, and was told that the other items would be transferred to him. To date this has not happened.

Under international human rights law, a detained person must be informed promptly of the reasons for their detention, and Administrative Detention must be of a short duration only, not for an indefinite period. Further, under international humanitarian law, the right to a fair trial is guaranteed and the principle that no one may be convicted or sentenced, except pursuant to a fair trial offering all essential guarantees has been deemed customary by the ICRC.

Ziyad's situation is not unique. Addameer, a Palestinian prisoners support and human rights organisation, estimated that at the end of 2004 there were over 850 Palestinian administrative detainees in Israeli prisons. Further, Israel's widespread and sustained policy of Administrative Detention is supported by both the Government and the judiciary, denying Palestinian detainees any meaningful protection of their rights.⁹¹

⁹¹ Information provided by al Haq staff, 3 August 2005 (on record in PCHR) and via the al Haq website <http://www.alhaq.org>.

On the 14 November 2005 Ziyad received a letter stating that his Administrative Detention had been extended by a further six month period.

C. The Case of Addameer Prisoners Support and Human Rights Association

Addameer Prisoners Support and Human Rights Association was established in 1992, during the first Palestinian *Intifada* to work in opposition to torture and the death penalty while providing support for prisoners and their families. Addameer is the Arabic word for conscience. The Association provides legal support, representing Palestinian prisoners through the Israeli military and civil court systems, conducts prison visits and does media and advocacy work on behalf of prisoners and their families.

The organisation was originally based in both the West Bank and the Gaza Strip. However, 'due to restrictions on freedom of movement, the organisation was divided into two separate administrative units',⁹² one headed by **Khalida Jarrar** in the West Bank and the other by **Khalil Abu Shammala** in the Gaza Strip (himself subject to severe restrictions on his movement which prevent him from leaving the Gaza Strip). This section of the report will deal with Addameer based in the West Bank town of Ramallah.

Many human rights organisations and individual defenders have come under threat over the course of the *Intifada*. However few have suffered with such persistence as Addameer. The organisation which was established to fight against the practices of Israeli authorities, such as Administrative Detention, has seen a large number of its researchers, lawyers and international workers placed under Administrative Detention orders.

Director Khalida Jarrar was held in detention for twenty-two days following her participation in international women's day on 8 March 1989. She is now completely unable to leave the West Bank because her 'security record' will not allow her to travel to Israel and the Jordanian authorities have also placed her on a list which prevents

⁹² Interview with Khalil Abu Shammala, 22 December 2004.

her from travelling to Jordan. Travel through Jordan is the only way out of Palestine for West Bank residents who do not hold Jerusalem Identity cards (which grant the holder special privileges).

[E]ssentially I am trapped in the West Bank at the hands of the Israeli authorities, a prisoner in my own country, under constant threat of being placed in prison, under Administrative Detention, if I try to travel through checkpoints or roadblocks.⁹³

Khalida was also prevented from attending the Third Dublin Platform for the Protection of Human Rights Defenders in Dublin Castle in September 2005. She had secured a visa to enter Ireland but was told that she would not be allowed through the border to Israel to board her flight. The only explanation the authorities gave for this refusal was that she was being denied access for 'security reasons'.⁹⁴

However in the past two years two other members of staff have been subjected to long periods of Administrative Detention – one of whom is free at the time of writing and one who is still detained in an Israeli prison.

1. Abla Sa'adat: Arbitrary Detention and Ill-Treatment in Prison.⁹⁵

Abla Sa'adat is a long time activist for women's rights and human rights. She is forty-seven years old and is a mother of four children. She is the wife of the Secretary General of the Popular Front for the Liberation of Palestine Ahmad Sa'adat, who has also been imprisoned on many occasions both by the Palestinian and Israeli security services.

⁹³ Interview with Khalida Jarrar, 16 December 2004.

⁹⁴ Front Line, (2005), *Israeli Authorities Stop Human Rights Defender Coming to Ireland*, Dublin: Front Line, available at <http://www.frontlinedefenders.org/news/2063>.

⁹⁵ Information on the case of Abla Sa'adt retrieved from interviews with Addameer legal staff, <http://www.addameer.org> and from correspondence with Addameer's lawyers during December 2004 and January 2005.

On 21 January 2004 Abla left her home in Ramallah to attend the World Social Forum in Brazil, from 24 - 29 January, on behalf of Addameer. She left her home at 07.30, three days in advance of the conference, in the full knowledge that the delays, checkpoints and crossing of land borders which every Palestinian is subjected to in order to leave the OPT may delay her attendance at the conference. When she arrived at Karamah crossing (Allenby Bridge), the main access point for the south and central area of the West Bank to Jordan, she was detained by Israeli security services. At approximately 16.00 she was transferred in a military vehicle to Beit EI military detention centre. She was then held in the Jeep for six hours because authorities in the centre refused to accept her due to lack of facilities. Her family was not informed of her detention, nor was anybody in Addameer. By chance a Jordanian citizen who had met Abla at the Israeli side of the border crossing informed Addameer that she was in custody of the GSS who would not allow her to contact her family.

Sa'adat had arranged to meet her son in Amman, Jordan that evening at 22.00 who was going to take her to the airport to catch her flight to Brazil. When she failed to make the arranged meeting time a lawyer for Addameer contacted the Israeli authorities at the Bridge. The authorities refused to confirm or deny whether she was detained at the crossing point. On 22 January Addameer's lawyer, again unsuccessfully, tried to establish the whereabouts of Abla. He was informed that her name was not included on any lists at Israeli detention centres. It took the Israeli authorities forty hours, until 23 January, before they finally admitted to having Abla Sa'adat in detention. She was being held in an isolation cell, at the Ohel detention facility, with another Palestinian woman who had been detained at the same time as her. She was being kept in detention without charge and without access to a lawyer. Concerns were raised at this stage about the health of Abla Sa'adat who suffers from chronic and severe back pain resulting from a slipped disc. This was of particular significance at the time as the cell the prisoners were being held in was 2 metres long and 2.5 metres wide.

On 22 January Abla Sa'adat and two other Palestinian women were issued four month Administrative Detention orders, which allowed the authorities to hold them without charge while preparing a file

which would not be given to their defence representatives in the event of a trial. On 23 January Abla was allowed to leave her cell for the first time to use the toilet and to visit her lawyer. The detention centre in Beit EI had no facilities for women detainees and the conditions in which the three women were held in were appalling. The women were allowed to go to the toilet three times a day and were not given any access to fresh air or recreation time in an open space. No change of clothing was provided for them and the food offered to them was of extremely limited and poor nutritional quality. They were only allowed to drink tap water. The women were among only five women, out of 1200 at the time, who had been placed under Administrative Detention since the *Intifada* started. As a result of these extremely harsh conditions two of the three women decided to go on an open-ended hunger strike.

After eight days of hunger strike the Israeli authorities carried out a review of their detention and, confirming the Administrative Detention orders issued against them, decided to move them to Ramleh prison which is in Israel. Such a move is in breach of international humanitarian law which prohibits the transfer of civilians outside the area of occupied territory, including in the case of prisoners (Arts. 49, 76 Fourth Geneva Convention). Israeli authorities confirmed that the women would be placed in women's facilities at the prison - however when the women were moved they were placed among Israeli criminal prisoners rather than the facilities that are normally reserved for Palestinian political prisoners. Palestinian prisoners who are placed with Israeli criminal prisoners are subject to continuous harassment from other inmates and the two women were no exception to this. This harassment was facilitated and encouraged by the prison authorities who had supplied Israeli prisoners with newspapers detailing the arrest of the women and then awarded special privileges to the inmates who subjected the women to the most vicious harassment.

When Addameer's lawyer **Mahmoud Hassan** tried to visit the women, on 4 February, he was subjected to extreme harassment from the prison authorities which included extensive searches as well as being locked in a room for more than three hours. When Sa'adat was finally brought into the room she was separated from

her lawyer by a wire fence which prevented her from signing an affidavit about the events surrounding her arrest.

In protest against the serious intimidation, which ensured both women were deprived of sleep out of fear for their safety, both women again began refusing food on 4 February. That day, while Mahmoud Hassan was being kept in a locked room in the prison both women were transferred to facilities for political inmates. GSS officers interrogating Sa'adat informed that her arrest was a warning against her activism. This confirmed that the detention was directed specifically at her as a measure of harrassment designed to intimidate her and to prevent her from continuing her activities in human rights defence. The arrest was also connected to the position of Sa'adat's husband and represented a pattern of detaining women for the actions of their family members.

On 8 March 2003 Abla Sa'adat was released early from her Administrative Detention. She continues her work for Addameer and her defence of human rights.

2. The Case of Abdul Latif Gheith

Abdul Latif Geith is Chairman of Addameer's Board of Trustees. He is a well known figure in the human rights field and has been active for many years in prisoner support issues, as a member of the Higher Palestinian National Committee on Political Prisoners. He has also been at the forefront of the campaign to stop construction of the Wall inside the Green-line. As a member of the Palestinian Civil Society Committee on Jerusalem he has also been a campaigner for the rights of Jerusalemite residents, who have a unique position among residents of the OPT. He rose to particular international prominence when he described the ending of Israel's occupation of southern Lebanon, saying 'the nightmare is over'.

At 14.00 on Thursday, 29 July 2004 the 63-year-old human rights defender was trying to cross the Qalandia checkpoint which separates Ramallah from Jerusalem and is encompassed in the area where the wall is being built. He was arrested by Israeli soldiers conducting searches of and identity checks on Palestinian civilians passing through the checkpoint. On his arrest Gheith was not given

any reason for his detention, as international law stipulates he should be. On Wednesday, 4 August, again around 14.00, Addameer's Lawyer Mahmoud Hassan visited him in the Israeli detention centre. Until this point Gheith had been denied all access to legal counsel from the point of his arrest. Geith signed an affidavit detailing the circumstances of his arrest - he told his lawyer that he had been detained at Qalandia for some time preceding his eventual arrest by the military. During this time he was questioned by a member of the *Shabak* (GSS). The security officer questioned him extensively about his work with Addameer, the members of staff at the organisation and the mandate and activities of the organisation. It was clear that Gheith was being detained because of his ongoing work in defence of human rights.

The interrogation lasted about fifteen minutes at which time Gheith was transported by the military to an Israeli settlement, Giva'at Ze'ev, which is near Jerusalem. He was then taken to Benjamin military camp at the Ofer military base near the Palestinian city of Ramallah. His arrest was typical of the treatment given to many West Bank Palestinians - however, Gheith, as a resident of the Shu'fat area of Jerusalem, holds a Jerusalem ID Card. As such he is subject to a different set of military regulations than other Palestinians from the West Bank.

On 4 August 2004 the legal team at Addameer was informed, by the Israeli military command in the West Bank, that Gheith had been issued an Administrative Detention order which would be in effect until 4 February 2005. The reason given for issuing the order was that Gheith formed a threat to the security of the region.

Despite international pressure from a number of human rights groups, including Front Line and Amnesty International, the Israeli authorities refused to release Gheith until 27 January 2005.⁹⁶

⁹⁶ Addameer, (2005), Release of Addameer's Chairman of the Board of Trustees, Abdul Latif Gheith, Ramallah: Addameer, available at <http://www.addameer.org/resources/pr/press05.html#>.

D. Arrest and Detention of Palestinian Medical Personnel by the Israeli Military

The Israeli military continues to arrest and detain a number of Palestinian medical personnel and raid hospitals and medical facilities in an attempt to prevent medical personnel from carrying out their humanitarian mission. The Israeli military have continued their attacks on Palestinian medical personnel and facilities during incursions into Palestinian communities.

The following cases are examples of arrests and detentions of Palestinian medical personnel during the reported period:

- On 1 April 2004, the Israeli military raided the Mental Health Hospital in Bethlehem after having opened fire at it. The Israeli military arrested thirteen Palestinians, including eight staff members of the hospital and the Palestinian Military Health Service, and damaged the building and equipment of the hospital.

According to investigations conducted by PCHR, at approximately 02:30, Israeli occupying forces, reinforced by heavy military vehicles and two helicopters, moved into Bethlehem. At approximately 02:50, they surrounded the Mental Health Hospital. A number of Israeli soldiers took positions on roofs of neighboring houses. They opened fire at the hospital and called through megaphones on those who were inside the hospital to get out, without mentioning names. At approximately 03:00, the Israeli military raided the houses of **Dr. 'Essam Bannoura**, director of the hospital, in Beit Sahour, east of Bethlehem; and **'Aadel 'Eissa al-Lahham**, the administrative director of the hospital, in al-Souha village, southwest of Bethlehem. They handcuffed the two and detained them in their sleeping clothes approximately 30 metres away from the hospital. At approximately 03:10, the Israeli military resumed firing at the hospital. The Israeli gunfire continued for one hour, after which the Israeli military broke into the hospital. They opened fire inside the hospital and damaged its equipment. They arrested thirteen Palestinians, including four hospital staff

members and four staff members of the Palestinian Military Medical Service.

According to Dr. 'Essam Bannoura, the losses incurred onto the hospital by this Israeli military attack is estimated at US\$ 500,000. The buildings and equipment of the hospital were extremely damaged.

- On 2 November 2004, after they had extra-judicially killed three Palestinians in Nablus on the evening of 1 November 2004, shortly after midnight, the Israeli military raided and searched the emergency centre of Palestine Red Crescent Society in the city. They also searched a number of ambulances and interrogated medical crews.

5. Movement and Other Restrictions on Palestinian Lawyers

Working as a human rights lawyer is one of the most traditional forms of practicing human rights defence - lawyers protect and uphold the legal systems, international and local, upon which an effective, just and fair system is established. Restrictions on Palestinian lawyers amount to an attempt not only to persecute the profession as a whole but also an attempt to prevent access to justice for other victims of human rights violations.

Historically, the treatment of Palestinian lawyers by the Israeli authorities has been characterized by a total lack of respect, ranging from a general obstructionist attitude and harassment, to beatings, even arrest during the course of their duties. The status of Palestinian lawyers today has deteriorated still further; currently, Palestinian lawyers are not recognized by the Israeli authorities and have no direct access to the Israeli judicial system.

A. Freedom of Movement Restrictions

Lawyers, like all Palestinians from the OPT, were, and continue to be, subject to increasing restrictions on their freedom of movement.

Prior to the establishment of the Palestinian National Authority, Palestinian lawyers from the OPT were allowed some access to the Israeli legal system and to clients held in detention inside Israel. This access was restricted by a system of permits, both for travel to Israel and for access to individual detention facilities. All Palestinians required travel permits for access to Israel, including the system of magnetic cards which were issued following extensive security checks, including into civil affairs. These cards and other permits were used to deny access to Israel for increasing numbers of Palestinians. In addition, Palestinian lawyers required additional documentation including:

- a) Lawyer's professional identification cards;
- b) Special permits in order to visit Palestinians detained and imprisoned in Israel. These permits were valid for one year and obtainable from the Israeli Civil Administration's Officer in Charge of Legal Affairs. Israel carried out extensive security investigations into all applicants for permits, and often used it as a pretext to restrict freedom of movement;
- c) Special permits for access to each individual Israeli prison or detention facility.

B. Treatment of Palestinian Lawyers

In addition to the ‘official’ restrictions placed on Palestinian lawyers, their treatment by individual members of the Israeli authorities further hampered their abilities to discharge their duties to their clients. Palestinian lawyers visiting clients detained in facilities inside Israel were often subjected to particularly harsh treatment by prison guards, including inappropriate or unnecessary searches, verbal and physical harassment, even beatings.

Lawyers were often made to wait for hours before having access to their clients. In some cases the lawyer would arrive at the prison for an arranged visit to discover that their client had been moved to another prison without prior notification. There were also restrictions imposed on lawyer-client meetings, which often had to be conducted within the view or hearing of prison guards in open areas. Lawyers were refused the use of prison facilities, including the toilets.

These restrictions and treatment obviously seriously impacted on the ability of Palestinian lawyers to discharge their duties to their clients effectively. However, with the arrival of the Palestinian National Authority the status of Palestinian lawyers deteriorated still further. In 1995, the system of special permits issued by Israel, which allowed Palestinian lawyers to visit Palestinian detainees, was cancelled, and applications (both first-time and renewals) by the Palestinian Bar Association, individual lawyers and human rights organisations were consistently rejected. Many received no response at all.

C. Current Status of Palestinian Lawyers

Palestinian law provides a system of professional recognition and registration for lawyers. All Palestinian lawyers are required to possess professional identification cards issued by the Palestinian Bar Association, and to register with the Chief Registrar of the Palestinian High Court of Justice. However, this system is not recognised by the Israeli authorities.

Currently, within the OPT, only those Palestinian lawyers who have been trained and licensed in Israel are able to practice in Israel. Since only those Palestinians who are residents of Occupied East Jerusalem (annexed to Israel following the 1967 war) have access to Israeli educational institutions, effectively only Jerusalemites with Israeli legal training can practice in Israel. In addition, the continuous closure throughout the OPT, in particular on the Gaza Strip, combined with the lack of any administrative system through which lawyers can apply for permission to travel into Israel means that legal work suffers from severe limitations.

Clearly, the refusal of the Israeli authorities to recognize Palestinian lawyers from the OPT has serious implications for Palestinians from the OPT requiring legal assistance, particularly those held in Israeli detention facilities. Since 1995 Palestinian lawyers have continued their work, representing Palestinians detainees, and others in need of legal representation, through the use of Israeli lawyers. This system is problematic for a number of reasons which will be detailed below. However, it has ensured that Palestinian lawyers have been able to provide a minimum level of service to Palestinians prisoners.

D. Current Demands for Legal Advice and Representation

During the second *Intifada* the level of the legal representation required by Palestinians from the OPT increased in most areas as a result of the mass arrest policy, in which up to 10,000 Palestinians may have been detained. These arrests were conducted in towns, villages and refugee camps throughout the OPT, in particular in Jenin, Nablus, Ramallah, Hebron and surrounding refugee camps and included mass ‘roundups’ of all males between the ages of fourteen and forty-eight. The detainees have been routinely subjected to varying forms of ill treatment and in some cases, torture. These detentions were largely arbitrary and unlawful. Many were released within days but a large number remain in detention as will be detailed below. The need for effective and qualitative legal representation in such cases is clear but the ongoing refusal of the Israeli authorities to recognize Palestinian lawyers from the OPT has effectively ensured that the rights of the vast majority of the detainees were flagrantly ignored.

There was also a dramatic increase in the number of cases of unlawful or willful killings and injuries, and of house and property destruction. Action taken in these cases includes legal complaints, requests for investigations and reparation. In all such cases Palestinian lawyers were forced to work through Israeli lawyers. Despite the lack of widespread success in cases pursued through the Israeli legal system Palestinian lawyers are also working through various domestic systems abroad because of the relevant requirements in taking universal jurisdiction cases. The large workload, and the need for immediate responses to intervene and stop real-time military activities, places a considerable strain on human rights lawyers across the OPT.

E. Israel's Judicial System

The Israeli justice system in the OPT is comprised of two parallel courts; the civil courts and the military courts. Israeli settlers are tried in regular civil courts. In contrast, however, nearly all Palestinian prisoners are tried in the military courts. These military courts routinely violate international minimum standards for fair trial, as regularly acknowledged by inter-governmental bodies, and international human rights organisations such as Amnesty International. Sentences passed down by the military courts are often excessive and disproportionate. In many cases the Military Prosecutor does not submit proper evidence against the defendant. In the absence of a defence lawyer, sentence is passed without defence submissions, or defence challenges to prosecution submissions. Usually, pre-trial detention is extended by the ruling of a single judge, and without legal counsel. Often, the sub-standard trial procedures go unchallenged as defence counsel are not admitted to the Courts. Additionally, though some of the military courts are geographically located within the OPT, they remain under the total control of the Israeli military and therefore access to these areas is as restricted as for courts and prison facilities inside Israel.

F. Implications of the Denial of Access for Palestinian Lawyers

Since Palestinian prisoners and others in need of legal representation effectively cannot be represented by Palestinian lawyers from the OPT, there are three options available; to hire Israeli lawyers; to

seek legal aid services from Palestinian human rights organisations such as the Palestinian Centre for Human Rights (who in turn must hire Israeli lawyers); or have no legal counsel of their own choice.

There are a number of problems with using Israeli lawyers either directly, or through legal aid services provided by Palestinian organisations. Israeli legal fees are far higher than Palestinian legal fees and are largely prohibitive to the average Palestinian. On average, an Israeli lawyer's fee for a detainee is about US\$1,600, which includes pre-charge sheet proceedings and first three hearings at the Military Court. Each additional session is charged US\$150, and appeals to the Military Court will also be charged extra (from US\$150 to US\$400 depending on the case). In contrast, around half the population of Palestine are living on or less than US\$2.10 per day placing legal fees beyond their financial capacity.⁹⁷

Even for organisations such as PCHR, the high costs of Israeli legal fees seriously restrict the number of cases undertaken and the level of representation which such organisations can provide to their clients. Few Israeli lawyers of the experience, professionalism and commitment required for such cases, work *pro bono*. The number of such lawyers is clearly inadequate for the number of cases of detainees, as well as other cases. Consequently, there is little hope that even a significant minority of detainees can receive the legal counsel and assistance to which they are entitled.

Language is an additional problem, since many Palestinians do not speak Hebrew, and translations or interpreters are rarely available within the military court system. There are also inevitable communication and language difficulties even between lawyer and client. As a result violations of Palestinian prisoners' rights are routine, and often go unchallenged. Many Palestinian prisoners remain in detention, without charge or trial, in conditions which fail to meet the minimum international standards required. They receive no legal counsel to challenge the specific and overall unlawful aspects of such detentions.

⁹⁷ United Nations Office for the Coordination of Humanitarian Affairs, (2005), *Humanitarian Situation in the Occupied Palestinian Territory in 2004*, New York: UNOCHA, 3, available at <http://domino.un.org/UNISPAL.NSF/0/de9906e4d567199a85256fda00549d88?OpenDocument>.

G. Changes in the Law Designed to Prevent Access to Justice for Human Rights Defenders

In recent years Israel has already severely limited the ability of Palestinians to seek compensation in Israeli courts against the Israeli army for damages including death, injury and property destruction. In an initial amendment in July 2002,⁹⁸ the Israeli authorities ensured that compensation claims were out of reach for most Palestinians who had suffered damages through an expanded definition of ‘combat activity’ and imposing a strict statute of limitations (two years) and other procedural limitations. The amendment created a regime where Palestinians could not claim compensation from Israel for damages sustained through ‘any action of combating terror, hostile actions, or insurrections, and also an action as stated that is intended to prevent terror and hostile acts and insurrection committed in circumstances of danger to life or limb’. This definition was applied to encompass most actions carried out by the Israeli military throughout the Gaza Strip and West Bank territory and in practice severely limited the right of Palestinians to justice. The wording of the law effectively precludes compensation even for blatantly unlawful acts as long as they fall under this excessively broad category of ‘wartime actions’.

The latest amendment⁹⁹, which passed through the Knesset on 28 July 2005, further ensures that the limited number of Palestinians who currently have the right to claim compensation will be denied access. The 2005 amendment makes sweeping disqualifications for compensation based on extraordinarily broad circumstances (such as time, space, and identity of victims) rather than on the merits of any particular case. The amendment retroactively extends to cover all acts from September 2000; it effectively denies compensation for any harm done to any resident of any area outside Israel designated as a ‘conflict zone’ by the Minister of Defence, *even if the damage was caused outside the conflict zone* and it denies compensation to

⁹⁸ Full text available at http://www.hamoked.org/items/310_eng.pdf.

⁹⁹ Full text available at <http://www.adalah.org/features/compensation/law-e.pdf>.

alleged members of ‘terrorist’ organisations and most nationals of ‘enemy states’ as well as anyone deemed to have been helping them.

The concern is that the amendments grant complete discretion to the Minister of Defence and even allow the Minister to determine an area a ‘conflict zone’ after a Palestinian has filed a complaint. This will eradicate the thousands of cases in which PCHR and other organisations have collected evidence and built legal files on throughout the *Intifada*

In an attempt to cover up the wholesale denial of access to justice for Palestinians the law sets out some exceptions: (1) injury in a traffic accident in which a soldier/driver was convicted; and (2) abuse of Palestinian detainees/prisoners in Israeli jails.

The law goes on to create an ‘Exceptions Committee’ appointed by the Minister of Defence which will allow the Minister to propose exceptional amounts of money in exceptional cases. No criteria are stipulated to define what amounts to an ‘exceptional’ violation of a Palestinian’s basic rights. Awards made in ‘exceptional’ cases are outside any legal framework and allow the claimant no right of appeal to a Court. The awards never constitute an admission of wrongdoing on the part of the Israeli military. This amendment has codified the impunity granted by the Israeli military and judicial system to their soldiers throughout this occupation.

The amended law is contrary to Israel’s legal responsibility as a State subject to international law. It once again demonstrates that Israel does not respect the obligations placed upon States. Israel has an obligation to provide an effective remedy to those within its jurisdiction that have been victims of human rights violations by the Israeli military.

The latest amendments are contrary to international humanitarian law and Israel’s responsibility as an ‘Occupying Power’. International humanitarian law governs situations of occupation and Article 3 of the Hague Regulations of 1907 (Annexed to the Fourth Hague Convention) provides that,

A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

The Hague Regulations are widely considered customary international law (including by the Israeli High Court of Justice) and thus binding on all States.

Furthermore, the law is contrary to international human rights instruments to which Israel is a party to including Article 2 of the International Covenant on Civil and Political Rights. Article 2(3) provides,

Each State Party to the present Covenant undertakes: (a) to ensure that any person whose rights or freedoms are herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

Under international law Israel has clear responsibilities towards Palestinian civilians. Israeli lawmakers state that because of the large numbers of ‘incidents’ which occur in the OPT it is difficult to investigate and check responsibility for the violations. Israel is now trying to eliminate its legal responsibilities by stating that they are an administrative burden.

The effect which this will have on human rights defenders seeking to pursue justice for victims of violations through legal recourse will be significant. Organisations such as PCHR, and many others, have now effectively lost the right to pursue compensation for a broad range of violations. This means that the work of lawyers in the OPT will be severely limited.

6. Silencing the Press - Silencing Human Rights: Israeli Attacks Against Journalists and the Media

The political and social climate throughout the Palestinian territories and Israel remains explosive ... [this] summary of incidents involving press freedom violations displays some chilling

*patterns ... Journalists and media workers have been targeted and injured with missiles, live ammunition, shelling, shrapnel, ricochets and rubber-coated steel bullets and they have been harassed and physically assaulted in other ways.*¹⁰⁰

A. Introduction

Journalists in the OPT, be they Israeli, Palestinian, or international, place themselves under daily threat of being attacked, beaten, shot, detained and having their work severely interrupted. In the majority of cases these attacks are motivated by a desire to silence the press and to prevent them from communicating information on human rights violations to the outside world. PCHR has documented large numbers of attacks against the press which indicate a strong pattern of intent and design on behalf of the Israeli military and political establishment. The Israeli policy of closure interferes on a regular basis with attempts by the media to access the areas they need to - on arrival in those areas the media are often met with force designed to keep them out and to keep the public in the dark.

The role of the press, both Palestinian and international, is essential in bringing news of the events of the conflict to the outside world. The media, and individual members of the press (be they camera operators, reporters or journalists) often find themselves at the very front line of reporting on events during incursions by the Israeli military into densely populated refugee camps and towns. During these incursions human rights organisations have documented a pattern of wilful killing of civilians, disproportionate and indiscriminate use of force, collective punishment and other violations. The role of the media is essential in covering such events as they unfold and providing analysis and information to a global and local audience. Incidents in which members of the press are injured or killed are commonplace.

However, for the purposes of this report, the media will be dealt with in the context of when they have been attacked as a result of their

¹⁰⁰ International Press Institute, (2004), *Press freedom Violations in Israel and Palestine September 29, 2000 – September 28 2004*, Vienna:

International Press Institute, available at http://www.freemedia.at/r_intifada/r_intifada_intro.htm.

focus on human rights violations. Whether or not the media discuss human rights law or use human rights terminology in their reporting (although some do) - their coverage of an event is an important part of documenting and exposing human rights violations. It facilitates their audience's understanding of the scale or scope of human rights abuses. Attacks on media documenting human rights abuses have included an incident where a cameraman was shot while filming footage of a series of house demolitions (which are considered to be a form of collective punishment and a breach of the right to adequate housing) in order to prevent the incident being recorded and broadcast.

There is considerable difficulty in establishing whether or not an attack on a member of the press is specifically motivated by a desire to prevent the documenting and exposure of human rights violations. For the purposes of identifying cases for this report we have used the following criteria in identifying cases:

- When the media person was clearly targeted by a known group;
- Where the purpose of the targeting is clearly as a result of the surrounding events - that is to prevent coverage of those events or other related events;
- Where the incident cannot be construed as an accident but as a result of a direct targeting;
- Where the individual attacked was clearly identifiable or known to be a journalist and not 'just' a civilian.

As such, a member of the press who is injured by a bullet from an unknown source (Palestinian or Israeli) or one which ricochets and then hits the journalist, would not be included. Nor would an incident where the status of the journalist was not clear. However in most situations journalists working in the OPT will mark their vehicles and their body armour with the letters 'TV' in bright colours to distinguish themselves. This, alongside obvious equipment such as cameras or microphones, should mean that their status is clear to all parties in the conflict. Although the shooting of a journalist when they may have been indistinguishable from a civilian is still of great concern as a grave breach of international humanitarian law we have not included such cases here.

Journalists are given particular and special mention in international humanitarian law,

Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians...They shall be protected as such under the Conventions and under this Protocol, provided that they take no action adversely affecting their status as civilians.¹⁰¹

Journalists are also given protection under the UDHR and the ICCPR which provide that everyone shall have the right to freedom of expression and that this right shall include the freedom to ‘...seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other medium of his choice.’¹⁰²

In addition, Article 6(b) of the Human Rights Defenders Declaration explicitly allows everyone the right to ‘publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms.’¹⁰³

Building on these rights, and acknowledging their centrality in the work of human rights defence, in her report to the Human Rights Commission in 2003 Hina Jilani, highlights certain rights based ‘platforms’ which are fundamental for human rights defenders to carry out their work. The platforms detailed by her include some which are of particular concern to journalists when carrying out their work:

- (i) Access to Information
- (ii) Freedom of Expression
- (iii) Freedom of Association.

¹⁰¹ Article 79 of the Protocols Additional to the Geneva Convention, 12 August 1949, Protocol 1.

¹⁰² Article 19 of the International Covenant on Civil and Political Rights.

¹⁰³ The full text of the Declaration may be found in Appendix I of this report.

Suppression of these rights, which occurs on a systematic basis within the OPT, are covered in more detail in different chapters of this report. However as a result of the suppression of these rights many journalists have found themselves the victims of attacks to their person, through shootings and beatings. It is when these rights are being violated that the vulnerability levels of the individual human rights defenders increases. These attacks are the culmination of efforts by the Israeli authorities to reduce and eliminate coverage of the events in the OPT. This is an act which is considered by many to be motivated by a desire to veil the actions and human rights violations of the military.

The International Press Institute, an Austrian based advocacy and support organisation for the media, suggested in its most recent review of the press situation in Palestine and Israel that attacks against the press 'usually [serve] the purpose of covering up even worse human rights violations.'¹⁰⁴

The methods of attack could include shootings, beating with clubs, sticks and other implements, journalists reported having mace sprayed in their face, beatings by Israeli settlers (often under the watchful eye of the Israeli military). Verbal threats at checkpoints or more sinister threats by members of the military through phone-calls to the offices of the media have also been recorded.

The Israeli military has, on various occasions, committed themselves to investigating all allegations brought to them. In July 2001, responding to complaints by Reporters Sans Frontieres (RSF) Israeli Army spokesperson Olivier Rafowicz said 'we are going to group together these inquiries and publish them: I will personally see to that. We have to explain what has happened and reveal the mistakes. We really want to establish the truth.' Despite this apparent commitment to the truth and justice, the Israeli military has only disciplined one soldier (at the end of 2001). This prompted RSF to place Shaul Mofaz and Ariel Sharon on a list of 'predators' on media freedoms. Israeli government spokesperson Daniel Seaman

¹⁰⁴ International Press Institute, (2004), *Press freedom Violations in Israel and Palestine September 29, 2000 – September 28 2004*, Vienna:

International Press Institute, available at http://www.freemedia.at/r_intifada/r_intifada_intro.htm.

responded to this by explaining that the Israelis would not listen to any further statements by RSF on press matters.

Journalists operating in the OPT have been attacked because of their attempts to cover incidents which include: torture, house demolitions, wilful killings and injuries, arbitrary arrest and detention, excessive use of force in breaking up demonstrations, incursions into civilian areas, extra-judicial executions.

Against the background of this environment PCHR fieldworkers have recorded at least seventy-nine incidents of physical attacks against the person, involving 100 individual journalists, who were acting in their capacity as human rights defenders in the OPT over the course of the *Intifada* by Israeli forces. Another two attacks resulted in the death of journalists, as a result of being shot and killed by the Israeli military while reporting on human rights violations. These statistics refer to the period of 29 September 2000 until the fourth anniversary of the *Intifada* in 2004.

It should be noted, however, that even these figures are not considered to be exhaustive as many other incidents have been omitted from the statistics for not clearly conforming with the strict criteria laid out above. In many other incidents journalists have also been attacked because of their coverage of human rights abuses but the motivation of the attacker, or another circumstance, could not be clearly established.

B. Case Studies

As stated above there have been seventy-nine attacks and two killings of journalists defending human rights in the OPT by the Israeli military or settlers. The following case studies are from the second half of the *Intifada* only, starting from 29 September 2002. They illustrate clearly the ‘chilling pattern’ of behaviour that journalists interested in exposing human rights abuses face on an almost daily basis in the OPT.

- **Nasser Eshtayeh**, a cameraman from Associated Press, was wounded by a bullet in the left foot fired by an Israeli soldier positioned on a tank. Eshtayeh was reporting on attacks that

erupted between Israeli forces and Palestinian civilian demonstrators at al-Hussein square in the centre of Nablus. In his statement on the incident, Eshtayeh said:

At approximately 14.00 on 30 September 2002, I was at al-Hussein (al-Shuhada) square in the centre of Nablus reporting on an Israeli incursion into the city. Clashes had erupted since the morning. Israeli soldiers burnt a number of Palestinian stores. The Israeli head officer had already allowed us to photograph. I was wearing a bulletproof jacket marked 'press'. I moved closer to the tank to photograph it while they were firing at the boys. As I moved away from the tank, an Israeli soldier on the tank deliberately fired at me. I was wounded by a bullet in the left foot. I was evacuated to Nablus Specialized Hospital, where I remained for ten days.

- **Samir Abu al-Rub**, an *Associated Press* cameraman, was injured on 7 October 2002 while he was with other journalists reporting on an Israeli incursion into the centre of Jenin. According to information available to PCHR, an Israeli tank fired a shell at them that hit a wall beside the journalists. Abu al-Rub was injured in the shoulder as debris from the wall fell on him. The journalists were wearing bulletproof jackets marked 'press'.
- On 25 October 2002 Israeli forces opened fire at a group of journalists and reporters of local and international news agencies as they were filming a roadblock on the coastal road near 'Netzarim' settlement, south of Gaza city. This roadblock is used to divide the Gaza Strip into three parts preventing civilians from traveling to the north or south of Gaza. Civilians who try to pass the roadblock by walking on the near-by beach are often shot. **'Adel al-Za'noun**, correspondent for *Palestine Television* and *France Press*, **Mohammed Nassar**, a cameraman with *Palestine Television*, **Nidal al-Mughrabi**, correspondent for *Reuters* news agency in Gaza, and **Ibrahim Barzaq**, an *Associated Press* correspondent, were among the group. Bullets hit a *Palestine Television* vehicle, in which al-Za'noun and

Nassar were traveling, but no casualties were reported. In his statement to PCHR, al-Za'noun said:

At approximately 13.30 on Friday, 25 October 2002, Mohammed Nassar and I went to the western junction of 'Netzarim' settlement on the coastal road to report on the closure of the junction by Israeli occupying forces. We stopped our car approximately 200 metres southwest of the junction. There, we met Nidal al-Mughrabi and Ibrahim Barzaq. Barzaq parked his car, which was marked 'press', on the roadside to be seen by Israeli soldiers. We all moved forward carrying cameras to be able to photograph sand barriers established by Israeli forces. When we got approximately 100 metres away from one of the sand barriers, four Israeli soldiers appeared suddenly from behind the barriers and fired in the air. Barzaq shouted in Hebrew: 'press'. We moved back until we reached our car. My colleagues lay down behind the car. Israeli soldiers continued to fire in the air. Our car was hit by a bullet.

- At the end of October 2002 a group of the Israeli Border Police beat and verbally abused **'Ammar 'Awadh**, a *Reuters* cameraman and **Mustafa al-Barghouthi**, a freelance journalist. 'Awadh and al-Barghouthi were reporting on Israeli measures near Qalandia checkpoint, between Ramallah and Jerusalem. Israeli soldiers cut 'Awadh's press card up and erased photographs on al-Barghouthi's digital camera. In his statement on the incident 'Awadh said:

At approximately 13.30 on 31 October 2002, my colleague, Mustafa al-Barghouthi, and I were in al-Kassarat area near Qalandia checkpoint, between Ramallah and Jerusalem, filming Israeli soldiers who were detaining and beating dozens of Palestinians. Immediately, Israeli soldiers moved towards us and took our press cards, which were issued by the Israeli governmental press bureau. They also ordered us to remove the memory cards from our digital cameras, but we refused. They attacked us and took our cameras. They removed all the films from my colleague's camera and some films from my camera. They also confiscated my press card.

- On the 25 November 2002 Israeli soldiers attacked two Palestinian journalists in the courtyard in front of the Church of the Nativity in Bethlehem. They detained **Karim al-'Asakra** and **Amin al-'Asakra**, of the *al-Mahad* television station, for more than two hours. Israeli soldiers confiscated videotapes the two journalists had filmed which showed Israeli military attacks on Palestinians in the town.
- On 19 December 2002 a Palestinian photographer employed by *Agence France-Presse* was attacked and beaten by Israeli border guards at a roadblock they had set up near Jenin. They had clearly acknowledged that he was a journalist and they threatened to seize his camera. However when they realised no pictures had been taken they gave it back. Before letting him go they punched **Jaafar Ishtayeh** and then threatened to kill him if he came back. In a statement to PCHR Ishtayeh said:

On Thursday morning, 19 December 2002, I was traveling from Salem village to my work in Nablus on foot as Israeli occupying forces had dug a trench around the village, obstructing the movement of cars from and into the village. An Israeli military jeep had set up a temporary checkpoint. I tried to photograph the scene, but an Israeli soldier called me over and said: 'Why are you photographing?' I told him that I am working for *Agence France-Presse*. He tried to confiscate my camera, but I refused and he hit me on my head. Other Israeli soldiers got out of the jeep and beat me. They took the camera, but there were no photos. Then, an Israeli soldier said to me: 'If I see you again, I will shoot you.'

- At approximately 12.30 on the 29 December 2002, Israeli soldiers at a military checkpoint at the entrance of al-Mawasi area in the west of Rafah, opened fire at Palestinians and internationals who were participating in a peaceful sit-in. Residents of the area had organized the sit-in, which took place approximately 200 metres away from a checkpoint. Twenty members of the International Solidarity Movement participated in the sit-in, which called for the Israeli military to facilitate free

access to and from the area: the checkpoint had been closed since the 6 November 2002. A Palestinian journalist, **Tamer Nasser al-Din Ziada**, a cameraman with *Associated Press*, was wounded by a bullet in the head. PCHR's field worker in Rafah reported that the journalist was wearing a bullet-proof suit marked with press. He added that the area had not witnessed any clashes and that Israeli soldiers clearly fired directly at the participants. In his affidavit to PCHR, Ziada said:

At approximately 11.50, on Sunday, 29 December 2002, I went towards an Israeli military checkpoint at the entrance of al-Mawasi area near Tal al-Sultan neighbourhood in the west of Rafah, to report on a sit-in organized by residents of the area who had been denied access to their homes in the Mawasi. A delegation from the International Solidarity Movement also participated in the sit-in. At approximately 12.00, while I was with other journalists and some members of International Solidarity Movement, Israeli soldiers opened fire at us. I saw bullets hitting the ground. Soon, I felt as if a stone had hit my head. I fell onto the ground.

- On the same day the Israeli military arrested **Mustafa Shawkat Simha**, a journalist and a spokesman for the International Solidarity Movement, near Jayous village in Qalqilya. They beat him and a US journalist, **Radica Sneh**, who had tried to defend him. They then took him to a detention centre in 'Kidumim' settlement. Simha was accompanying journalists and members of the International Solidarity Movement, who were reporting on Israeli attacks on Palestinian civilians. Simha told Israeli soldiers that he was a journalist and that he had an international press card. In the same incident, Ussama Qashwa', a freelance journalist, was injured. In his statement on the attack, Simha said:

On 29 December 2002, while I was reporting on an international march in Jayous village near Qalqilya protesting against the confiscation of Palestinian land by Israeli occupying forces for the construction of a separating wall between the West Bank and Israel. Debate erupted between the participants and Israeli soldiers who came to

disperse them. Israeli soldiers fired tear gas canisters, so I and members of International Solidarity Movement took shelter in a nearby house. Israeli soldiers broke into the house and searched it. International journalists intervened to protect me, but Israeli soldiers opened fire at them. They also beat Radica Sneh, a US journalist with the International Solidarity Movement. They detained me in Jayous village for six hours, during which time they beat me. Then, they took me to 'Kidumim' settlement. They refused to recognize me as a journalist. After an eight-day detention without charge, they interrogated me, accusing me of throwing stones at Israeli soldiers. Three soldiers, one of whom was not even present in the area during the incident, testified against me. The testimonies were different from one another. When I denied the charge before the interrogator, he said: 'A journalist is not a prophet and many journalists were killed or arrested.' I was brought to trial on the same day, and my detention was renewed for another eight days to conclude the investigation. On 27 January 2003, the court decided that I must pay 3000 NIS (approximately US\$700) as a non-refundable bail pending another decision by the court on 19 March 2003. The court also ordered me to go to a police station in 'Kidumim' settlement every Thursday to prove my presence and not to participate in any press work or demonstrations pending the trial session. They assigned me residence in Jayous village.

- On 21 January 2003 Israeli soldiers beat **Ja'far Eshtayeh**, of *Agence France-Presse*, and **Nasser Estayeh**, of *Associated Press*. The two journalists were photographing two Palestinian children, who were being arrested by Israeli soldiers and who were tied to the front of a military jeep. In his statement on the attack, Ja'far Eshtayeh said:

On 21 January 2003, we went to Khellat al-'Aamoud area to report on clashes between Israeli occupying forces and Palestinian boys. While we were trying to photograph Israeli soldiers closely, we were surprised to see an Israeli military jeep moving around with two Palestinian children tied to it. The jeep toured around the city. It then moved into a closed

street. When Israeli soldiers noticed us trying to photograph them, they got the children down and the jeep moved very fast towards us. Israeli soldiers tried to confiscate our cameras, but we resisted, so they beat us. An Israeli soldier said to me: 'If I see you again, I will kill you.' He pointed at my neck.

- One week later, Israeli forces operating in Jenin opened fire at **Saif Shawqi al-Dahla**, a photographer with *Agence France-Presse*, wounding him with two bullets in the right leg and foot. In his statement on the incident, al-Dhala said:

At approximately 07.30 on 28 January 2003, I and a number of journalists and international volunteers went to the centre of Jenin to report on an Israeli incursion into the town. While I was there, I received a phone call from a resident of the town who informed me that a young man had been wounded in Faisal Street and no one was able to offer him help. I and my colleagues went to the area immediately. When we arrived there, an Israeli tank had stopped approximately 5 metres away from the body of a Palestinian young man. I moved towards the tank to let Israeli soldiers identify me as a journalist as I was wearing a helmet marked with 'press' and a bullet-proof suit with 'TV' written on it. I photographed the Palestinian victim. Israeli soldiers opened fire at me and I fell to the ground. I crawled until I got far away from the tank. My colleagues evacuated me to hospital where I discovered that I had been wounded by two bullets in the right leg and foot.

- In February 2003, Israeli occupying forces positioned near the junction on the coastal road leading to 'Netzarim' settlement, south of Gaza city, opened fire at journalists with *al-Arabiya* satellite channel who were reporting on the Israeli closure of the coastal road, which separates Gaza City from the middle of the Gaza Strip. The journalists were wearing bullet-proof jackets clearly marked with 'press'. In his statement to PCHR on the incident, **Saif Shaheen**, Gaza correspondent for the channel, said:

At approximately 11.30 on 20 February 2003, I and four staff members of *al-Arabiya* satellite channel went to 'Netzarim' junction on the coastal road, south of Gaza city. When we arrived there, Israeli soldiers opened fire at us for no apparent reason. We took shelter behind some buildings and then left the area.

- On 9 April 2003¹⁰⁵ **Hussam Abu Alan** of *Agence France-Presse* and **Nayef al-Hashlamoon** of *Reuters* were both beaten by Israeli soldiers after filming an incident in Hebron, Israeli troops had forced all the local shopkeepers to close their premises, in clear violation of their right to economic security. The cameramen were later taken to hospital in Hebron.
- While filming an incursion by the Israeli military into the old town in Nablus on the morning of 19 April 2003 **Nazih Darwzeh**, 45, was shot dead at close range by the Israeli military. Darwzeh, a cameraman for *Palestine Television* and *Associated Press*, was killed when the Israeli military deliberately fired at a group of Palestinian journalists who were reporting on clashes that erupted between Palestinian civilians and Israeli soldiers in the centre of Nablus. The journalists were clearly marked and were carrying their cameras. Video footage of the incident, taken by a *Reuters* cameraman, as well as eyewitness reports indicate that he was clearly identifiable as a journalist. He was wearing a fluorescent yellow jacket marked 'Press' and holding a camera. Before the shooting the journalists in the area were shouting in English and in Hebrew that they were members of the Press. Before he was shot Darwzeh was standing in a doorway filming a tank. A single Israeli soldier took a position near the tank and fired a single shot at a group of three journalists from a distance of 10 - 20 metres. The shot shattered the camera which Darwzeh was holding and entered his head above the eye killing him instantly. Two other journalists travelling with Darwzeh that day were injured by Israeli gunfire, **Nasser Ishtayeh**, working for *AP* and **Aref Tufaha**.

¹⁰⁵ The following reports are based on submissions made by PCHR to the International Press Institute on press freedom violations, they have not previously been published in English by PCHR.

- On 2 May 2003 **James Miller** a freelance journalist working on a documentary for *HBO*, a US based cable channel, about the Palestinian-Israeli conflict, was in Rafah filming the Israeli military conducting house demolitions. He was shot dead in Rafah when a bullet from an Israeli tank hit him in the neck. Miller and a group of other journalists had been filming late that evening inside a house very close to the Egyptian border. All the journalists were wearing bullet-proof vests marked ‘TV’ and helmets. At around 23.30 they decided to leave the house and set about trying to identify themselves to the military. Waving a white flag and using a torch to highlight the lettering on their vests they began to approach the military. They shouted in English and Arabic that they were members of the press. The troops fired three shots at them and this was followed by a burst of gunfire. Miller was hit in the neck.

The Israeli military stated that their troops had been defending themselves against anti-tank rockets fired in their direction. While committing a search operation they found Miller with a bullet lodged in his neck. The Israeli military later claimed that Miller was shot from behind, so indicating that he was most probably shot by Palestinian militants. However an independent autopsy was conducted at the Israeli national forensic institute which indicated that he had been shot by an Israeli bullet head on. This supports the account given by other eyewitness present that evening. This also eliminates the likelihood that Miller was killed in crossfire or by an accidental ricochet. The family believes that there is compelling evidence that he was targeted by the military. Eyewitness accounts recorded by PCHR fieldworkers state that there was little or no other gun-firing that night. The Israeli military has failed to make the results of its investigations into the incident public. Miller’s documentary has since been shown, to considerable acclaim. It recounts the effect of the conflict on the children in Rafah.

- In 2004 attacks against Journalists reporting on human rights violations continued in the climate of impunity which had been established over the course of the *Intifada*. Journalists who were covering an incursion into Jenin on 9 March 2004 witnessed and

recorded the killing of an unarmed 23-year-old civilian woman. One of them, **Saif Dahla**, a photographer who works for *Agence France-Presse* was injured when soldiers opened fire with machine-guns at her and the other journalists near-by. All of them were clearly identifiable as journalists, wearing distinctive markings to indicate this. Dahala, whose injuries were not life threatening was shot when hostilities had ended. He had been standing very close to the civilian who had been shot earlier on. The journalists had been working in the area for over an hour and had come under attack on a number of occasions from the Israeli military. As the journalists tried to evacuate Dahla to a near-by home they again came under fire from the tank.

- About a dozen policemen attacked **Ammar Awad**, a *Reuters* journalist while he was reporting on Israeli restrictions on the right of worshippers to pray at the al-Aqsa Mosque in Jerusalem on 2 April 2004. The restrictions caused clashes between demonstrators and Israeli police. The police beat him so badly that he was advised to stay at home and stop working by his doctor. They also seized identity documents and destroyed his photographic equipment, including the photographs he had taken of the Israeli actions against those leaving the Friday prayers.
- The *al-Jazeera* and *Reuters* cameraman, **Ali Samoudi**, was shot in the nose by an Israeli soldier on 24 April while covering an incursion by the Israeli military into Jenin. He was distinguishable as a member of the press as a result of the clear markings on his clothing. In the company of other journalists Samoudi believed that clashes in the area had ended. Samoudi then witnessed the wilful killing of a young child, **Mohammed Azzouqa**. He filmed the military vehicles which were, at this stage, leaving the area. As he and his colleague walked off the soldiers shouted at them, instructing them to leave the area and to stop filming. His colleague called him to hurry-up and as Samoudi turned around a bullet penetrated his nose. Samoudi told PCHR that if he had not turned at that very moment he would have been shot in the head. The military refused to offer him any medical assistance and forced him to walk almost 250 metres until he came to an ambulance, despite the fact that he was bleeding heavily. He believed that he was clearly targeted

for being a member of the press who was trying to report on the activities of the Israeli military that day. Samoudi had been attacked previously by Israeli soldiers in Jenin refugee camp in 2001.

- **Ala'a Badarneh** of the *European Press Agency* had travelled to al-Zawiye village, south of Nablus, on 10 June 2004. He wanted to cover protests by Palestinians against the continued construction of the Wall in the area, one month before the ICJ found that the construction of the Wall was in breach of international law. Soldiers broke up the demonstration with tear gas. He was clearly identifiable as a journalist, with distinctive markings, when a soldier 40 metres from him fired a tear gas canister directly at him. He was taken to Nablus hospital for treatment where he was kept in for observation overnight.

C. The Case of Kawther Salam

Kawther Salam is a Palestinian journalist who was born and raised in the town of Hebron. She has been involved in the struggle for the right of the Palestinian people to have self-determination and demanded human rights and appropriate treatment for them.

Over the course of this *Intifada* Kawther, like many other journalists, set out to expose the actions of the Israeli military. Observing the suffering around her she noted

Wherever we find occupation we find a violation of human rights, and where we find a violation of human rights we find a violation of justice, and where we find a violation of justice we will find no freedom, no peace, no security.¹⁰⁶

The harassment, attacks, sexual harassment, violent threats and restrictions on her work finally forced Kawther Salam to become another Palestinian refugee. In 2002 she moved to Vienna where she

¹⁰⁶ Correspondence with the author, 29 December 2004.

now lives, continuing to expose the truth about occupation and about life under the corrupted PNA.¹⁰⁷

Attacks against her continued systematically for over two years with complete complicity from the Israeli military command, to whom Kawther complained on a variety of occasions.

Finally Kawther Salam decided to escape the attacks, harassment and sense of general insecurity provided by living in Palestine and Israel completely. She fled to Austria as a refugee. In 2004 she was the recipient of the Human Rights Watch Hellman/Hammett Grant, an honorarium designed to assist writers who have been persecuted for their defence of human rights throughout the world.

She continues to be a strong believer in human rights and the defence of human rights defenders:

Since I lived under the occupation, and I worked as a journalist, I find out that defending human rights is the most basic cause of liberation and peace. ... This is why I strive to defend the defenders of the human rights and freedom of information and to keep a watchful eye on the violations of human rights under the occupation, without any hesitation or favouritism.¹⁰⁸

¹⁰⁷ The full text of Kawther's diary can be found at http://www.gush-shalom.org/kawthar/kawth_eng.html.

¹⁰⁸ Correspondence with the author, 29 December 2004.

Part III: Human Rights Defenders Under the Palestinian National Authority

As observed in the introduction, the challenge faced by human rights defenders in the OPT is almost unique in that they are compelled to either work against violations by the Israeli military as well as violations by the Palestinian National Authority (PNA) or, in some cases, by both sides. Very few organisations have the resources to work on both types of violation, and consequently, priority tends to be given to the Israeli violations of human rights which are grander in scale and tend to be seen as being more 'immediate'.

The PNA's record on human rights has been poor - the PNA has failed to incorporate international human rights standards into all of its domestic law. Following on from this, the failure to initiate substantial democratic reforms for such a long period, during the Arafat era, led to an atmosphere conducive to corruption, violence and interference with judicial process. The collapse of law enforcement bodies during the *Intifada*, because of Israeli attacks against them, combined with the failure of the PNA to take genuine or coordinated action, led to a proliferation of small arms which are now regularly used by members of paramilitary factions or other criminal organisations in pursuit of their aims or in attacking journalists and other outspoken public figures. The current chaotic security situation within the PNA controlled areas results from this and is also a consequence of internal political infighting.

Attacks such as the one against the Khan Yunis based Culture and Free Thought Association have also gone uninvestigated by the security services. According to preliminary investigations conducted by PCHR, at approximately 01:45 on Tuesday, 31 May 2005, three masked and armed persons broke into the offices of Culture and Free Thought Association in al-Amal neighborhood in Khan Yunis. They detained the night guard in the guardroom and proceeded to break windows in the Centre and set fire to the premises. The administration and computer division was totally burnt and other parts of the centre were severely damaged before the armed persons withdrew from the area. Firefighting crews were

called and they were able to extinguish the fire, but not before extensive damage to the Association's premises.

It is notable that an unknown group calling themselves the 'Echo of Muslim Voices' issued a leaflet a few days prior to the attack strongly criticizing the Association and its administration following a conference organised by the Association on 3 May 2005 called 'Echo of Bold Voices'. A number of educational experts and teachers of the Directorate of Education and hundreds of preparatory school students in Rafah and Khan Yunis participated in the Conference.

The outbreak in kidnappings is also symptomatic of a complete failure by the PNA to enforce respect for the rule of law.

The PNA, in order to answer its critics on the issue of clamping down on attacks against the Israeli civilian population, has instigated mass arrest campaigns without trial and, infamously, established a system known as the State Security Court. These Courts operated clandestinely, often at night-time and without any access to lawyers or independent officials. They were presided over by security officials rather than members of the Judiciary and being found innocent of a particular crime was a rare treat afforded to few who appeared before them.

Further to this the PNA's poor record extends back, before the *Intifada*. One of the key methods of preventing or, pursuing restitution or compensation for a human rights violation is through the Courts. Palestinian lawyers have been a particularly vocal collective in their criticisms of the PNA. To this end the decision by the PNA to try and prevent them from practicing at the Palestinian Bar can be considered to be one of the most fundamental attacks against the right to protect human rights.

The situation of human rights defenders under the PNA has had varied fortunes. The PLO and the PNA both supported the work of human rights defenders when it relates to the Israeli occupation and bringing the attention of the world to the violations which have been committed. However when these very same human rights defenders turned their critical eye on the PNA, under President Arafat, they

were invariably locked up or threatened. However the current PNA leadership has, perhaps, learned the lessons of the past. Some critics suggest, however, that the PNA is too weak after five years of the Palestinian uprising against the occupation to affect any real impact on the human rights situation or on the situation of human rights defenders in particular. These critics await a time when a bolstered PNA begins to look internally for new methods of silencing its most vocal critic - Palestinian civil society.

Already some of the signs may exist - attempts have already been made to interfere with the independence of the Judiciary by altering pay rates. As of yet substantial action has still not been taken by the Palestinian Legislative Council (the Parliamentary body) to incorporate human rights norms into domestic law.

1. The Internal Security Chaos - Attacks by the Security Services and by Armed Factions Linked to Them

*'[S]ecurity forces - including police, military, paramilitary and similar forces - are the most common direct perpetrators of human rights violations against defenders.'*¹⁰⁹

Threats by security forces are indeed common within the OPT. However during the past few years of *Intifada* the security forces have continued to weaken as a result of the occupation and the internal chaos. This has caused a reduction in the number of offences committed and attacks against human rights defenders in particular. The security services, and armed factions with close or suspected links to them, have been responsible for attacks against journalists who have provided unfavourable coverage of their activities and for attacks against (and in particular kidnapping of) international human rights defenders.

Attacks against the press under the PNA are relatively commonplace. Such attacks take the form of closures of offices as well as physical attacks and beatings by unknown people. It is not uncommon for journalists who work on reporting the Israeli occupation to be attacked by Palestinians with links to the security services or by armed groups because of their reportage of the political situation under the PNA. Those journalists who try to root out political corruption or who highlight democratic deficiencies are liable to be beaten or otherwise attacked. However it is important to observe that in the majority of such cases, given that the perpetrators are rarely identified or known, it is impossible to ascertain whether the attacks against journalists come as attacks against human rights defenders in particular. However given the climate and the types of attacks and the fact that the attacks are against certain journalists who report on particular issues, it is reasonable to assume that the

¹⁰⁹Jilani, H, (2003), *Human Rights Questions: Human Rights Questions Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms*, Geneva: Human Rights Commission, Fifty-Eighth Session, A/58/380, para. 37, available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/a106527cf89ae9b2c1256dd7004dafce?Opendocument>.

attacks are motivated by a desire to silence those who speak truth to power inside the PNA and its associated armed factions.

A culture of impunity is associated with such attacks. The perpetrators are rarely, if ever, found and brought before of a court. This is often because their activities are sanctioned at various levels of the PNA security services or, because the armed groups are too powerful for the PNA security services to confront. Either way, attacks against journalists are relatively commonplace and are rarely punished.

One of the more prominent victims of regular attacks by the security services is **Seif al-Din Shaheen**, Gaza correspondent for Arabic satellite channel *al-Arabiya* and previously for *al-Jazeera*. In one example, at approximately 13.15 on Thursday, 8 January 2004, Shaheen, 35, was travelling in his car with **‘Emad ‘Eid**, correspondent of the Lebanese *al-Manar* satellite channel. Shaheen and ‘Eid had just left the offices of the al-Arabiya satellite channel in the centre of Gaza city. Five armed individuals, four of whom wore masks, intercepted the car, dragged Shaheen from the vehicle and then proceeded to beat him. The group then escaped. Shaheen was taken to Shifa Hospital in Gaza city. Medical sources confirmed that he had sustained bruising throughout the body. On 21 December 2001, he was attacked in a similar incident by unidentified individuals. He was also arrested by Palestinian security services on 6 January 2003, allegedly in response to his TV reports. Shaheen’s health still suffers as a result of the attacks against him.¹¹⁰

Attacks against institutions which do not support the PNA are also commonplace and take place in the form of raids by the security services on the offices and seizure of files or equipment.

Although generally rare, an ongoing threat against defenders are the kidnappings which took place. These kidnappings occurred as a direct result of the chaos inside the security services and targeted international human rights defenders. On 19 September 2002 a group of Italian human rights defenders were kidnapped in Khan Yunis. The three, who worked for Grassroots Solidarity with the

¹¹⁰ In interview, 16 May 2005, Gaza City.

Palestinian People, were held for about sixteen hours in a house in Khan Yunis before being released after the intervention of human rights organisations and established national figures. Their kidnappers specifically told them that the kidnapping was in response to the fact that they had lost their jobs with the security services and wanted them back. The kidnappers were unquestionably involved with militant groups affiliated to the ruling Fatah party of then President Arafat.

A similar series of incidents occurred in 2004, which took place in the context of kidnappings of members of the security services and against the backdrop of the intensive kidnapping period in Iraq. On Friday, 16 July at 21.30, an armed group, the 'Martyr Ahmed Abu al-Reesh Brigades', kidnapped four French citizens working for an international organisation, including two women, in Khan Yunis. The kidnappers claimed that they carried out the kidnapping in protest against comments which had been made by Terje Roed-Larsen about the PNA. The comments demanded an end to the corruption in the PNA. The kidnappers then contradicted themselves and stated they wanted an end to corruption in the PNA. Negotiations were held with the kidnappers and the victims were, again, released unharmed.

In the evening of Friday, 30 July 2004, four gunmen kidnapped three foreign nationals working in their international capacity in the West Bank town of Nablus. The victims included an Irish national, a UK national and a US national. They were taken from Nablus to Balata refugee camp. The three foreigners were released after the Palestinian police surrounded the house where they had been taken.

Although in each incident the human rights defenders were released unharmed the trend of kidnappings which broke out, especially in 2004 during the ongoing Iraq kidnapping crises, was of serious concern to UNRWA and other internationals based in the OPT. UNRWA specified that one of the reasons it moved its staff out of the Gaza Strip was the escalation in internal security chaos.

The pattern was repeated in the summer of 2005. It culminated in a second decision by the UN to remove its staff for security reasons. On this occasion the pattern of threats indicated further involvement

by elements linked to the Palestinian National Authority who were in conflict with the PNA. The first attack against human rights defenders came when a US citizen was kidnapped in Rafah early on the morning of 24 July 2005.

According to PCHR's initial investigations at about 06.45 on Sunday, 24 July an armed Palestinian wearing military garb broke into an apartment inside a residential block in the centre of Rafah. The apartment was inhabited by four US citizens. Under threat of arms the suspect kidnapped **Harry Borrey**, 75 years old. He was ordered to get into a civilian car stopped near the building. Three other masked and armed individuals were inside the car. He was then taken to an unknown location. The reason for the kidnapping has not been made clear by the perpetrators.

The Palestinian police found the victim an hour later in an UNRWA school. He was completely unharmed. The four US citizens came to Gaza to witness the consequences of the Israeli occupation on the Palestinian people. They have conducted a series of visits in which they witnessed destruction across the Gaza Strip.

The trend of kidnappings also included another attack against human rights defenders from an international organisation. **Zoi Constantine**, an Australian national and **Steve Sabella**, a Palestinian national with Jerusalem ID, from the United Nations Development Programme (UNDP) were kidnapped along a busy street in Gaza City's beach front area of el Remal at approximately 13.40 on Friday, 29 July 2005.

The two were forced into their UN vehicle by armed members of the Abed family and driven to Jihad Mahmoud Abed's house in Ibad Rahman area of Jabalya. The two UN officials were held in the house in the northern Gaza Strip while other armed persons set fire to the streets and alleyways around the house.

The Abed family has said that the kidnapping was in response to the earlier kidnapping of their family member, Jihad, by an armed group referring to themselves as the Jenin Martyrs Brigade. Abed had been kidnapped at Abu Houli checkpoint on 28 July 2005 at approximately 14.30 after returning from Egypt with his family and

held in al-Borrej Refugee camp. Abed is a Colonel in Military Intelligence and a senior aide to the former Head of Military Intelligence, Mousa Arafat. The Abed family demanded his release in return for the UN officials' release.

After direct intervention from both official and other mediators, including Rashid Abu Shabak (Head of Preventive Security Services), the two were released at approximately 18.35 that evening. Jihad Abed was later released at approximately 01.00 on Saturday, 30 July 2005. This incident raised concerns that the PNA were prepared to negotiate and accede to the demands of kidnappers.

These concerns were raised again when at approximately 12.15 on Monday, 8 August 2005, a number of masked gunmen, who were traveling in a civilian car, chased an UNRWA jeep, in which two UNRWA international staff members and a driver were traveling in Khan Yunis. The gunmen fired a number of bullets at the tyres of the jeep and forced the driver to stop. They then kidnapped the UNRWA staff members, taking them and their jeep towards the al-Sikka area in Khan Yunis. Immediately, Palestinian security services chased the kidnappers. An exchange of gunfire erupted between the two sides, but the kidnappers were able to escape towards a house in the area, where they held the three kidnapped UNRWA staff members. Following intervention by some public figures in the town, the hostages were released. However, the kidnappers were able to escape.

The three UNRWA staff members who were kidnapped are:

1. **Christina Blunt**, British;
2. **Stefan Ziegler**, Swiss; and
3. **Rasmi Ba'lousha**, Palestinian.

As a result of the exchange of fire between the kidnappers and Palestinian security services, two civilian bystanders were wounded:

1. **Jamal Hisham Barbakh**, 28, wounded by a bullet to the right knee and;
2. **Basheer 'Awad al-Masri**, 45, wounded by a bullet to the left thigh.

This incident occurred in the context of tension that had spread over Khan Yunis since Sunday afternoon, 7 August 2005, when the Palestinian Preventive Security Service (PSS) arrested **Suleiman al-Farra**, Director of the Media Office at the Secretariat of the Central Committee in Fatah. A number of gunmen gathered near the headquarters of the PSS and opened fire in the air. At approximately 15.30, gunmen broke into and seized control over the headquarters of the PRCS in the al-Amal neighbourhood of Khan Yunis and demanded al-Farra's release. A number of other gunmen rushed into the streets, where they forced traders to close their shops and set fire to tyres. At approximately 19.00, the gunmen left the headquarters of the PRCS but soon after, at approximately 19.30, a number of gunmen moved towards the Municipality of Khan Yunis and attempted to seize control over its offices. These gunmen attacked some journalists who were near offices of the Municipality. One of the gunmen threw a sound bomb at the journalists, injuring one of them, 32-year-old **Nahid 'Abdul Hadi al-Khatib**. The gunmen managed to take control of the Municipality offices and demanded al-Farra's release. They remained there until 22.30. These kinds of incidents are typical of an ongoing pattern which involves an internal political dispute and results in a severe threat to international human rights defenders.

In another, apparently related development, at approximately 21:00 on Sunday, 7 August 2005, a number of unknown gunmen fired at the offices of the ICRC in Khan Yunis. They also threw a number of home-made hand grenades near the offices. No casualties were reported, but the offices were damaged. Subsequently, the ICRC decided to close its offices in Khan Yunis and to suspend its field activities in the Gaza Strip, due to the increased security risks for their staff.

The suspension of ICRC activities was followed shortly afterwards by another kidnapping which took place against the background of a high-level decision taken by the UN about the possibility of evacuating non-essential staff from Gaza. On the day that the United Nations Relief and Works Agency for Refugees in the Middle East announced that it was going to be evacuating its non-essential headquarters staff, a French-Arabic journalist was kidnapped in

Gaza City. The journalist, a sound operator for *Channel 3*, was reportedly kidnapped outside the Gaza International Hotel in the el Remal district of Gaza city around midnight on 14 August 2005. He was held as a hostage for nine days without the kidnappers declaring their identity or their demands. This latest kidnap was different from previous incidents in the Gaza Strip as hostages were released in a few hours. The identity of the kidnappers has not been so far revealed and no details about the journalist's releases or whether the PNA took any legal measures against the kidnappers have been disclosed. PCHR is concerned that the PNA acceded directly to the demands of the kidnappers - so encouraging further such incidents to occur.

In addition to these kidnappings there have been two attacks against the offices of the Central Elections Commission (CEC) in Deir al Balah in the center of the Gaza Strip. The first incident took place on 8 May 2005. The CEC had opened registration centres across the Gaza Strip. A total of nine men, seven of whom were armed and wearing masks, from the al Aqsa Martyrs Brigade of the Fatah movement raided the offices of the CEC and forced the Director of the office, **Jameel Tawfiq al-Khaldi** to shut down registration. Following discussions with CEC HQ in Ramallah he complied but reopened the office the next day.

A further attack took place on 14 November 2005 against a CEC office in Rafah, a town on the border between Gaza and Egypt. A masked and armed man handed a leaflet signed by 'the Islamic Army' instructing staff to close the office immediately. The strongly-worded leaflet claimed that:

[F]oreign states and collaborators among our people plan conspiracies under the terms of democracy, liberation and freedom of women ... Based on written and photographed evidence, we declare the closure of a centre of depravity which witnesses acts that contradict our morals and religion, taking into consideration that there are plans by collaborators to make use of elections to inflame internal fights among our Muslim people.

The perpetrators of this attack have not been established due to the failure of the security services to investigate and prosecute the individual(s) responsible. This ongoing climate of impunity encourages attacks against human rights defenders such as this.

The ongoing security chaos inside the OPT will continue to have a direct impact on the work of Palestinian and international human rights defenders. Until such time as the PNA instigates effective reform, which is founded on the implementation of the rule of law, it is unlikely to be able to put an end to such violations against human rights defenders.¹¹¹

¹¹¹ At the time of going to press at least one other attempted , on this occasion unsuccessful, kidnapping had occurred inside the Gaza Strip and a series of attacks, by members of the Fatah party, took place on offices and staff of the Central Elections Commission across the Gaza Strip. Please PCHR Press Release 163/2005 for further details of attacks against the CEC.

Part IV: Women Defending Human Rights in Their Own Words – Two Perspectives

1. Ibtesam Zaqout – Head of the PCHR Fieldwork Unit

I started my human rights work in 1989 as a fieldworker in the al-Haq Institute in Ramallah. I was living in the Gaza Strip, specifically in Khan Yunis refugee camp. I was chosen from among scores of applicants for the job. The choice fell on me in part because of the relationship of my educational background with the work. I had a degree in political science from Al-Najah University. In addition, I had worked in the women's activities in the refugee camp. And I was a firm believer in the human rights cause.

I was the only female in a five-member team. I worked in the Khan Yunis city, refugee camp, and suburbs. My job was to monitor and document violations of International Law and International Humanitarian Law. This was necessitated by the fact that the Gaza Strip was under Israeli occupation; and the Israeli army controlled the area completely and deployed in cities, towns, and residential areas.

My work in al-Haq was for about three and a half years. Although I was married and mother to three children, I worked very hard in my job. I was working in the very difficult circumstances of the first *Intifada*. I woke up early, and went to the field to document events and meet victims and eyewitnesses personally. I visited medical centres and relevant organizations. And at the end of the day, I prepared my report and faxed it to the Program Officer. And at the end of each week, I traveled to Ramallah to meet my colleagues and others in charge of the organisation. I spent a whole day there before returning to my hometown.

I worked as a fieldworker in the Gaza Centre for Rights and Law in Gaza City from 1993-1995. My job was harder than before, as we started to work in the new era of 'Oslo' and the Israeli redeployment from the Gaza Strip. It was essential to work on two agendas: the Israeli agenda and the Palestinian agenda. Again, I was the only female in a five-member team of fieldworkers.

Then I started to work as a fieldworker in the Palestinian Centre for Human Rights, where I was a founding member. I worked in the Centre's Democratic Development Unit. And since 1998, I have been Head of the Fieldwork Unit.

As a human rights activist, I faced many challenges. When I started my career, human rights work was very limited. The number of relevant institutions was very few in general, and non-existent in the Gaza Strip. And so it was very difficult to deal with people concerning their problems and the violations they suffered from. The people felt it was useless to say anything; and that it was a luxury and waste of time to work in the field of human rights. In addition, occupation soldiers hindered my work frequently by banning me from taking photos, throwing tear gas in my direction, and stopping me from covering events. Furthermore, many people refused to give information out of fear or out of their feeling that what I was doing wasn't important.

There are many major challenges facing women. To begin with, people around me didn't come to terms with the fact that I was working in the street, confronting soldiers, and meeting the injured in hospitals. Sadly, some of them were colleagues in the same profession. The attitude towards women was that the suitable professions were a teacher, physician, or any other professions where women aren't in public.

Some people, including supposed democracy advocates, believe that the main responsibility of women is the house and taking care of children. As a result, women face harsh difficulties, especially if they are married and have children. And because our society is male-chauvinistic, women are disputed the right to work. And if they work, they are discriminated against in work tasks.

A female human rights activist has more responsibilities towards her work than a woman in another profession. She has to carry inside her the concerns of the people and society. She must work day and night to remedy the damage and defend their rights. She has to advocate a number of sensitive and emotional cases, which could have negative effects on her life. She could be targeted by security forces or human rights violators.

A working woman faces difficulties in her work because of her gender. For example, I used to interview victims of torture in prison, ask them about torture techniques, and request pictures of the tortured areas. They would vehemently refuse and stop cooperating with me. The only solution was to bring a male colleague with me.

I think that what Amnesty International's report said about violence against women is correct. Women are suffering from the violence perpetrated by the occupation. From my field experience, Israeli soldiers frequently chased me and threw tear gas at me. I remember that in one incident in 1990 when I was seven months pregnant with my second child. I went to the Khan Yunis refugee camp where there were confrontations between occupation soldiers and some Palestinian youths. When one soldier saw me, he jumped behind me and threw a tear gas grenade at me. It inflicted abdominal and back pain on me. And when the child was born, it suffered greatly from breathing difficulties. This doesn't mean that men aren't subjected to the occupation's violence. On the contrary, they are subjected to worse violence. But the tasks born on the shoulders of women are more difficult than those asked of men.

As to social violence, I stated earlier that society's outlook upon women is shrouded with inferiority and contempt. Even though the situation is better now because people increasingly feel the importance of what we are doing to expose the Israeli violations, and because of our struggle to attain our rights with all possible means. However, the social challenges remain great, especially for women activists. For a long time, the Gaza Strip is experiencing an increasing spread of fundamentalism, which affects women's programmes through confrontation and incitement.

2. Dunya El-Amal Ismail

I do not remember exactly when my interest and, subsequently, work started in the field of human rights, especially women's rights. But I am certain that my primary work as a journalist, with a critical vision and as a defender of freedom of expression, overlapped frequently with human rights. I was forced to develop my defense of freedom of expression and opinion as a result of the different harassment I

received against my critical writing about the Palestinian National Authority (PNA) and its figures, security branches, and governmental bodies. Harassment frequently extended to me personally as a woman or a citizen.

I chose to return to the Gaza Strip after the establishment of the PNA. Because of this choice, I put up with numerous difficulties as a woman in my mid-twenties living alone in a small house in a conservative city. I was away from my family and work in Cairo because of my belief that writing about Palestine away from Palestine lacks credibility. I insisted on going inside the lion's den to directly confront the dangers, which is what happened. My first book, *I saw in Gaza* was burned inside Gaza Central Prison after it was confiscated and banned from circulation. This was the first incident that put me in direct confrontation with Palestinian security branches.

I urgently needed the whole human rights program with its laws, mechanisms, and total alignment with humans and their freedoms. Afterwards, this need developed into an actual belief in the importance of human rights for people like me, and for men and women requiring the fulfillment of their rights from different perspectives and in varying degrees. The belief in the importance of human rights work was augmented by the fact that journalism, for a number of reasons, was not able to fulfill its criticism and enlightenment responsibilities.

In the year 2000, a number of motivated local human rights activists established al-Mezan Centre for Human Rights. The Centre's Board, Chairman and Director asked me to work at the Centre. This came after al-Mezan's founders learned about my different roles and activities in NGO's, especially women's organisations; with whom I had direct and continuous relationships through projects and activities defending women's rights. I was al-Mezan's first employee.

Women's rights were my main interest, firstly, because I was a woman. Secondly, this issue was important due to the overall professional and humanitarian losses I suffered for this detestable

gender issue in the extremely conservative Gaza society with its rigid customs.

I thought that working in a human rights organisation would concentrate my energy and professional mission in an organised and systematic manner that would benefit Palestinian civilian's rights on the Israeli and Palestinian fronts. But I discovered, through my work, that true conviction in the principles of human rights - in freedom, justice, and equality - needed further imprinting within human rights organisations themselves. I fought a number of small wars inside the organisation; and they ended with my resignation, meaning that the result was nil.

Although I worked in Al-Mezan in its first year only, the Centre completed a variety of legal studies. The first was a case study on freedom of expression and opinion, taking the case of the 'Declaration of Twenty'. Other studies included communal housing, women's conditions in the Gaza Strip, and the Palestinian Legislative Council. But that was not enough for me to continue working in humanitarian work as prestige, source of income, or pressure tool to achieve narrow personal gains.

Afterwards, I dedicated myself to work as an independent human rights activist, with an emphasis on women's rights. My independence and strategic friendship with women's organisations were strong and effective weapons for criticism and guidance. This was done through direct participation in demonstrations, lobby groups, training and studies, or through journalism and media interviews on Palestinians rights, especially women. I am usually invited to speak or write about these topics.

And I expanded my research work through different media outlets. The internet achieved quick and wide dissemination of my vision and criticism.

And so I was engrossed in institutional human rights work through projects and programs, and through freelance work based on humanitarian, ideological, and nationalist convictions.

My second organisational work was in Addameer Prisoners' Support Association. I was involved in a project to spread human rights culture among Palestinian youth. I worked the duration of the project. In addition, I conducted a study on the situation of imprisoned children in Israeli occupation jails. The study was published by the Arab Committee for Human Rights and Addameer Association.

I returned to being an independent activist since finishing the project at Addameer.

It is obvious that my gender as a female played a significant role in shaping the kinds of difficulties I faced in Gaza's society as an activist and journalist. The cultural heritage dealt with women as beings with deficient vision and capacity to deal in a highly responsible way with her personal issues, let alone social issues. The prevailing assumption that women are of lesser stature and lower social standing was a large obstacle in exceeding 'red lines' such as staying out late at night, dealing with a male environment, and dealing with 'disreputable' social groups. Trespassing these lines was considered an attack on men's rights and social status.

One of the major obstacles I faced was in the PNA outlook, especially the security branches, on any interpretations that differ from their 'official' line on the crimes and violations of varying degrees, seriousness, and categorizations.

The PNA and Palestinian society see a woman whose head is not covered as a woman without principles or values. They see this woman as someone who can do anything and everything outside customs, religion, and conservative culture. I had to exert more effort to change this perception, and to convince others that judging a person by his/her looks does not have any logical, rational, or religious basis. Although this perception is regressing daily, the regression is enforced and not based on understanding and belief.

For me the most notable obstacles facing a woman who wants to be a human rights activist in the OPT include lack of awareness and ignorance. There is a lack of awareness, even among many educated circles, on the necessity of dealing with women as fully eligible,

free, and independent human beings. This is one of the most important challenges facing women who want to work in the human rights field. The assumed awareness in this regard allows women to be themselves, and not to tailor their lives, interests, and time according to the wishes of their husbands, fathers, or brothers.

Palestinian society respects and appreciates men who work in dangerous areas. But it hesitates dozens of times before giving the same to a woman who left her home and children to register a testimony or document events.

The occupational division between men and women has placed more burdens on women. In addition to their work, women are required to carry the responsibility of the house and children. These tasks consume most of their time, and prevent them from closely monitoring human rights violations.

The differing perception on work in principle based on gender differences is a challenge that is no less important than the others. Frequently, a husband perceives his wife's work as 'expendable', especially if there is no financial return benefiting him or reducing his obligations towards the home. If the wife possesses some strength and conviction in what she is doing, the husband employs forms of psychological pressure against her. This includes degradation and ridicule of the work or the wife, forcing her to choose between work and home, comparing the importance of his work with hers, and others. In all cases, women are required to give in so to maintain their 'beautiful' picture, even if that leads to nervous breakdowns. It does not matter.

We can also talk about the lack of legal guarantees against assaults so as to protect female activists during their work. The assaults could be from governmental or non-governmental sources, and inside or outside home. Female activists do not have the support of this protection, especially since they are the weaker side in the traditional social structure. And so, female activists are subject to slander, harassment, imprisonment, house detention, and physical assault. There are no differences between society inside or outside the house in this regard. And this might explain the small number of female

human rights workers or the decreasing role of female activists after marriage.

Palestinian women face two types of violence. One type is the occupation's violence that is justified by the occupation. The second type is from society. This type is the most dangerous because it is difficult to confront. In addition, it is hidden; and women victims are reluctant to talk about it. The second type victimizes most women, including activists. But activists suffer more due to their awareness and ability to understand and analyze. Their awareness and knowledge torment them; as they cannot transform them into protection mechanisms due to the rigidity of the patriarchal system in control. Men refuse to give up the privileges they won over the past centuries. It is in their interest that women should remain captive within the walls of violence so as not to find any breathing room and take away these privileges.

A female activist goes out with the effects of the husband's and family violence on her body. In her heart and mind, she hears the insults, slander, and ridicule. She goes out to work burdened by stress and accusations. And in this state, she is asked to perform her work completely in order to save a sister from going through what she (the activist) is going through. Meanwhile men go about their work with an easy conscience.

Conclusion

This report has documented cases in which human rights defenders have been killed, attacked, injured, persecuted and slandered, as well as the restrictions on day to day activities which thousands of defenders are subject to throughout the OPT.

The report has illustrated that the ongoing occupation of Palestine, by Israel, has resulted in a situation which has placed human rights defenders in a drastic position. Palestinian, international and Israeli human rights defenders, across a broad spectrum of work, have all been subject to these restrictions and have, invariably, all suffered as a result of the occupation.

The broad range of work which human rights defenders carry out across the OPT has contributed in no small part to clear and concrete achievements on both a macro and micro level. Defenders, working in extra-ordinarily difficult circumstances, have managed to save lives, prevent homes being demolished, open checkpoints for sick civilians to pass through. All of this has happened against the background of severe risk to their own lives and wellbeing.

At the same time defenders have had to cope with the appalling human rights record of the Palestinian National Authority and the threats resulting from that. At the time this report was being finalised the PNA seemed to be descending into a state of further security chaos which will, inevitably, put the security of both Palestinian and international defenders at even greater risk.

Although, in general terms, the future of the OPT seems uncertain there are certain key challenges which will remain in place for defenders and the international community, who are obliged to assist and protect them.

Closures, curfews, killings and injuries, and a general escalation and institutionalisation of the occupation will all remain in place. The international community has a clear obligation to put its mouth where its money is and compel Israel to live up to its international obligations.

On the level of the PNA the ongoing security chaos and the problems of trying to establish respect for the rule of law will place defenders at considerable risk. This may be particularly the case inside the Gaza Strip.

It is clear that after almost forty years of Israeli occupation the human rights situation and the situation for human rights defenders has continued to deteriorate. The international community is under a clear legal obligation to compel Israel to end this occupation, to implement international humanitarian and human rights law and to allow the Palestinian people to exercise their right to self-determination. In so doing they will be able to alleviate many of the problems faced by human rights defenders.

Appendix I

United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

General Assembly resolution 53/144

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Taking note of Commission on Human Rights resolution 1998/7 of 3 April 1998, See *Official Records of the Economic and Social Council, 1998, Supplement No. 3 (E/1998/23)*, chap. II, sect. A. in which the Commission approved the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms,

Taking note also of Economic and Social Council resolution 1998/33 of 30 July 1998, in which the Council recommended the draft declaration to the General Assembly for adoption,

Conscious of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights, Resolution 217 A (III).

1. *Adopts* the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annexed to the present resolution;

2. *Invites* Governments, agencies and organizations of the United Nations system and intergovernmental and non-governmental organizations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof, and requests the Secretary-General to include the text of the Declaration in the next edition of *Human Rights: A Compilation of International Instruments*.

85th plenary meeting
9 December 1998

ANNEX

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights² and the International Covenants on Human Rights Resolution 2200 A (XXI), annex. As basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the

particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:

Article 1

Everyone has the right, individually and in association with others,

to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights³ and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration; everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the

legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, and administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.
2. Such measures shall include, *inter alia*:

- (a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;
- (b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present

Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

Appendix II

Special Representative of the Secretary-General on the situation of human rights defenders

In August 2000, Ms. Hina Jilani was asked by Secretary General Kofi Annan to become the first holder of the position of Special Representative on Human Rights Defenders, in accordance with the provisions of Commission on Human Rights resolution E/CN.4/RES/2000/61, of 26 April 2000. Ms. Jilani's initial remit of 3 years was renewed by a subsequent Commission resolution in April 2003 (E/CN.4/RES/2003/64).

Hina Jilani is an Advocate of the Supreme Court of Pakistan and has been a human rights defender for many years, working in particular in favour of the rights of women, minorities and children. Ms. Jilani was a co-founder of the first all-women law firm in Pakistan in 1980. She also founded Pakistan's first legal aid center in 1986. She is based in Lahore, Pakistan.

Human rights defenders in the OPT and around the world can make complaints to the Special Representative. The procedure for making complaints is on the Special Representative's webpage <http://www.unhchr.ch/defenders/complaints.htm>.

The UN Human Rights Defenders Office can be contacted directly:

UN Special Representative on human rights defenders
Office of the High Commissioner of Human Rights

Palais Wilson
8-14 Avenue de la Paix
1211 Geneva 10, Switzerland
Fax: +41 22 917 9006

Telephone: (41-22) 917-9000 Callers should ask for the staff supporting the mandate of the Special Representative on human rights defenders.

urgent-action@ohchr.org

The text of the e-mail should refer to the human rights defenders mandate.

Appendix III

The Special Representative of the Secretary-General on the situation of Human Rights Defenders Established by the Commission on Human Rights

PRESS RELEASE

11TH OCTOBER 2005

I have just concluded my official visit to Israel and the Occupied Palestinian Territories in my capacity as the Special Representative of the United Nations (UN) Secretary-General on human rights defenders. This mandate was created in 2000, pursuant to the adoption of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs in Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (“the Declaration”) in 1998. The Declaration provides protection to activities for the promotion and protection of human rights. The mandate requires me to report on the situation of human rights defenders and to make recommendations for the effective implementation of the Declaration for the protection of human rights defenders. I receive individual complaints and communicate my concerns to governments with regard to any actions against human rights defenders that are not in conformity with the provisions of the Declaration. I also conduct country visits in order to make a more comprehensive examination of the situation of human rights defenders in a country.

I thank the Government of Israel for its invitation to visit the country and appreciate its cooperation in this regard. I also thank the Palestinian National Authority (PNA) for extending their cooperation and allowing me the opportunity to meet with them during the course of my visit. The purpose of the mission is to assess the situation of human rights defenders in Israel and the Occupied Palestinian Territories. I also express my gratitude to the Office of

the High Commissioner for Human Rights for facilitating the mission.

During my stay I have met with Israeli officials including the Minister of Public Security, the Minister of Construction and Housing, the Deputy State Attorney and members of Parliament. With regards to the Palestinian National Authority I met with the Minister for Foreign Affairs, the Minister of Justice and Minister for Women's Affairs. I also met human rights organisations and individual defenders engaged with a broad range of issues. These include non-governmental organisations (NGOs), lawyers, journalists, and health workers working both in the field of civil and political rights and economic, social and cultural rights. I deeply regret not being able to meet human rights defenders in Gaza in person, and had to rely on a video conference with some of these defenders in order to inform myself of their situation. I have also met with UN agencies working in the Occupied Palestinian Territories and thank them for giving me the benefit of their knowledge and experience.

I have visited Ramallah, Bethlehem, Nablus, Hebron and Bil'in village in the West Bank, and Nazareth and Tel Aviv in Israel - and of course, here in Jerusalem.

At the end of my mission I would like to share some preliminary findings and conclusions with the press. A detailed report of this mission will be submitted to the United Nations Commission on Human Rights at its next session in April 2006.

I will begin with my observations regarding the situation of human rights defenders and organizations in Israel. I have noted that in general there is respect for their rights and defenders have access to governmental authorities, members of the Knesset, and Knesset Sub Committees. Defenders have acknowledged that they have opportunities to look and comment on legislative drafts. I have been told by the Government of Israel that NGOs have been instrumental in the preparation and passage of some laws especially in the field of the environment. I have been advised that an NGO committee has been formed within the Knesset but it is still in the nascent stages

and no concrete initiatives have been taken yet by this committee. I hope this initiative, once developed, will become a mechanism that human rights defenders can use in order to promote and protect human rights. I have been assured by the Government of Israel that there are plans to design initiatives aimed at giving a greater role to civil society and the human rights community and for improving their interaction and dialogue with the Government.

I must, however, emphasise that I have been made aware of serious constraints experienced by NGOs based in Israel working on the rights of minorities. Many aspects of the rights of these communities are perceived as sensitive issues by the Government. In these areas the major constraint for most NGOs working on such rights is the lack of response to their concerns and the inflexibility of the Government on policies that result in human rights violations of the affected population. These defenders are particularly concerned that their efforts have little or no impact on policies of government especially in relation to security measures that result in serious violations of human rights and fundamental freedoms.

I now come to the most serious part of my concerns – the practice and policies adopted as a part of the occupation of Palestinian Territories which result in conditions and an environment which place human rights defenders operating in these areas at grave risk and presents serious obstructions in every aspect of their functioning.

In stark contrast to the relative openness that the Government allows for NGOs based in Israel, the human rights defenders in the Occupied Palestinian Territories operate under conditions that are absolutely incompatible with international norms and standards of human rights or the principles set forth in the Declaration. The environment is totally non-conducive for human rights defenders to conduct their work with facility or safety.

Restrictions on the freedom of movement by the Wall, closures, checkpoints, roadblocks and other barriers, while affecting the entire population in the Occupied Palestinian Territories also inhibits and obstructs the activities of human rights defenders. I am especially concerned with the situation of field workers engaged

with any area of rights who face daily harassment, intimidation and humiliation in the course of conducting their work. Lawyers are consistently denied access to their clients, journalists are obstructed from observing incidents and reporting on human rights violations, humanitarian assistance is impeded, and health professionals are hampered from fulfilling their duty of providing medical assistance and care.

I have been made aware of several cases in which human rights defenders were prevented from travelling to participate in human rights activities outside of the country. These restrictions on the freedom of movement are particularly significant with respect to their effects on NGO interaction and coordination of human rights activities including between those based in Israel and the Occupied Palestinian Territories. I also see this as a trend that infringes upon the right of defenders to report human rights violations at national and international levels.

I note the total lack of respect for the freedom of assembly that is apparent in repressions of the right to peaceful protest in the Occupied Palestinian Territories. I have observed one such event in the village of Bil'in where Palestinian, Israeli and international human rights defenders are seeking to exercise their right to peaceful protest and have been subjected to arrests. I have also received reports of arbitrary arrests and detention and unjustified or disproportionate use of force on previous occasions at the same location, and elsewhere.

Particularly disconcerting are incidents of settler violence against human rights defenders that have been reported to me from Hebron and other places. These are violations of the rights of human rights defenders by non-state actors that the Israeli authorities have failed to address effectively or adequately. I have been told that the Government has recently constituted an inter-ministerial committee to examine the issue as well as cases in this regard. I have yet to be informed of concrete action that committee has taken to deter these acts of violence through enforcement of appropriate policy or punitive measures.

I am convinced that human rights defenders cannot perform their monitoring or reporting functions where they have no access to information, places of detention or reported sites of violations. In the case of the human rights defenders I am afraid the access in all these cases is either extremely limited or completely denied in the Occupied Palestinian Territories. The denial of information has more serious consequences for those whose fundamental rights were denied on the grounds of security intelligence, which is not shared with them or with their representatives.

In response to my expression of concern on these issues the Government of Israel has strongly stressed the security imperatives that make these measures absolutely necessary. While I accept the security concerns which the Government supports with reference to acts of terrorism against the civilian population in Israel, I am fully conscious of the vulnerability of the Palestinian population and see the security of this population equally, if not more severely threatened and eroded by practices of the occupation as well as some non-state elements within the Israeli society. "Security imperatives" have been allowed to deprive a vast population of their very basic rights and these measures need deeper scrutiny by all concerned if any respect for norms of international human rights and humanitarian law is to be preserved.

Put in the context of human rights defenders, the inescapable reality is that the exceptional conditions resulting from occupation demand a more active human rights community in the face of the serious violations faced by the civilian population in the Occupied Palestinian Territories. Their inability to function diminishes the prospects for peace and security which are not attainable without respect for human rights. Instead the human rights community is being weakened by the risks that they are placed under with respect to their life, physical security, their livelihood and above all their right to human dignity.

I also note reports of serious violations committed by the security apparatus under the Palestinian National Authority. Human rights defenders who have exposed abuses of power, conditions and treatment of persons under detention, and corruption in the security apparatus, have been threatened and intimidated or have suffered

serious harm. Lack of access to places of detention in areas under the jurisdiction of the Palestinian National Authority have also been reported and need to be urgently addressed.

I would remind the Government of Israel that, as stated in the Declaration on Human Rights Defenders, the absence of peace and security does not excuse non-compliance with international human rights norms and international humanitarian law. I, therefore, strongly recommend that immediate steps be taken, if necessary with the cooperation of other interested actors, to devise initiatives that would urgently relieve the conditions that are causing serious obstructions to the defence of human rights.

On the part of the Palestinian National Authority there is a need to recognise their responsibility to alleviate the distress and actively provide protection to the population to the extent of their ability and authority. The practices of occupation should not be allowed to become the norm under which the Palestinian population continues to be governed either now or in the future. This will only be possible with stronger support to and better cooperation with the human rights community, and a clear acknowledgement of the legitimacy and value of the work that they do.

In the end I would like to commend the resilience and courage of human rights defenders who continue to work for the promotion and protection of human rights despite extremely challenging circumstances. I must express my strongest appreciation for the solidarity and cooperation that I have witnessed between human rights defenders in Israel and in the Occupied Palestinian Territories. I am also aware that the defenders community finds further strength from international solidarity.

I shall be making recommendations for the consideration of the Israeli Government and the Palestinian National Authority and look forward to continued cooperation from them and an ongoing dialogue within the framework of my mandate.