

CRITIQUE OF THE SECOND PALESTINIAN  
DRAFT LAW CONCERNING CHARITABLE  
SOCIETIES, SOCIAL BODIES AND PRIVATE  
INSTITUTIONS OF 1995

PALESTINIAN CENTRE FOR HUMAN RIGHTS

SERIES STUDY (3)

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## **PREFACE**

On 10 September 1995 a Draft Law Concerning Charitable Societies, Social Bodies and Private Institutions was published by the Palestinian Authority. This followed an earlier draft which had been published by the Palestinian Authority and was due to be adopted in mid-October; however the reaction of Palestinian non-governmental organisations and community leaders led President Arafat to delay its adoption and to revise it. Before this Second Draft is adopted there will be a three-month consultation period.

This paper primarily examines the Second Draft NGO Law and forms the Palestinian Centre for Human Rights' submission to the consultation process on the Second Draft. Unfortunately there is no official English translation of the Second Draft NGO Law and it is unlikely that one will be made as the differences between the First and Second Drafts are superficial. Therefore we have provided the official English translation of the First Draft in Appendix III, and a Precis of the First Draft Law in Part I of Section Two. However we have identified the points of departure between the two Drafts wherever they occur and in all sections of this Report. In addition we have given a detailed account of the differences between the Drafts in Part III of Section Two.

We have endeavoured to be consistent and to avoid confusion, but wherever this arises the following should be borne in mind: this paper primarily examines the provisions of the Second Draft Law as this has superseded the First; this Report is the Palestinian, Centre for Human Rights' submission on the Second Draft NGO Law to the consultation process; differences between the First and Second Drafts are trivial and superficial and no changes have been made to the basic character, aims and premises of the provisions of the Draft legislation.

This Report is part of a series of studies on the legislation proposed by the Palestinian Authority. Each report analyses the proposed legislation from a human rights perspective. We take as our basis the standards of the Universal Declaration of Human Rights and the International Covenants on Human Rights.

These studies are not intended to be purely academic or to provide detailed legal analysis, involving the citing of laws and precedents. We believe that there should be extensive and public debate on the development of a civil society in the autonomous areas of the Occupied Territories, and have therefore chosen to make this report as accessible as possible. However we also seek to contribute to the development of a legal framework which adheres to democratic principles and respects internationally accepted standards of human rights. We believe we have reconciled these aims by making our arguments clear and persuasive, substantiating them only where necessary with legal quotations and references to international human rights law; but in no way have we surrendered the legal and intellectual rigour necessary to produce a report of this kind.

With these aims in mind we have submitted this Report in its Arabic version as part of the consultation process, offering a critique of the Draft Law, with the aim of supporting human rights and democracy in the Occupied Territories.

The Declaration of Principles heralded a new era in the Gaza Strip and West Bank. This, together with subsequent agreements, has resulted in dynamic and rapid changes in the Occupied Territories. The Palestinian Authority was installed in the Gaza Strip and Jericho on 18 May 1994. Its significance as the first national government in the Occupied Territories cannot be under-estimated.

The Palestinian Authority is supported by many elements of a government, including: social, economic, cultural, political and legal institutions. These need to be encouraged, supported and developed, but this task cannot be left to the Palestinian Authority alone.

It should be noted that such development occurs in a very difficult environment, particularly as the Israeli occupation continues to control life in the Gaza Strip and West Bank. Thus, the Gaza Strip and those areas under the autonomous rule of the Palestinian Authority face a unique situation: they remain under Israeli occupation but at the same time have been offered a degree of self-rule. However such self-rule, and any movement towards a democracy, is marred by the maintenance of the Israeli military occupation; which is itself abhorrent to democracy.

In spite of the continuing oppressive nature of the Israeli occupation, self-rule does provide the Palestinian Authority and the Palestinian people with an opportunity to demonstrate their commitment to democracy and human rights. If this opportunity is seized it will assist positive social and political development, and may strengthen the support for recognition and accession of the rights of the Palestinian people. However, in order for a truly just and democratic society to be developed in the Occupied Territories, the Israeli occupation must come to an end and the rights of the Palestinian people realised in full.

The Palestinian Centre for Human Rights takes seriously its responsibilities in supporting the development of a democratic civil society in which human rights and the rule of law are respected. This study is one of the projects in our programme of activities which aim to meet these objectives.

## **Definitions**

Throughout this Report, and in the Draft Laws, a variety of terms have been used for organisations in the non-governmental sector; these include: voluntary, charitable, social, non-governmental, community body, society, institution and organisation. This is a reflection of the lack of clear definition which pervades the Draft Laws.

Our definition for an organisation in the non-governmental sector is: a non-profit making organisation reliant on donations or voluntary assistance, established to meet the welfare and other needs of the Palestinian community, and which is not controlled by a governmental authority. Constructing an absolute definition is difficult, and it may be that our definition misses or includes some groups, which would not be commonly

regarded as non-governmental organisations. An alternative and simpler definition may be that a non-governmental organisation is neither a private organisation formed for benefit, nor a statutory organisation nor a political party. Notwithstanding the difficulty in providing a comprehensive definition, in this Report we have used the term non-governmental organisation (NGO), and this should be considered a generic term.

This Report has been produced in English and Arabic. The Arabic version was prepared using the Arabic text of the Second Draft Law Concerning Charitable Societies, Social Bodies and Private Institutions 1995 published by the Palestinian Authority. The English version was prepared using an English translation Of the First Draft Law translated by the Jerusalem Media and Communication Centre. However it should once more be stressed that the differences between the First and Second Drafts are trivial and superficial.

Great care has been taken to seek conformity between the substance of these reports. However where differences remain the Arabic report should be regarded as the original.

*The Palestinian Centre for Human Rights is an independent legal agency dedicated to protecting and promoting human rights, respect for the rule of law and the promotion of democratic principles in the Occupied Palestinian Territories. The work of the Palestinian Centre for Human Rights is supported by the Swedish International Commission of Jurists, CA W Social Justice Fund, NOVIB, Open Society Fund, Agir Ensemble Pour les Droits de l'Homme, Christian Aid and Robert F Kennedy Memorial Foundation.*

## INTRODUCTION

Prior to the establishment of the Palestinian Authority the Palestinian non-governmental sector made a significant contribution to the provision of services in the Occupied Territories Territories.' This was despite the fact that Palestinian non-governmental organisations (NGOs) were at best tolerated or ignored, and at worst their activities were suppressed and the we individuals involved were persecuted. Successive regimes have legitimised their suppression and have restricted non-governmental activity by placing great restrictions on their establishment, and on the work of Palestinian NGOs. These laws are discussed in further detail below.

The Palestinian non-governmental sector has unofficially represented aspirations and has been critical of the activities of alien regimes, especially during the period of the Israeli occupation. Bearing this in mind, the approach of these alien regimes is not surprising. It could be argued that the Palestinian non-governmental sector has been central to the development of social and political networks within the Occupied Territories, and has been the more acceptable face of opposition to these regimes.

Any law on NGOs should take account of the unique role these organisations have played. Unfortunately the Draft Law under discussion does not do this. Instead it binds up NGOs with onerous obligations, rules and procedures.

The study of Palestinian NGOs is not easy to undertake. This is because of the complex and difficult social, economic, and legal conditions which Palestinian society faces. Some of these organisations were established amongst the diaspora. Many others were established within the Palestinian territories in historically and variable conditions.

Generally speaking since 1917, Palestinian society has been involuntarily subject to an unbalanced political, social, religious and economic formula. This began in 1917 with the British occupation, continued in 1922 with the British Mandate which lasted until 1948; and then with the establishment of the state of Israel, annexation of the West Bank by Jordan, and administration of the Gaza Strip by Egypt. Subjugation became more severe in 1967 with the occupation of the Gaza Strip and West Bank by Israel. Thus, for most of this century, until the establishment of the Palestinian Authority on 18th May 1994, all institutions and organisations in Palestinian civil society have been controlled or suppressed by laws and legislation imposed by alien forces that were determined to serve the Zionist project and create obstacles to the progress of Palestinian society.

This report is divided into five sections: Section One provides the background history and development of NGO law and culture in the Gaza Strip until the 1995 Law; Section Two is divided into three parts: Part I provides a precis of the First Draft NGO Law of 1995, Part II analyses its provisions in detail and Part III provides a comparative analysis of the First and Second Drafts. Our Conclusions and Recommendations are the final section and precede the appendices which provide some background to the report.

## **Notes to Introduction**

1. The contribution of the Palestinian non-governmental sector was relatively small when compared to the services of UNRWA, the municipalities and a range of other service providers. Its importance lay more in the fact that they were Palestinian service-providers.

## SECTION ONE

### Voluntary Organisations Law Prior to 19 May 1994

The legal situation in the Occupied Palestinian Territories is unique and complex. It reflects the various periods of foreign domination: the Ottoman Empire, the British Mandate, the Egyptian Administration of the Gaza Strip and Jordanian rule in the West Bank, and the Israeli Occupation which began in 1967. These periods of domination were characterised by the violation of the rights of the Palestinian people; every aspect of life at some time and to varying degrees, from art and literature to social, cultural and political discourse, has been under alien control.

#### **The Ottoman Empire Period**

The Ottoman Societies Law of 1907 was passed during the latter period of the Ottoman Empire. It was passed at a time when Arab demands for separation from the Ottoman Empire were rising; Arab military officers in the Ottoman army and intellectuals were founding societies to support Arab nationalism. The Ottoman Law aimed to control this through a basic system of regulation.

The Ottoman Law required the authorities to be informed of the establishment of an organisation; clearly giving them power to control the establishment of an organisation and to close those which incited rebellion or had nationalist aspirations. However, although Ottoman Law was restrictive, comparison with legislation established by later regimes, shows that it was relatively tolerant.

For example the Ottoman Law did not require that a permit had to be obtained in order for an organisation to be established, but it did require the founding members to submit a signed and sealed communique including the address of the society, its aims, and details of its administration and members. Thus it clearly involved a residual right for the authorities to deny permission for establishment.

Following establishment, organisations had to keep records of membership, of decisions taken by the management boards and the accounts of the organisation. These records had to be made available to the government on request. Organisations were obliged to make their offices available for the government. In this way the Ottoman authorities were ensured wide control of institutions.

Although this Ottoman Law has been maintained by subsequent regimes, the Palestinian Draft Law 1995 repeals this law.

#### **The British Mandate Period**

The British forces took over Palestine following the defeat of the Ottoman forces in the First World War. In 1922, the British occupation was converted by the League of Nations into a Mandate by which the British Government was

"responsible for placing the country over such political, administrative, and economic conditions as will secure the establishment of the Jewish national home ... and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all inhabitant of Palestine, irrespective of race and religion".<sup>1</sup>

The League of Nations Mandate followed the Balfour Declaration in which the British Secretary of State for the Foreign Office stated that it was the intention of the British Government to establish a Jewish homeland in Palestine, whilst not prejudicing the rights of the indigenous population. This pledge and the League's Mandate shaped the policies and legislation of British mandatory government in Palestine; under which the British Government proceeded to diminish the rights of the Palestinian people, and to further the Zionist goal of a Jewish state.

During the British Mandate (between 1922 and 1948) the British High Commissioner had governmental and legislative responsibilities in Palestine. Just as the Ottoman Empire had responded to the rise of Arab nationalism by controlling voluntary organisations, so the British High Commissioner responded similarly by initially maintaining the Ottoman Societies Law of 1907, and then by adding harsher laws. These laws were used in a selective fashion. They curbed the development of Palestinian NGOs and permitted the rise of Jewish organisations that were dedicated to pursuing Zionist objectives. During the British Mandate a number of important Jewish organisations were established, including the *Moshav, Kibbutz and Histradut*.

The first of the additional laws to be passed by the British imposed a system of punishments for individuals involved in illegal organisations. An illegal organisation was defined as a group of people, registered or not, actively involved in, or encouraging in its constitution or propaganda or by any means or any act that could be interpreted as having the intention of corruption.<sup>2</sup> It was prohibited to hold membership, positions or employment in any illegal society. Anyone donating funds to an illegal society was punished with six months imprisonment. The publishing of information for an illegal society was punished with a harsher sentence.

These laws were augmented by the British Defence (Emergency) Regulations of 1945, which were adopted in order to control the increasingly violent situation, which was developing in Palestine. These Regulations placed more restrictions on the activities of societies<sup>3</sup>.

The Penal Law of 1936 contained penalties which were extended so that they applied to individuals who attended meetings of illegal organisations and anyone caught with a book, an account, a periodical, a communique, an advertisement, a newsletter, a document or money, which belonged to or was provided by an illegal society.

These harsh measures were primarily used against Palestinians and led to a paralysis in the development of Palestinian civil society. During this very difficult period and at an extremely crucial time, these organisations provided much needed services and filled the vacuum which existed as a result of British Mandatory government of Palestine.

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### **Egyptian Administration of the Gaza Strip**

The Gaza Strip was under Egyptian administration from the entry of its army into Palestine in May 1948, until June 1967 when Israeli forces began their occupation following the Arab-Israeli War.

Egypt installed its own military governor to administer the Gaza Strip, which it treated as a military zone and therefore subject to military laws. The Egyptian Administrative Governor issued Order No. 6, which placed all executive, legislative and judicial functions under the control of Egyptian forces in the Gaza Strip. This Order subsumed all laws in existence prior to Egyptian administration, including those from the British Mandate period.<sup>4</sup> During this period, there was little or no development in the non-governmental sector in the Gaza Strip.

However the advent of a constitution for the Gaza Strip, declared by Egyptian President Gamal Abdel Nasser in 1962, allowed some development of Palestinian non-governmental society. A number of important organisations were established, most importantly amongst workers and professionals; for example, the General Union of Palestinian Workers, the Gaza Bar Association and Palestinian Women's Union. In addition relief societies of a religious nature, such as the Council of Churches were established; many of the societies established at this time still exist today.

Development of these organisations was still limited, however, because of the continuing control of the Egyptian Administration, which justified its restrictive laws on the grounds of security. Even the 1962 Basic Law, which sought to give certain rights and a degree of autonomous authority to Palestinians, denied the freedom of association, which is clearly an essential element for participation in and the existence of these organisations.

### **Jordanian Rule in the West Bank**

In the West Bank numerous Palestinian organisations were founded prior to 1948. These were subsequently re-established following its incorporation into the Hashemite Kingdom of Jordan.

Although voluntary organisations represented an acceptable channel of expression, obtaining permission from the regime was quite difficult. The Hashemite Kingdom viewed such organisations as a threat to its interests; which were to strengthen the annexation of the West Bank and suppress the political identity of Palestinians.

In 1956 the Law of Charitable Societies was introduced following the Declaration of a State of Emergency. This law banned all voluntary organisations. In 1965 the Law of Social Societies and Agencies was passed which cancelled all earlier laws pertaining to voluntary organisations and charities.

### **The Israeli Occupation of the Gaza Strip and West Bank**

On the second day of the Israeli occupation, two decrees were issued granting all governmental power to the commanders of the Israeli army occupying the Gaza Strip and West Bank.<sup>5</sup> This power was to be carried by the issuing of Military Orders. These Orders, as with earlier regimes, retained laws which had been in force prior to occupation by the Israeli army.<sup>6</sup>

The Israeli Military Governor of the West Bank issued over 1,200 Military Orders and the Israeli Military Governor of the Gaza Strip passed 1, 184 Military Orders. These Orders covered every aspect of life for Palestinians in the Occupied Territories. They placed significant obstacles and restrictions on economic, social and cultural development and ensured the continuation and strengthening of the Israeli occupation, and its dominance over the rights of the Palestinian people.

During the period of complete Israeli occupation the role of NGOs changed. Their previous role was to provide social welfare and to support cultural and economic development; but during this period they became active in supporting Palestinian rights in the face of oppression and deprivation, in addition to the traditional NGO role.

During the 1970s the part that NGOs played in the Palestinian struggle became increasingly significant. Their part in the struggle did not involve outright physical opposition to the Israeli military, however; but was rather an intellectual opposition, which sought to inform the public locally and internationally of the plight of Palestinians in the Occupied Territories.

As far as the Israeli military were concerned these groups fell into two categories: Firstly, benevolent and professional societies which provided social, cultural, education and health services, which mostly had official registration and were tolerated by the Israeli occupation forces. Secondly grassroots organisations which were established in order to give direct support to Palestinians in the context of the Israeli occupation. These organisations did not seek registration from the Israeli authorities, and were regarded by then as nationalist organisations working against the occupation. As such they were attacked and many had their offices closed and workers and individuals connected with these organisations were detained and harassed.

As well as maintaining earlier laws, the Israeli occupying authorities instituted additional Military Orders, which sought to control the establishment and activities of NGOs. Military Order No. 616 of 1981 concerning the Gaza Strip, required registration of all voluntary organisations. The founding members were required to submit an application containing the name and address of the organisation, its aims, and the names of founding members, their addresses, ages and ID card details. All organisations were prevented from carrying out any activity until registration had been approved.

The Israeli District Commander had the power to dissolve an organisation if he considered that it carried out any political activity, if it contravened security or Israeli Military Orders, or if it failed to meet administrative requirements. The Israelis have

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tended to interpret concepts of security extremely widely, thus encompassing every sphere of Palestinian society.<sup>7</sup>

In spite of the legal restrictions and physical military attacks instituted by Israel against voluntary organisations, they continued to flourish with the support of local, Palestinian and international groups. The experience that Palestinian NGOs gained through their activities in this difficult climate has resulted in the evolution of a unique professionalism and commitment.

During this period the voluntary sector in many ways constituted an embryonic Palestinian government. NGOs represented the aspirations, opinions and rights of the Palestinian people and provided services, which the Palestinian Authority has now subsumed in seeking to develop its system of governance.

It is therefore unfortunate that the Palestinian Authority has foregone the opportunity to harness this energy, professionalism, and experience, and has failed to seek to encourage non-governmental activity; rather it has chosen to restrain and control it.

The Palestinian Centre for Human Rights urges the Palestinian National Authority to seriously consider the NGO community's stance towards this Draft Law, and to engage with us in serious dialogue, in order that a more acceptable and appropriate law can be concluded, which allows NGOs to play a positive and constructive role in supporting the building of a Palestinian civil society and to avoid the experience of NGOs in neighbouring Arab states. Only if the Palestinian National Authority take on board these criticisms and concerns can there be assurance of a healthy Palestinian civil society with a democratic future.

### Notes to Section One

1. The Mandate for Palestine, 24 July 1922
2. According to Article 60(a) of the same law the "intention of corruption" is defined as that aimed at creating hatred or awakening feelings against His Majesty the King, or the mandatory state, or the High Commissioner or the legal government of Palestine, or the intention to encourage the people of Palestine to try to change the status quo by illegal means or to awaken hatred in the various sections of the people in Palestine.
3. Chapter 7 of the Defence Regulations specifically concerned illegal organisations.
4. The British Defence (Emergency) Regulations of 1945 were, in fact, repealed. The Foreign Office of Her Majesty's Government confirmed in a letter dated 22 April 1987 that "in view of the revocation order in Council of 1948, the Palestine (Defence) Order in Council of 1937 and the Defence Regulations, 1945, made under it are, as a matter of English law, no longer in force" (*Occupier's Law*, Raja Shehadeh, Institute for Palestine Studies).
5. Article 2 of Israeli Military Order No.2 issued on 8 June 1967 by the Commander of the IDF in the Gaza Strip and North Sinai. A similar Order No.1 was issued covering the West Bank.
6. The Israeli occupying forces relied heavily on the British Defence (Emergency) Regulations of 1945 to carry out extra-judicial punishments, house demolitions, deportations and administrative detention.

7. Israeli security has been the primary concern of Israel during the peace talks with the Palestine Liberation Organisation. An extremely wide interpretation was given to security, which appears to include economic and political concerns, as well as military concerns. This wide interpretation has had reverberations in the peace process negotiations; it has meant that in order to obtain concessions, Palestinian Authority has had to apply the same extensive security policy, to crack down on opposition groups and has introduced his security measures against Palestinians; and ultimately, to accept maintenance of the Israeli military forces in and around the G Strip and West bank.

## SECTION TWO

### The Draft Laws Concerning Charitable Societies, Social Bodies and Private Institutions of 1995

On 13th September 1993 the Declaration of Principles was signed between the PLO and the Government of Israel. On 4th May 1994 the first of a series of agreements under the Declaration of Principles was signed in Cairo (the Cairo Agreement). This established the Palestinian Authority, and gave it partial autonomy over the Gaza Strip and the district of Jericho. A further agreement, the Taba Agreement was signed in Washington on 28th September 1995, which extended the jurisdiction of the Palestinian Authority to areas of the West Bank, and established the elections for a Palestinian Council which would then negotiate a final settlement of the Palestinian-Israeli conflict.

It was clear that following the advent of the Palestinian Authority the position of NGOs would be radically altered. Clearly, the persecution and harassment by Israeli forces would end, and relations would have to be established between the Palestinian Authority and themselves. The work and perspectives of these NGOs would also fundamentally change; they would no longer be the primary source of service provision, but would seek to provide support to the Palestinian Authority through additional, subsidiary or specialised services. The change has been greatest amongst human rights NGOs. They have had to switch from dealing with Israeli military violations to the new and complex situation, which has evolved.

NGOs must now operate in a context where Israel has relinquished some control of parts of the Gaza Strip and West Bank to the Palestinian Authority, but has maintained overall control of the Occupied Territories. Voluntary organisations must completely re-evaluate their activities, and seek to develop a relationship with Palestinian Authority.

Palestinian NGOs in the Occupied Territories have closely monitored the agreements and aspects of the peace process in to assess what impact this will have for them. Once the process began to bear fruit, and the Palestinian Authority envisaged, discussions took place and a network established amongst Palestinian NGOs. The crucial question, which subsequently arose was what form and content their relationship with the Palestinian Authority would take. It was them that either bilateral or multi-lateral meet sought with it, in order to provide an opportunity NGOs in the West Bank and Gaza Strip to express their needs and aspirations.

Their requirements would be much different from those of previous eras. The Palestinian NGO network proposed a framework for their relationship with the Authority, which emphasised the need for cooperation, involvement and generally positive relations with the Authority. This suggested framework affirmed the need to ensure the freedom to work for NGOs and for a law, the structure of which would regulate the conduct of the Authority in relation to them.

Palestinian NGOs were not suspicious of a law, which could regulate their work; thus there were no discussions regarding right of the Authority to promulgate such a law. It is pertinent to consider in this context the reality of the situation; the majority of Palestinian NGO work had thus far taken place outside the law (i.e. they were not registered) due to the suppressive nature of laws that had been in force during previous alien regimes.

It is not clear where this organisation of NGO affairs has come from. The very first movements to develop a dialogue with the Palestinian Authority came from the Palestinian Economic Council for Development and Reconstruction (PECDAR). This body prepared a framework for relations between the Authority and NGOs. Once the Palestinian Authority was established, the Ministry of Justice became involved to the extent that it sent all Palestinian NGOs special application forms with the aim of organising their registration. In addition the Ministry of Interior and departments of the Security Services have also been involved to varying extents.

Thus the environment for NGOs since the start of the peace process has been uncertain and ambiguous, that is until the publishing of the proposed Draft Laws Concerning Charitable Societies, Social Bodies and Private Institutions of 1995.

Before analysing the Draft Law, it is worth bearing in mind the following important points:

- i. It is not clear whether the Second Draft Law will come into force or whether there is a chance that another law can be drafted to replace it.
- ii. It does not take into consideration the circumstances or complexity of the Interim Period and the absence of a true state.
- iii. It does not mention the right of individuals to establish societies or organisations or the freedom of association.
- iv. It does not take account of the realistic situation; which is that there are different Palestinian NGOs both within Palestinian territory and beyond, in the diaspora. Many of those working inside the Palestinian autonomous areas have close links with those working outside. This is important to bear in mind considering the special nature of the situation amongst Palestinians.
- v. The drafters of the Draft Law have little experience of and are not familiar with the nature and activities of Palestinian NGOs.
- vi. The Draft Law provides the Minister with almost absolute powers to intervene in all affairs of NGOs. There seems to be a paranoia for security concerns which pervades it; which makes it the type of law, which would be appropriate for implementation during a state of emergency.
- vii. The Draft Law requires societies and organisations, including those already in existence, to obtain permits the Ministry. This requirement is far in excess of required during what is only a transitional period; be far more appropriate to require registration permission as well.  
Ottoman law required that the Ministry of I merely informed of the establishment of an NGO
- h. The absence of a memorandum for interpretation is regrettable and ominous; had one been included the questions in relation to the Draft Law answered and the meaning behind many articles clarified.

- i. The Draft Law is tainted with ambiguity and a clarity concerning the responsible bodies for the granting of permits for an organisation. It is unclear whether it is the Ministry of Social Welfare, of the Interior, or the Ministry whose work is specifically related to the field of work of the organisation. It is unclear whether there is a need for NGOs seeking registration to receive acceptance from more than one ministry.

NGOs traditionally, in other jurisdictions and internationally, a crucial role as independent monitoring organs for the activities of governments. They are a crucial element for government accountability and are usually present in democratic societies this Draft Law is promulgated it will have the effect of compel undermining this role for Palestinian NGOs.

## **Part I**

### **Precis of the First Draft Law on Charitable Societies, Social Bodies and Private Institutions 1995**

This Precis is based on the official English translation of the First Draft NGO Law, provided in Appendix 111 of this Report. However the equivalent articles of the Second Draft Law and the differences between the two Drafts are indicated.

#### **Article 2 - Definitions** (*Article 1 of Second Draft*)

Article 2 provides a definition of the terms and expressions used in the text of the Draft Law, and the Palestinian Authority departments involved in the process. These are listed as the Social Welfare Minister, the Social Welfare Ministry and the Director and Director General of the Ministry of Social Welfare. Definitions are given of a charitable society, social body, private institution, foreign society and social service to all of whom the Draft Law applies.

#### **Article 3 - Status of an Existing Organisation** (*Article 2 of Second Draft*)

Once an NGO is licensed it enjoys the status of a legally independent body, and is then only allowed to carry out its functions and activities "as long as these do not contravene this law or the institutions' by-laws approved by the appropriate authority".

#### **Article 4 - 8 & 10 - 11 Licensing of a Non- Governmental Organisation** (*Article 3 - 10 of the Second Draft*)

An institution must apply for a license and registration so that it can legally exist in the autonomous regions. Applications for a license should be submitted to the Social Welfare Minister in the Palestinian Authority, along with ten copies of its by-laws, so that they can be approved (Article 4).

*Article 5 of the Second Draft reduces the number of required copies to 3.*

The Minister issues a decision on the license which s/he "deems appropriate". This can take up to a maximum of 2 months from the date of submittance of the application, and is based to some extent on the opinion of the Interior Minister; although the final decision of the Minister is not contingent on the latter's approval. (Article 5).

By-laws must include detailed information on: all aspects of the NGO, including its name, address, headquarters and branches; the names of the founding members, their places of residence, ages and responsibilities; the objectives of the NGO; information about membership requirements; details of the administration, supervision and jurisdiction; its meetings and financial affairs and funding; and dissolution (Article 6).

Upon dissolution funds must not be dispensed either "beyond the purpose of the society" or beyond the jurisdiction of the Palestinian Authority. In the last resort the Minister himself decides how funds should be dispensed. Although dispensation by the Minister must be made in fulfilment of the purposes of the NGO, there is no

transparency in the process and thus no way of ensuring that this happens. Thus there is ample opportunity for misappropriation of funds (Article 6(i)).

An approved license is published along with its by-laws in the Official Gazette (Article 7). But these provisions for the procedure of notification do not have to be followed by the Minister; if there has been no notification of a decision within 3 months it should be assumed that the NGO has the right to function as a legal institution (Article 8). It is unclear whether registration would still be published in the Official Gazette. There may be a request for more details, or a notice about incomplete legal requirements. It appears that there may be opportunity for the NGO to amend its application if it has supplied insufficient details; it is not clear whether this is so if it has not completely satisfied the legal requirements. The Ministry maintains detailed information on all registered NGOs, as well as those which were denied a license and the reasons why.

### **Articles 9, 12 - 25 & 53 Obligations of Non-Governmental Organisations** (*Article 11 - 15 & 41 of Second Draft*)

An NGO is not permitted to own property beyond that which is necessary to fulfil the purpose of its establishment. *Article 9 of First Draft provides exceptions for the prohibition on owning property. These exceptions are not granted in the Second Draft's equivalent Article 11.*

The relationship between NGOs and the Ministry shall be one of cooperation with the aim of the "provision and upgrading of services" (Article 12). This cooperation requires NGOs to present their premises and records for inspection by and visits from the Ministry. There is no indication as to when or how frequent these visits will be; and therefore this provision could provide for spot-checks. Article 13 lists all the information which NGOs must keep and how it must be kept in order that such inspections can be carried out.

These records, must be kept specifically for the purpose of scrutiny by the Ministry, and must include records of correspondence, membership and members' details, meeting minutes and a record of the private assets and property owned by the NGO.

The Director General of the Ministry must be immediately notified of any material changes, which shall not take effect until approval by the Minister (Article 14). The law is not explicit here on what the process is for approval in this case or how long it may take.

### **Financial Affairs**

NGOs are required to provide two copies of an annual report to the Minister setting out the activities it undertakes, implementation of its goals and an account of the money spent, plus "any other information requested"; this is a vague requirement and does not indicate what kind or the extent of the information required.

*Article 16 of the First Draft provides that where expenditure exceeds 500 Jordanian dinar a certified accountant is required to supervise the annual budget. This amount has been increased to 1000 dinar by equivalent Article 38 of the Second Draft.*

There is a customs fee exemption on any equipment imported by an NGO; but such equipment must be used for a period of at least 5 years (Article 18).

Every registered NGO must deposit its liquid assets in a bank in its name and must notify the Ministry of the place of deposit. The Ministry monitors NGO accounts to ensure that no more funds than the monthly expenditure are deposited any one time (Article 17).

It is not permissible for any NGO to join, participate in, receive funds from, or to transfer funds to an organisation located outside the jurisdiction of the Palestinian Authority, unless this has been approved by the Minister (Articles 19 & 20).

*Article 20 of the First Draft allows NGOs to send money out of the autonomous areas in order to purchase goods from external or foreign markets. Equivalent Article 41 of the Second Draft cancels this exception.*

Any fund-raising activities within the jurisdiction of the Palestinian Authority must be approved by the Minister (Article 21). All accounts and donations must be supplied for monitoring by the Ministry (Article 22).

*This requirement is not contained in the Second Draft.*

#### **Articles 23 - 33 Board of Directors (Article 16 - 22 of Second Draft)**

The board of directors fulfils a management role for both staff and activities within the NGO. Article 26 sets out the activities which the board of directors specialise in, and these are to be laid down in the organisation's by-laws. In carrying out administration of the NGO, the board may perform any function so long as this does not infringe its by-laws; and providing that approval is given by the general assembly, which it can only give by absolute majority, and in compliance with the Ministry's monitoring (Article 29).

A member of the board of directors cannot be on the board of more than one NGO without the permission of the Ministry; and neither can s/he be a salaried employee of the NGO (Articles 27 & 28). The general assembly elects board members (Article 30). The Minister retains the authority to intervene in any aspect of the administration or management of the NGO where s/he feels that its regulations or by-laws are being contravened (Article 31).

*The power granted to the Minister under Articles 32 and 33 of the First Draft is not contained within the provisions of the Second Draft.*

#### **Articles 34 -39 General Assembly (Article 23 - 26 of Second Draft)**

Members of the NGO must form a general assembly to oversee all activities of the NGO and its board of directors, including the election of new members (Article 34). The general assembly may be consulted by the Ministry in relation to matters of dissolution or dismissal of a board member, or for any other reason (Article 35). The Ministry must be informed about all general assembly meetings 15 days in advance, and provided with a list of issues on the agenda (Article 36). A general assembly meeting cannot take place unless it is attended by an absolute majority of its members; all its decisions may only be taken by absolute majority, unless otherwise specified in its by-laws. Meeting minutes must be given to the Ministry 15 days after the meeting (Articles 37 & 38).

#### **Articles 40 - 44 Foreign Organisations (Article 27 - 30 of the Second Draft)**

These are permitted to operate within the jurisdiction of the Palestinian Authority if they carry out any type of social services. They must also apply for a license from the Ministry and must provide the name of the organisation, its headquarters, names and addresses of its founders, and its board of directors, its main objectives and purposes and the names and citizenship of those responsible for the branch. Details of disposal of funds in the case of removal or dissolution of the branch must be provided (Article 40).

*Under Article 41 of the First Draft any changes which occur in the private records of the branch must be notified to the Ministry within one month. This is reduced to 15 days in Article 28 of the Second Draft.*

Regular reports must be submitted to the Ministry on activities undertaken and money spent in implementation, plus any other information requested by the Minister (Article 43).

The Palestinian Authority may refuse to give or cancel a permit for the foreign society to operate in its territory; or it may impose additional conditions, or amend previous conditions as it considers necessary (Article 42).

It is unclear what the law is concerning foreign societies that charge fees for its services of more than 10% of its expenses. Although it appears that there must be additional consultation with the Minister on this point (Article 44).

#### **Articles 45 - 47 Religious Bodies and Orders** *(Article 31 of the Second Draft)*

All religious bodies and orders established in the territory of the Palestinian Authority must receive approval from the Minister in order to be established in the territory of the Palestinian Authority. The Ministry supervises activities of such bodies to ensure that they operate for the public good, without "profit infringing on religion", or taking fees from beneficiaries (Article 45 & 47). The Law explicitly refers to religious bodies and orders established inside the territory of the Palestinian National Authority. However it is difficult to perceive exactly what kind of bodies/orders the Law relates to as the terms used are vague and there is no definition in Article 2 of what a religious body/order is.

If a fee is charged for the provision of education, health and social services, then the "appropriate minister" must be consulted in relation to the provision of a license (Article 46).

*Equivalent Article 31 of the Second Draft adds the requirement that any changes made in the kind of services provided must be submitted for acceptance to the Minister. It also lists the type of services envisaged in which a religious order/body might be engaged in, for example: Establishing refuges, educational institutes for the needy, social centres for the poor, provision of financial assistance, medical services or care.*

#### **Articles 48-52 Mergers and Unions** *(Article 32 - 37 of Second Draft)*

Two or more licensed NGOs can merge on approval by two-thirds majority of their respective general assemblies "provided this does not infringe on the rights of others in relation to both sides prior to this merger" (Article 48). This is a very vague provision and it is unclear who the "others" are.

No more than one union of NGOs in the Gaza Strip, and one in the West Bank is permitted (Article 49).

*Article 33 of the Second Draft stipulates that only one union of the same kind can be established in the Palestinian Territories.*

The factors upon which the existence of a union depends are not clear. Article 50 stipulates that the existence of a union depends on the consent of a majority of members in the general assemblies of every NGO; but the article goes on to say that if more than half the NGOs in each territory form a union, then the remaining NGOs shall be regarded as part of that union, and must comply with its regulations.

Any NGOs which come into existence subsequent to this law are bound by all these rules and regulations, including those pertaining to unions (Article 51).

The Minister may consult the union on issues pertaining to an NGO which is a union member, including issues of dissolution (Article 52).

Article 53 stipulates that if the services or objectives of the NGO are similar to those already provided by a Ministry "other than by the Ministry of Social Welfare", then they must obtain the approval of the concerned Minister before applying for the necessary permit from the Ministry of Social Welfare.

#### **Article 54 - Palestinian Authority Control of Funding for NGOs** (*Article 43 of Second Draft*)

The Minister may establish a fund to help NGOs. However this can only consist of donations from "banks, public institutions, companies, stores, merchants, business people or any Palestinian citizen". The Minister heads the fund's Board of Trustees, which draws-up the policies of the fund.

#### **Article 55 - Temporary Board of Directors** (*Article 22 of Second Draft*)

The Minister may impose a temporary board of directors on an NGO in three situations where: the number of board members is not sufficient for it to hold a legal meeting; the general assembly has not convened for two years without an acceptable excuse to the Ministry; and the NGO has violated a provision of this law or its by-laws, and the Ministry does not see a reason to dissolve it on those grounds.

*A warning period of 15 days in which violations must be amended is provided in the First Draft; equivalent Article 22 of the Second Draft does not provide this, but adds the requirement that within 60 days of imposition of a temporary board the general assembly must meet and must submit a report on the temporary body and must elect a new board of directors.*

#### **Articles 56-68 - Dissolution and Punishments** (*Article 44 - 48 of Second Draft*)

The Minister has the right to dissolve or cancel the permit of an NGO in the following situations where the Ministry is convinced that it has: violated its by-laws; not fulfilled the aims for which it was established; stopped operating; refused to allow officials to search and monitor it, or given false information- misspent its funds; violated any provision of this law; or if two-thirds of the general assembly vote for this measure (Article 56).

*Equivalent Article 44 of the Second Draft adds to this list: the situation where the general assembly has not convened for 2 consecutive years.*

The Minister must inform the NGO and the Interior Minister that it will have its permit cancelled 15 days in advance. Upon receipt of its dissolution notice the NGO must cease all activities from that point onwards (Article 57). An NGO can appeal such a decision, although no details for the procedures for doing this are provided (Article 58); thus weakening the provision, and the right of appeal.

On dissolution a salaried employee of the NGO must conduct a complete audit in accordance with its by-laws. If there is no such provision in the by-laws the Ministry will transfer its funds to similar NGOs in existence. In addition the Minister may add further regulations to facilitate this dealing of funds (Articles 59 & 60).

The Minister may temporarily close the headquarters of an NGO where it is suspected that a member of the organisation's board of trustees has violated regulations of this Law (Article 61).

Penalties provided for by this Law include: a maximum fine of 100 dinars, and/or imprisonment for a maximum of 6 months (*reduced to 1 month in equivalent Article 49(i) of the Second Draft*); establishment of an NGO in secret is punishable by a 1 year prison sentence, and/or a 3,000 dinar fine; fraudulent affidavits or records are punishable by imprisonment for minimum 2 months, and maximum 1 year, and/or a fine of 1,000 dinars.

Article 66 provides that each area of this Law will be executed by the relevant ministry or agency. This throws into confusion the presumption so far that the Social Welfare Ministry, and the Ministry of the Interior to some extent, execute this Law.

This Law replaces the ottoman Societies Law and Jordanian Law of Charitable Societies 1966 dealing with NGOs. This Law comes into effect on the date it is issued and published in the Official Gazette.

## **Part II**

### **Analysis of the Provisions of the Second Draft NGO Law**

This Part makes detailed reference to the Second Draft NGO Law only.

This extensive monitoring structure provides the Palestinian Authority with the power to determine exactly what the nature of NGO activity in the autonomous areas will be. This will have the effect of nurturing an artificial and weak NGO culture, denying the natural evolution of NGO activity in the new context of autonomous regions.

The drafters of this legislation have ignored the existing institutional reality in the West Bank and Gaza Strip. NGOs have played a very active and important role in the Occupied Territories. In spite of the oppressive regimes which have borne down upon them they have persevered and indeed matured so that a rich and strong NGO culture has evolved, which has been able to provide vital support to Palestinian society throughout its historic subjugation.

These organisations have invested effort and energy in supporting the Palestinian people and are therefore very closely linked with them. Thus, by undermining and alienating NGOs in Palestinian Authority jurisdiction, the people also are alienated. NGOs have organised themselves into a framework through which a dialogue, and subsequently negotiations, could be established with the Palestinian National Authority. The response of the Palestinian National Authority which, this Draft Law constitutes is not worthy of such strong, vital and integrated NGO culture within its jurisdiction, nor is it worthy of the efforts made by the NGOs to cooperate with the Palestinian Authority.

### **Definitions**

Article I defines "Foreign Societies" as "Any social body, charitable organization or private institution whose headquarters are located outside the territorial jurisdiction of the Palestinian National Authority or one with a majority of foreign members". If this law is adopted it will take effect in areas under the jurisdiction of the Palestinian National Authority. The vagueness of this definition raises the question: Are those Palestinian NGOs outside Palestinian National Authority, for example those in Jerusalem or in the diaspora, considered foreign?

This is a critical issue because of the special relationship which exists between Palestinians both inside and outside the Occupied Territories. Palestinians both within and without have been affected by and involved in the Palestinian struggle against the Israeli occupation. This issue has to be approached in a sensitive way, and an innovative formula found, in which traditional and vital links are maintained rather than undermined.

### **Licensing a Non-Governmental Organisation**

Article 7 provides that before the Minister of Social Welfare takes his decision on whether to grant a permit he shall consult with the Ministry of Interior, who shall issue his decision within 15 days. If the Minister of Interior gives no answer within this time then it should be assumed that he agrees to the granting of the permit. The final decision of the Minister of Social Welfare it is not contingent upon the opinion of the Minister of Interior.

There are no clear channels for the decision-making process in this Draft Law. This hinders the administrative process of granting licences, makes adherence to the Law harder and more complicated, and makes the possibility of reviewing decisions of the Minister(s) even more remote.

The obtaining of registration is made more complex by the additional conditions of Article 50. This provides that where the objectives and services of an NGO have any relation to the services provided by a Ministry (not the Ministry of Social Welfare) then approval, in the form of a permit, must be sought from the Ministry in addition to and prior to an application to the Ministry of Social Welfare.

This is a very broad provision. It is highly likely that almost all NGOs will have some aspect of their work, which is related to the type of services provided by at least one Ministry. It is therefore likely that often at least two permits will be required by an NGO seeking registration. The law makes extensive provision for the obtaining of the second permit, as discussed above. But the first permit is a prerequisite in certain circumstances and there is no reference to the process for obtaining this. Thus a very complex and disorganised procedure has been constructed which will present obstacles to NGOs seeking registration.

Article 51 requires that an NGO which is already in existence must fix its situation in accordance with this Law within 3 months of it coming into force, or the NGO will be dissolved. The drafters appear to have ignored the existing institutional reality in the West Bank and Gaza Strip. This provision ignores the vital societal role that NGOs have played during a period when the Palestinian National Authority did not even exist. The drafters have failed to take into consideration that these institutions work and exist closely with the people, and that their maintenance and treatment will have some bearing on the extent to which they accept the new Palestinian Authority.

These organisations have invested efforts and energy into providing for the needs of the Palestinian people during times of great hardship and oppression. This Draft Law does not seek to award these institutions but instead to question their legitimacy, undermine their existence and to maintain the threat of dissolution over them.

### **Obligations of an Non-Governmental Organisation**

The Draft Law prohibits an NGO from owning any real property unless it obtains a permit to do so from the Minister and only if it is necessary for the specific purposes of the organisation.

The Draft Law considers the nature of these organisation as non-profit organisations, and to this extent the law limits ownership of any real property to that which serves their voluntary work and objectives. The ownership of property beyond these defined needs requires permission from the Minister.

The effect of this condition could be to restrict the work of NGOs as they will not be empowered to determine their own needs. In addition this restriction is not consistent with Article 2, which provides that NGOs enjoy "the status of a legally independent body once licensed". This provision is yet another element in the monitoring framework which the Draft Law establishes, the extent of which is excessive and unnecessary.

Article 12 states that the relationship between NGOs and the Ministry shall be one of cooperation. The connotation of this cooperation element appears to be that it appears to have the aim of serving the public interests in the best way possible. However this appears to be an empty sentiment when considered in the context of the Draft Law.

The provisions of the law place far more onerous obligations on NGOs than on the Ministry. There is an enormous burden placed upon NGOs to provide information and transparency arrangements. On the other hand the Law does not provide any principles for a code of conduct which the Ministry must follow in order to determine the application of every NGO in a fair, objective and non-partisan manner.

The requirement that any total or partial change or amendment in the by-laws, or to the administration of an NGO, must be immediately submitted to the Ministry for approval, is extremely obstructive. This provision would be a great obstacle to the efficiency and running of an NGO, especially as important changes could be vital to the continued running of the NGO. The situation is worsened by the fact that the change cannot take effect until it has been approved in writing by the Minister after consulting the Minister of the Interior. There is no detail as to how long this process will take or what right of review or appeal an NGO has in such case.

The Ministry's Director-General is empowered to visit the offices of any organisation. And the NGO must present its records, which must be kept specifically for this purpose in order that they can be checked, so that the Ministry is assured that the provisions of this Law are being adhered to.

The requirement that each NGO must provide "any other information" which the Ministry requires, is an extremely vague stipulation which augments the invasive monitoring provisions of the Draft Law.

The requirement that each organisation must submit an annual report is appropriate in principle. The context and nature of the work of NGOs is to fulfil a societal need; their activities should be transparent and open, as well as non-profit-making. An annual report is an effective and constructive method of ensuring this.

However effective monitoring does not necessitate such extensive measures, as are provided in this Law. They are intrusive and unjustifiable; based also based on a

presumption of distrust and an intention to monopolise and render impotent NGOs operating within the jurisdiction of the Palestinian National Authority.

### **Financial Affairs**

The financial provisions augment the extensive monitoring framework. They seek to further undermine the independent legal character of these organisations which is affirmed in Article 2.

The first worrying issue is that an NGO must notify the Minister in addition an NGO cannot of the place of depositing its funds. In addition an NGO cannot keep in cash more than its monthly expenditure without prior consent of the Ministry. This ensures that every facet of the activities of an NGO is under the monitoring process of the Ministry. In addition it is not appropriate that a powerful government body, which is neither accountable nor transparent, should have such control of funds which belong to an organisation which should be independent.

No organisation can obtain money from outside the autonomous areas or from foreign sources unless permission is obtained from the Minister. It is unclear how extensive the application of the provisions on funding from such sources are. “[O]utside” could include Palestinian donor individuals and organisations which are based or have branches outside the areas of limited Palestinian autonomy. This would be destructive for many NGOs within autonomous areas, as there are many donor sources outside.

This lack of clarity is the result of bad drafting. There is no specificity which results in some overlap with the provisions for foreign NGOs which have branches in the autonomous regions. For example the provisions could be interpreted in such a way that foreign NGOs are not able to receive funds from outside. This surely cannot be the intention of the drafters. Notwithstanding that the restriction on foreign sources is not absolute, as consent of the Minister can be sought, this is nevertheless a significant drafting error, which would be met with serious concern from foreign NGOs.

These measures clearly isolate Palestinian NGOs inside the autonomous areas. NGOs find it hard to generate funds as they do not engage in commercial activity and largely depend on external assistance. The economic situation in the Occupied Territories makes the prospect of receiving financial assistance from sources within the region even more remote.

The history of the Palestinian struggle is interwoven with the Arab World. This is reflected in financial support from many sources in the Arab world for Palestinian organisations. In addition it should be emphasised that support for Palestinian NGOs working in the Gaza Strip and West Bank has been strong from foreign sources, both governmental and non-governmental.

The funding provisions are confusing and unclear. The requirement of permission from the Minister before any support can be received from foreign or outside sources is unacceptable and enables the Palestinian Authority to undermine the work of an organisation or even to disable it totally. How far this is so is entirely dependant on how the Minister interprets these broad provisions.

Where there is a national or local alternative to foreign funding, it is probable that this will be preferred by both the NGO and the Palestinian Authority. However, the reality is that the economic situation in the autonomous areas is weak, and it is unlikely that there would be sufficient funding for all existing NGOs from local sources. In order to deal with this reality it is necessary for the Authority to alter its position so that NGOs are not geographically limited in their funding sources, and are given more freedom to collect donations.

In many countries NGOs are financed through donations from companies or individuals who donate directly to the organisation, and in so-doing receive tax-exemptions; few restrictions are imposed by the government, who's only requirements might be for example, that it is informed of the transfer of such donations for tax reasons, and that there is evidence that the funds were spent for non-profit-making purposes and in fulfilment of the NGO's objectives. On the whole there is little government intervention.

What is required from the Palestinian Authority is a realistic legal formula which regulates foreign funds in a way that is consistent with, and which makes a positive contribution to, the unique circumstances of Palestinian society at this time.

These provisions are far more severe and restrictive than is necessary. The interference of the Authority in the financial affairs of NGOs undermines their independent status as non-governmental organisations. These provisions reflect an unwarranted concern it would have to compete with NGOs for foreign funds. Thus this Draft Law falls well short of sympathy for their needs, and fails to answer the long-term demands of the developing process for NGOs in the autonomous areas. What really would serve this process is if greater freedom of movement for the activities of these organisations were given, and the Palestinian Authority were to seek to benefit from the experience which these NGOs have acquired through decades of activity.

### **Foreign Organisations and Religious Bodies**

Special provision is made for foreign organisations and religious orders. These are less extensive and more vague than those for Palestinian NGOs; thus there remains much which is unclear and many questions left unanswered in relation to such organisations and bodies under the Draft Law. However both categories remain very much under the monitoring process of the Ministry.

### **Foreign Organisations**

Foreign organisations must still obtain a license. They must also deposit specified information about the branch, its founders, its main objectives, information about the people it employs, information on finance and on the board of directors. Foreign NGOs do not appear to be subject to the same extensive monitoring process as Palestinian NGOs. However they still must inform the Minister of administrative changes, or in the private records of the organisation. They must also deposit a regular report which must

contain specified information, as well as the requirement for "any other information requested by the Minister".

Thus the Ministry ensures that it maintains control over foreign NGOs. The information requirements while less extensive in their listing, are still onerous as they contain that familiar vague phrase "any other information requested by the Minister". This control is consolidated by the power of the Minister to refuse to allow a foreign NGO to function in the autonomous areas and to impose additional conditions as he deems necessary.

### **Religious Bodies**

The Ministry seeks to ensure that through "supervision and monitoring" religious bodies carry out social services "for the public good without aiming for profit infringing on religion". The meaning here is difficult to ascertain: what is profit infringing on religion?

The Draft Law states that its provisions apply to those religious orders which are established in the autonomous areas, and that these shall be monitored and supervised by the Minister "to ensure its correct administration and provision of public services".

It is unclear how religious orders which are established outside the autonomous areas would be affected by the Law. In addition there is no definition of a religious order provided in the definition section; thus it is unclear exactly what such a body is, and which organisations are subject to these provisions.

### **The Board of Directors and the General Assembly**

The Minister maintains absolute control over all the activities of an NGO by controlling the board of directors and the general assembly, both of which each organisation is required to establish.

The board is subordinate to the assembly. All the activities of the board are largely administrative and are subject to the approval of the assembly, which also elects members for the board. Both bodies are subject to the monitoring process of the Ministry which must be informed in order that it can attend all meetings.

Article 22 gives the Minister the right to appoint a director or temporary board for the society where: i) the numbers of the members of the board are insufficient because of resignation or death; ii) a director has not attended three consecutive meetings without apology; iii) the board acts against any rule of this Law or against the organisations by-laws, and the Minister does not see a reason to dissolve it.

The general assembly can establish a new board within 60 days of the imposed temporary board. It is not clear what the quorum is to enable a meeting of the general assembly to do this; thus questions arise about the legitimacy of the general assembly's electing activities and its democratic basis.

In effect the Palestinian Authority has the right to dissolve an organisation on the pretext that it has not followed the rule of law, and without prior notice. This provision therefore ensures that the independence and authority of the board and assembly are completely undermined.

### **Dissolving a Non-Governmental Organisation**

The Draft NGO Law empowers the Minister to dissolve NGOs. There is much detail on the measures and procedures for winding-up its finances and its obligations. The existence of the provisions is consistent with the nature of the Law; it places the existence of the NGO entirely in the hands of the Minister, from the process of its evolution, through its maintenance, to its dissolution.

The procedural aspects of the decision to dissolve an organisation in accordance with these provisions require particular attention. The Minister informs the organisation and the Minister of Interior 15 days prior to the decision taking effect. Considering that this is such an extreme measure this is a very short period of time and is not sufficient to enable review of such a crucial decision.

It is unclear whether the Minister of Interior or the Minister for Social Welfare is responsible for the implementation of such a decision. If any review is to take place it is crucial that the decision-making process is transparent and clear.

It seems that the concept of NGOs having an independent status in the autonomous areas was far removed from the minds of the drafters. Government interference pervades all areas of the organisation which are clearly matters of an internal nature and should be regulated only by the particular organisation's own constitution and by its members. The existence of such organisations fulfils societal needs and is in the public interest. Closing or dissolving an NGO deprives the public of its services and in this context closure is often far too severe. The Minister is empowered to order the closure of an NGO for a "certain renewable time as a temporary step". This phrase threatens a climate of uncertainty and instability for NGOs, which is compounded by a lack of detail and vagueness in the provisions for closure.

### **Penalties**

Both the organisation and individuals can be penalised for transgressions under this Law. The transgressor is sometimes exposed to more than one punishment, and these are not proportionate or appropriate to the transgression.

The penalties for violating the provisions of this law include a maximum fine of 100 Jordanian dinars, and/or imprisonment for a maximum of 1 month. Operating without registration incurs imprisonment for a maximum of 1 year, and/or a 3,000 dinar fine. Failure to disclose, or fraudulent administration incurs imprisonment for a minimum of 2 months and a maximum of 1 year, and/or a fine of 1,000 dinars.

An organisation can be punished for violation of this Law, of public order and of morals. It is unclear what these latter two elements consist of. Neither seem at all appropriate or necessary in this context, and they are probably a result of ill-thought-out drafting.

It is absolutely unnecessary to have specific penalties for activities of NGOs. The penalties provided in this law are not proportionate to the violations envisaged. Many of the breaches are not specific to NGO activities, and are provided for by common law penalties anyway.

The Palestinian Centre for Human Rights proposes that there should be no specific penalties for transgressions by NGOs; and that it would be a far less complicated and more appropriate approach if reference were made to penalties provided in the common law where appropriate.

## **Part III**

### **The differences between the First and Second Draft Laws**

As discussed above, the First Draft Law which the Palestinian Authority published, was strongly opposed by the NGO community. A comparative analysis of the First and Second Drafts will provide a clearer idea of what the differences are between them, as well as how seriously the Palestinian Authority has taken into consideration the views of the NGO community.

Generally speaking there has been little change in the content of the Draft Law. Any changes are superficial and the dominating and controlling character of the Law is maintained throughout both Drafts.

The following are the most important points of comparison:

1. The required number of copies of the organisation's constitution is decreased in Article 5 of the Second Draft from 10 to 3.
2. Article 11 of the Second Draft cancels the exceptions granted in Article 9 of the First Draft for the prohibition on the owning of property in cases where the activities of the NGO concern housing provision, family and child service providers, juvenile, geriatric and disabled services.
3. Article 38 of the Second Draft, equivalent to Article 16 of the First Draft, increases the maximum expenditure before a certified accountant is required from 500 dinars to 1000 dinars.
4. Article 41 of the Second Draft cancels the exception granted for societies in Article 20 of the First Draft which allowed them to send money out of the country in order to purchase goods from external or foreign markets.
5. The Second Draft deletes Article 32 of the First Draft, which gave the Minister the power to integrate organisations which have similar objectives.
6. Second Draft Article 28 reduces the period prescribed in First Draft equivalent Article 41, within which a foreign organisation must inform the Government of any changes in its records, from one month to 15 days.
7. Article 56 of the First Draft lists the situations in which the Minister has the right to dissolve an NGO. Equivalent Article 44 of the Second Draft increases the number of situations by adding the situation where the general assembly has not convened for two consecutive years.

## CONCLUSIONS AND RECOMMENDATIONS

Palestinian society is going through a critical and difficult stage in its historical development. Israeli occupation continues to exist in both a physical and legal form. Palestinian NGOs find themselves obliged to continue to confront this reality, while at the same time reassessing in order to be able to respond to the peoples' altered aspirations and rights in the new situation which limited autonomy under the Palestinian Authority brings. Thus, in the present climate national objectives and social roles overlap.

NGOs face a dual challenge: that of the occupation, wherein they seek to protect and affirm Palestinian identity and the right to self-determination; plus monitoring the decision-making processes and activities of the Palestinian Authority.

In order to meet these two challenges an appropriate and conducive environment is required which is based on mutual cooperation rather than competition or conflict. An important enabling factor in this respect is that Palestinian organisations must maintain their independence. This is particularly important because they reflect the freedoms held by individuals and society to organise their activities and daily affairs without government interference or control.

A strong civil organisational structure weakens the ability of a government to practice suppression over its citizens. A strong and effective grouping of the people into independent organisations increases their ability to oppose the policies and activities of their government, and ultimately to safeguard against state suppression and oppression.

In order for such a structure to exist there must be clear separation between the activities of government and of NGOs. To ensure this an appropriate and fair law is required to ensure that individuals, civil societies and institutions have freedom and independence when carrying out their work.

Because of these dynamics undemocratic states invariably seek to prevent the foundation of such a civil society, by imposing unjust laws and requirements, containing bureaucratic measures which make it difficult to register. In addition, a strict monitoring and controlling structure is imposed. Thus stifling the ability for civil society to be strong and active, and for democratic structures to develop.

Palestinian society needs an empowered and strong NGO society in order to confront the difficult situation, which it now faces. This will not be achieved by inhibiting their independence, freedom of communication and activity. The Palestinian people desperately need the benefit of the human resources, which NGOs would contribute to the building of a society based firmly on the principles of democracy, pluralism and justice.

A legal environment must exist in which non-governmental organisations can continue their work towards the building of a strong Palestinian civil society, which can assist the integration and support the role of the Palestinian Authority. However the Draft Law marginalises these organisations and seeks to deny them of an effective role in society by not honouring, or utilising the benefits of the role which they have played throughout the past difficult decades. The Palestinian National Authority should not regard Palestinian NGOs as the enemy, but rather as partners in the challenge of developing a strong Palestinian society during this Interim Period.

The Palestinian Centre for Human Rights recognises that the NGO culture in Palestine lacks coordination, and there are many duplicate organisations, the existence of which are not always fully justified. In addition the role of some organisations will be subsumed since the establishment of the Palestinian Authority and its attendant social, health and economic ministries. But in the same way, there are other NGOs with different mandates, which may have not been formerly required, but which are now needed and should be given an opportunity to evolve.

There is a need to ensure clarity and transparency in the running of these organisations, particularly in their financial affairs. This is not only in the interests of the Palestinian Authority, but also in the public interest. However this Draft Law will impose excessive, destructive and inappropriate restrictions.

There is very little provision for review or appeal of any decision or for transparency in the decision-making process of any of the Ministries in relation to amendments or licensing. It is broadly accepted that a necessary element for democratic governance is the opportunity for review of any decision which is taken by a government body which could materially affect the rights of an individual or a group of individuals; and that a system of review of that decision by an independent tribunal must be provided. This is one of the safeguards against impropriety and helps to instill confidence in the decisions made by government bodies. The Palestinian National Authority must provide an effective review system for decisions taken by its ministries in this regard. The references which appear in the Second Draft to rights of review in relation to dissolution and closure are vague and inadequate.

Effectively the Minister of Social Welfare has a free rein to shape and mould NGOs as he wishes. NGOs under this Law do not have the freedoms they need in order to exist as they have done, or as society needs them to. The Palestinian Centre for Human Rights cannot find sufficient justification for the existence of such a law at all. This is only an interim period of government for the Palestinian Authority and it is more appropriate that all laws issued by it should be of an interim nature; they should not effect severe destruction and cause long-term damage. We therefore propose that the Palestinian Authority should pass guidelines for some, rather than all, aspects of NGOs, instead of this all-encompassing, suffocating and destructive legislation.

## **APPENDIX I**

### **INTERNATIONAL HUMAN RIGHTS LAW ON NGOs**

In a democracy, a strong NGO culture ensures that governments take account of alternative opinions; to this extent they provide a channel through which the public can exert pressure on a government to change or alter its policies.

The Universal Declaration of Human Rights and the International Covenants on Human Rights are the major international human rights treaties. They provide a framework of standards and bench marks by which the activities of the Palestinian Authority can be measured. These instruments are not explicit in regard to NGOs.

However they do refer to the rights of association, assembly and expression, all of which are important accessory rights for the existence of NGOs. These rights represent the foundation on which individuals can claim the right to establish and be active in independent NGOs.

Democracy and human rights go hand in hand. Not only do democratic rights form part of international human rights law but human rights rely on the existence of democracy. Indeed any state that seeks to curtail human rights has to show that this is a measure which is "necessary in a democratic society".

The Universal Declaration provides that:

"Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association" (Article 20).

The International Covenant also seeks to protect these rights:

"The right of peaceful assembly shall be recognised"  
(Article 2 1).

"Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests" (Article 22).

This right is obviously necessary to enable NGOs to organise themselves and to hold meetings, and for individuals to become members of such organisations.

These rights under international law are not legally enforceable in the Occupied Territories. The Universal Declaration of Human Rights, though possibly providing standards and norms for the respect of human rights, does not have legal force. Similarly, the International Covenant of Civil and Political Rights as an international treaty requires signature and ratification. The Palestinian Authority does not have the

legal capacity to sign the treaty and Israel has a reservation which excludes the Occupied Territories from the protection of the International Covenant.

However an undertaking was issued by Chairman Arafat on 30 September 1993, in which he stated that the Palestinian Authority accepted international human rights standards and would ensure their respect in the autonomous areas. Strictly speaking this undertaking has no legal force, but it may provide a means of interpretation and guidance on standards in legislation; for example, in its legislative capacity, the Palestinian Authority could ensure that all new laws conform to international human rights standards. Unfortunately the Draft NGO Law shows that this is not the case.

The right to association is not adequately guaranteed because the right of NGOs to exist is conditional on permission from Ministries of the Palestinian Authority; plus NGOs which transgress the provisions of the Draft Law are subject to dissolution.

This Draft Law does not contribute to the development of a democratic pluralistic society in the autonomous areas. Its aim appears to be to bolster the power and control of the Palestinian Authority in all aspects of society within its jurisdiction; to remove any semblance of opposition or criticism to its activities; and ultimately to isolate itself further from a people who are desperate for a legitimate forum from which to express their wishes and needs and to have these accommodated, or at least taken into consideration, by a government whose primary interests and concerns are those of the Palestinian people.

If this Draft Law passes into legislation it will not only fall well short of international standards of human rights and democracy, but will also facilitate the continued suppression and violation of the rights of the Palestinian people.

## **APPENDIX II**

### **THE LEGISLATIVE PROCESS UNDER THE PALESTINIAN AUTHORITY**

In May 1994 the Agreement on the Gaza Strip and the district of Jericho was signed in Cairo by the Palestine Liberation Organisation and the Government of Israel. Its primary aim was to transfer partial autonomy from the office of the Israeli Military Governor and its Civil Administration to the Palestinian Authority in the Gaza Strip and Jericho. A further agreement signed in Taba on 28 September 1995 extended this partial autonomy to certain areas of the West Bank.

Specifically, the Palestinian Authority is entitled to certain legislative and executive powers (Article VI(I)(a) of the Cairo Agreement signed between the Palestine Liberation Organisation and the Government of Israel); which include the power to pass basic laws and regulations (Article VII(1) of the Cairo Agreement). However, any legislation emitted by the Palestinian National Authority must be approved by Israel before it can come into force. Throughout the planned five-year transitional period the Israeli Military Orders are to remain in force (Article VII(9) of the Cairo Agreement).

The Palestinian Authority was established on 18 May 1994. One of the first decisions taken by Chairman Arafat as President of the Palestinian Authority was to revive the laws which were in force prior to June 1967, until such time as a unified set of laws could be established, (Law No.4 of 1995, states the procedures for legislation by the Palestinian Authority dated 20 May 1994). On 17 April 1995 Arafat issued Law No. 5, this supplemented the powers already held by the Palestinian Authority by subsuming all governmental control available in laws which were in force prior to 19 May 1994.

In addition Law No.4 established a legislative process for the Palestinian National Authority. Under this procedure, the relevant ministry prepares the basic elements of the law. This is then sent to the drafting department of the Justice Ministry (called the Dewan AI Fatwa Wal Tashre'a) which draws up a draft of the legislation. The draft legislation is then submitted to the Cabinet of Ministers and the President of the Palestinian Authority, who may accept, refuse or amend it. It is returned to the Elected Council for preparation of the final text. The text becomes law once it has been signed by the President of the Palestinian Authority.

It is worth noting that Law No.4 does not contain any reference to submission of draft legislation to the Government of Israel, as is stated in the Cairo Agreement. It is unclear therefore whether at any stage during the legislative process Israel is permitted to intervene.

It is clear, however, that the agreements with Israel have imposed limitations on the Palestinian Authority's power to legislate and that Israel has maintained a residual control on the already limited legislative power of the Palestinian Authority. Thus these

Agreements ensure the maintenance of the Israeli occupation in both its legal and physical forms.

A number of constitutional questions remain in regard to the dual role of the Palestinian Authority, who is both legislator and the executive. Similarly, the constitutional relationship between -the Palestine Liberation Organisation and the Palestinian Authority remains unclear. One example of this is that Chairman Arafat signs all decrees both as Chairman of the PLO and as President of the Palestinian Authority.

Although the Taba Agreement clarifies the situation to some extent by providing the Elected Council with the power to legislate, (it appears that the Elected Council acts under the rules and Constitution established by the Basic Law of 1962); two outstanding issues remain: Firstly, what is the status of laws passed before establishment of the Elected Council; and secondly, what is the extent of power which the executive retains to legislate in urgent situations and in absence of the Council.

According to Article 28 of the Palestinian Constitution of 1962, the Executive is empowered to legislate in certain situations without the approval of the Legislative Council. One such situation is when conditions require urgent measures to be taken. Such decisions can be overturned by the Legislative Council when it is convened, but remain in force until such time as the Elected Council cancels them.

Clearly, the Draft NGO Law will fall into the category of legislation passed by the executive. Would the Palestinian National Elected Council therefore be free to rescind these decisions? What would be the consequences of such an action?

Numerous questions will remain unanswered until the elected Council is installed and is able to establish constitutional principles for the relationship between itself as legislator and the Palestinian Authority as executive. This process will take time and it is unlikely that clear answers will be available immediately after the Council begins sitting.

## APPENDIX III

### PALESTINIAN AUTHORITY FIRST DRAFT LAW CONCERNING CHARITABLE SOCIETIES, SOCIAL BODIES AND PRIVATE INSTITUTIONS

Act Number (\_\_\_\_) 1995

Concerning Charitable Societies, Social Bodies and Private Institutions.

Head of the Executive Committee of the Palestine Liberation Organization and Head of the Palestinian National Authority has, after reviewing Law Number 5 for the year 1995, concerning Transfer of Powers and Authorities, and Charitable Societies Law Number 33 for the year 1966 concerning Charitable Societies, Social Bodies and Private Institutions in force in the West Bank; and the Ottoman Societies Law promulgated on 29 Rajab for the Hijri year 1327 in force in the Gaza Strip; and in accordance with the public good; and after the approval of the Palestinian National Authority Council on 1995 and based on the proffer of the Minister of Social Welfare, promulgated the following law:

#### CHAPTER ONE DEFINITIONS

##### **Article 2** (*Article I of Second Draft*)

The following items and expressions appearing in this Law shall have the following meanings unless presumed otherwise:

- **The Minister:** The Social Welfare Minister in the Palestinian Authority;
- **The Ministry:** The Social Welfare Ministry in the Palestinian Authority;
- **The Director General:** The Director General of the Ministry of Social Welfare;
- **Director:** The Director of the Ministry of Social Welfare;
- **Charitable Society:** Any body composed of seven members or more which aims to Provide social, financial and economic services to the citizens without any profit or political gains;
- **Social Bodies:** Any body composed of seven members or more which aims to provide social services, whether these services were scientific, cultural, training, charitable, artistic, or professional, without having any political gains;
- **Private Institutions:** Any institution established with a specific specialization, aiming to take a main role in the various fields of social Welfare or any other activity having a humanitarian, scientific or technical nature or any other social welfare activity, without aiming for profit;

- **Foreign Society:** Any social body, charitable organization or private institution whose headquarters are located outside the territorial jurisdiction of the Palestinian National Authority or one with a majority of foreign members;
- **Social Service:** Any social or economic service or activity provided voluntarily or optionally which may improve the financial, cultural, educational, health, athletic, social, technical, or professional level of the citizens in the society.

**Article 3** (*Article 2 of the Second Draft*)

All existing social bodies, charitable societies, and private institutions and those which shall be established, in accordance with this law, shall enjoy the status of a legally independent body once licensed and shall be allowed to carry out its functions and activities so long as these activities do not contravene this law or the institutions by-laws approved by the appropriate authority.

## **CHAPTER TWO LICENSING NON-GOVERNMENTAL ORGANISATIONS**

**Article 4** (*Article 5 of the Second Draft*)

Applications for licensing any society, body, or institution shall be submitted to the Minister, along with ten copies of its by-laws, (*reduced to three copies in the Second Draft*). The minister shall issue a decision which s/he deems appropriate concerning this application, and shall do so within a period not exceeding 2 months from submitting the application.

**Article 5** (*Article 7 of Second Draft*)

Prior to making his/her decision to license a society or body, or institution, the Minister shall seek the opinion of the Interior Minister, or his/her delegate who shall forward an opinion regarding it within 30 days after studying the society's by-laws. The Minister's decision shall not be contingent on his/her approval.

**Article 6** (*Article 8 of Second Draft*)

Subject to any conditions or instructions promulgated by the Minister, the by-laws of any society, institution or body applying for registration must contain the following:

- a. The name of the society or body or institution, its address, its headquarters and branches;
- b. the names of its founding members, their places of residence, ages and responsibilities;
- c. the basic objectives for which it was established and any other objectives it holds;
- d. details of membership requirements, fees, and the method for cancelling membership;
- e. details of arrangements for forming the body in charge of administration, delegating work, and supervising the affairs of the institution, body, or society, and its jurisdiction;

- f. details of arrangements for meetings of the general assembly;
- g. details of arrangements for controlling financial affairs and dispensing funds;
- h. details of arrangements for dissolving the society, body, or institution;
- i. details of arrangements for disposing of the society or body or institution's funds and properties upon dissolution, provided that this does not go beyond the purposes of the society and that the funds are spent within the boundaries of the Palestinian National Authority; or else the Minister may decide how funds and property is disposed of, so long as this does not contradict the purposes for which the society was established.

**Article 7** (*Article 9 of the Second Draft*)

Every charitable society, social body, or private institution shall be granted a license after it has been registered, signed, and sealed by the Minister, and a copy of the approved by-laws attached. This shall be published in the Official Gazette.

**Article 8** (*Article 5(i) of the Second Draft*)

If applicants for registration have not received notice of the decision, or a request for more details, or a notice regarding incomplete legal requirements, within 3 months after the application is submitted to the Ministry, then applicants should assume that they are registered and have the right to function as if they were an institution or society licensed in accordance with the law.

### **CHAPTER THREE OBLIGATIONS OF NON-GOVERNMENTAL ORGANISATIONS**

**Article 9** (*Article 11 of the Second Draft*)

It is not permissible for any society, body, or institution to own property beyond the degree required to fulfil the purpose for which it was established; unless it is granted permission to own property by the Minister or his/her delegate, for the purpose of generating funds to provide services.

*In the First Draft there is an exception in this article for housing societies, family and child service providers, juvenile, geriatric and disabled peoples' service providers on the basis that they have special requirements in services, funding, organization, and training. However this exception is not granted in the Second Draft.*

**Article 10** (*Article 10 of Second Draft*)

For the purpose of implementing this law, the Ministry shall maintain the following:

1. A registry of all licensed societies, including the titles and centres of its activities and any other information deemed necessary by the Minister.
2. A different registry of all societies that were denied a permit, stating their objectives and reasons why the permit was denied and any other information deemed necessary by the Minister.
3. A registry where registration applications are recorded in chronological order according to application date.

**Article 11** (*Article 6 of the Second Draft*)

Applications for registration by different societies shall be examined by the Director General of the specialized Ministry and shall be referred to the Minister or his/her delegate, with his/her opinion attached.

**Article 12** (*Article 12 of the Second Draft*)

The relationship between the Ministry and the institutions, societies, and bodies shall be based on cooperation and participation in the provision and upgrading of services. The Ministry's Director General or delegate for that purpose may visit the premises of any society and inspect its records and papers to ensure that its funds are being used for the purpose for which they were intended and that it is carrying out its functions in accordance with the provisions of this Law and in accordance with the set objectives.

**Article 13** (*Article 13 of the Second Draft*)

The administrative body of any charitable society, social body, or private institution, or any of its branches, shall maintain the following:

1. correspondence in special files and organized records;
2. its by-laws, the names of its board of directors in every election term and the day of its election;
3. the names of all members of the society, institution, or social body, stating their identity card numbers, age, and the days of their memberships;
4. minutes of the meetings of its administrative body, in chronological order;
5. minutes of the general assembly of the society, body, or institution;
6. detailed statement of revenues and expenditures; and
7. a record of the society's private assets and belongings.

The relevant administrative committee at the Ministry shall have the right to examine these documents, books, and records.

**Article 14** (*Article 14 of the Second Draft*)

The administrative body of any charitable society, social body, or private institution shall notify the Director General of the Ministry of any amendment or change that may occur with its position, in its by-laws, or any total or partial change in its administrative body. Any amendment or change shall not take effect without written approval from the Minister or his/her delegate, who shall first consult the Minister of the Interior or his/her representative.

## **FINANCIAL AFFAIRS**

**Article 15** (*Article 15 of the Second Draft*)

The administrative body of a charitable society, social body or private institution must present the Minister, through the Director General of the Ministry two copies of an annual report stating their activities, the aggregate amount of money spent for implementing their goals, sources of revenue, and any other information requested from them as set out in the form prepared by the Ministry. A copy of this report shall be forwarded to the Ministry of the Interior.

**Article 16** *(Article 38 of the Second Draft)*

Every charitable society, social body, or private institution shall have an annual budget supervised by a certified accountant, if expenditure exceeds five hundred dinars.

*This figure is increased to 1000 dinars in the Second Draft.*

In either case, the auditors' report on the budget, expenditures, and revenues shall be presented to the general assembly on its annual meeting for ratification and authorization.

**Article 17** *(Article 39 of the Second Draft)*

The society shall deposit its liquid assets in its name in a bank and it shall notify the Ministry of the place of depositing the funds. It is not permissible for the society to keep money exceeding its monthly expenditure without the consent of the Ministry.

**Article 18** *(Article 40 of the Second Draft)*

Charitable societies, social bodies, and private institutions covered by this Law shall be exempted by the Minister from custom fees on all equipment imported. It is not permissible for the society to use equipment for a period not less than 5 years if it does not pay fees on it.

**Article 19** *(Article 35 of the Second Draft)*

It is not permissible for any society to join, participate, or enrol in , an organization located outside the jurisdiction of the Palestinian National Authority without the approval of the Minister. If no reply is received within 30 days of submitting the application for approval from the Minister, then approval should be assumed.

**Article 20** *(Article 41 of the Second Draft)*

It is not permissible for any society to receive funds from outside the jurisdiction of the Palestinian National Authority or from a foreign body; or to transfer funds outside or to any foreign body without the consent of the Minister or his/her delegate, with the exception of goods required from external or foreign markets.

*This exception is not granted in the Second Draft.*

**Article 21** *(Article 42 of the Second Draft)*

It is permissible for societies to hold parties or charitable functions, sports activities, or to undertake other fund-raising activities, such as sending letters for collecting funds, intended for the objectives for which the society was established. This requires prior consent from the Minister or his/her delegate.

**Article 22** *(NO equivalent article in the Second Draft)*

All societies shall comply with the monitoring of the Ministry, which shall include: inspection of accounts, donations collected by the society and ensuring that the society complies with the Law and its own by-laws.

*This requirement is not contained in the Second Draft.*

## **CHAPTER FOUR**

### **BOARD OF DIRECTORS**

#### **Article 23** *(Article 16 of the Second Draft)*

Every society, institution, or body shall have a board of directors whose roles, and the process for selecting its members, shall be specified in its by-laws.

#### **Article 24** *(Article 17 of the Second Draft)*

The board of directors of a society, social body, or institution shall be responsible for the society's entire activities and functions. The board shall be headed by a director, who represents the society before all official, international, and local bodies, and who shall sign all correspondence, contracts and agreements conducted between the organization and other parties.

#### **Article 25** *(Article 17 of the Second Draft)*

The role of the director, his/her deputy, the secretary, researcher, and the secretary of the board of directors of any society shall be determined in accordance with the by-laws set by its board of directors.

#### **Article 26** *(Article 18 of the Second Draft)*

The board of directors shall be specialized in: administering the technical -and administrative affairs of the organization; preparing internal lists and instructions while taking into account the instructions of the Ministry; establishing committees which it considers necessary to improve work, and specifying the roles of each; appointing/dismissing staff and specifying their roles; preparing the final accounts for each fiscal year and an annual budget proposal; inviting the general assembly for regular and extra-regular meetings in accordance with - this Law and implementing its decisions; discussing any remarks from the monitoring office or from the Ministry, and replying to them or to the international, official, or private parties in regard to the organization's activities; or any other activities necessary for the organization's activities and functions.

#### **Article 27** *(Article 20 of the Second Draft)*

It is not permissible to be a director on more than one board of a society, institution, or body working in the same field, without permission from the Ministry.

#### **Article 28** *(Article 20 of the Second Draft)*

It is not permissible to hold both membership on a board of directors and a post as a salaried employee in a society, body, or institution at the same time.

#### **Article 29**

The board of directors shall carry out the administration of the affairs of the organization or institution. To do so it may carry out any function with the exception of that which infringes on the organizations by-laws, provided that the general assembly approves the plan by absolute, majority before it is implemented. All its decisions and minutes shall comply with the Ministry's monitoring.

#### **Article 30**

The board's members shall be appointed from candidates elected by the general assembly. The board shall be formed from the winning candidates pursuant to the organization's by-laws.

**Article 31**

The Minister has the right to halt implementation of any decision issued by the body running the affairs of the society, body or institution, if that decision is in contravention with this Law or the organization's by-laws.

**Article 32** *(No equivalent article in the Second Draft)*

It is permissible for the Minister to decide to integrate more than one society, institution, or body working for the implementation of a similar objective; to unite their administration, or amend their objectives in accordance with the requirements of public interest; or to coordinate administration of the public service that these organizations are carrying out; or for any other reason which the Minister sees appropriate for achieving the services for which the organization was established.

**Article 33** *(No equivalent article in the Second Draft)*

The wishes of the founders and the objectives of the organization and the type of service they provide shall be taken into consideration in the process of integration. The integrated organizations shall merge their funds and documentation. No integrating organization shall ask for more funds than were at its disposal at the point of integration.

*The power to integrate two or more organisations is not included in the Second Draft.*

**CHAPTER FIVE**  
**THE GENERAL ASSEMBLY**

**Article 34** *(Article 23 of the Second Draft)*

The active members of the charitable society, private institution, or social body shall form a general assembly which shall hold one regular meeting annually to examine the budget, final accounts and the reports of the board of directors and the auditor; and to plan election of new members of the board of directors; and additional issues which the board of directors proposes for inclusion on the agenda.

**Article 35** *(Article 24 of the Second Draft)*

It is permissible to invite the general assembly of a society for an extra-ordinary meeting in order to examine amendments of its organization's regulations, its dissolution, the dismissal of a member of its board of directors, or for any other reason.

**Article 36** *(Article 26 of the Second Draft)*

The Ministry shall be informed about all general assembly meetings 15 days before they are held. The letter of invitation shall contain all issues proposed for the agenda.

**Article 37** (*Article 25 of the Second Draft*),

A meeting of the general assembly of any society, institution or body is not valid unless it is attended by an absolute majority of its members. If the majority is not met, the meeting shall be postponed to another session where there is the proper number of attending members.

**Article 38** (*Article 26 of the Second Draft*)

Decisions of the general assembly of any society, institution, or social body shall be made by an absolute majority of the members present unless the organization's by-laws specify otherwise. The Ministry shall be provided with a copy of the minutes of the meetings of the general assembly 15 after being held.

**Article 39**

Private institutions shall be established \_\_\_\_\_ for an unspecified period to carry out a function having a humanitarian, religious, scientific, or technical nature, or for any of the activities of charity, social welfare, or public good, without financial gain. It shall enjoy the status of a legal body and all the provisions of this law shall be applicable to it.

## **CHAPTER SIX FOREIGN ORGANISATIONS**

**Article 40** (*Article 27 of the Second Draft*)

The Minister may allow any foreign society to open one or more branch in the Palestinian National Authority's territory, so that it can carry out any type of social service in accordance with the restrictions and fees determined by the Minister. The license application shall include the name of the foreign organization, its headquarters, the names and addresses of its founders, the names of its board of directors, its main objectives, and the names of those who shall be responsible for the branch to be established in the country, their citizenship, purposes, and the manner by which the branch's private funds shall be disposed of once the branch is pulled out or dissolved or if it is liquidated.

**Article 41** (*Article 30 of the Second Draft*)

Those responsible for a branch of a foreign society, body, or institution, as defined in this Law, shall notify the Minister of any changes to the private records of the branch which they administer within a period of one month after this change or alteration is made.

*Article 28 of the Second Draft reduces this period to 15 days.*

**Article 42** (*Article 30 of the Second Draft*)

It is permissible for the Minister to consult with the Head of the Palestinian National Authority and to refuse to allow any foreign body, society, or institution to function in

the Palestinian National Authority, or to impose on it any conditions which s/he sees necessary and to amend the previous conditions, or to cancel its license.

**Article 43** *(Article 29 of the Second Draft)*

Every branch of a foreign society shall submit to the Ministry of Social Welfare a regular report stating its entire activities and the amount of money spent on implementing its objectives, and any other information requested by the Minister.

**Article 44** *(Article 30 of the Second Draft)*

If the services provided by an institution, society, or body in the country are not free, and if its fees exceed more than 10% of its expenses, then the Minister and the ministries concerned must be consulted and provided with the objectives for which the society was established, in order to grant it a license.

## **CHAPTER SEVEN RELIGIOUS BODIES AND ORDERS**

**Article 45** *(Article 31 (i) & (ii) of the Second Draft)*

It is the responsibility of religious bodies and orders established in the territory of the Palestinian National Authority to carry out social services targeted for the public good; without aiming for profit infringing on religion and without taking any fees from the beneficiaries. Establishment and administration of such bodies is conditional on the approval of the Minister; and it shall be put under the supervision and monitoring of the Minister to ensure the correct administration and provision of public services.

**Article 46** *(Article 31 (ii) of the Second Draft)*

If the services provided by the religious body or order are related to education or health, and its services are provided in return for a fee, then the appropriate Minister may give an opinion regarding the license to the Minister of Social Affairs regarding the type of service provided.

**Article 47** *(Article 31 of the Second Draft)*

This law shall apply to all religious bodies and orders established in the territory of the Palestinian National Authority.

*Article 31 of the Second Draft adds the requirement that any changes made in the kind of services provided must be submitted for acceptance to the Minister. It also lists the type of services envisaged in which a religious order/body might be engaged in, for example: Establishing refuges, educational institutes for the needy, social centres for the poor, provision of financial assistance, medical services or care.*

## **CHAPTER EIGHT MERGES AND UNIONS**

**Article 48** (*Article 32 of the Second Draft*)

It is permissible for two or more licensed social or charitable bodies to merge and unite on approval of two-thirds majority of their general assemblies, provided that this does not infringe on the rights of others in relation to both sides prior to this merger.

**Article 49** (*Article 33 of the Second Draft*)

It is permissible for three or more charitable societies, private institutions or other bodies to form one union. It is not permissible to establish more than one union in each of the Gaza Strip and the West Bank.

*Article 33 of the Second Draft stipulates that only one union of the same kind can be established in the Palestinian Territories.*

**Article 50** (*Article 34 of the Second Draft*)

The establishment of a union between the licensed charitable and social societies is conditional on the consent of a majority of the members of the general assembly of each of them. If more than half the existing societies in the West bank and in the Gaza Strip form a union, then the other remaining societies shall be regarded as part of this union and shall comply with its regulations upon notification thereof.

**Article 51** (*Article 36 of the Second Draft*)

All procedures and regulations stated in this Law regarding the manner of registration, procedures, by-laws, records, work and regulations related to any union between charitable bodies, societies, or institutions, shall apply to any other institution established pursuant to this Law.

**Article 52** (*Article 37 of the Second Draft*)

The Minister may consult with the union in decisions pertaining to the dissolution of a society, body, or institution which is a member of a union, or in regard to the appointment of temporary administrative councils for each.

**Article 53** (*Article 50 of the Second Draft*)

If the services or aims of a society, organization, or institution have anything to do with the type of services provided by a Ministry, other than the Ministry of Social Welfare, then it must obtain the approval of the concerned Minister, in addition to abiding by all the regulations in this Law. They must obtain the necessary permit for the activity before applying to the Ministry of Social Welfare, according to this Law.

## **CHAPTER NINE FUNDING FOR ORGANISATIONS**

**Article 54** (*Article 43 of the Second Draft*)

The Minister may establish a trust fund for societies, private institutions and unions which have been established in accordance with this Law. The fund's income shall come from donations and aid from banks, public institutions, companies, stores,

merchants, business people, or any Palestinian citizen. The Minister shall head the fund's board of trustees, which draws the policies of the fund.

## **TEMPORARY BOARD**

### **Article 55** (Article 22 of the Second Draft)

The Minister may appoint, for a limited time, a director or temporary board for a society to carry out the specifications of its by-laws in the following situations:

- 1) when the number of board members is not enough for it to hold a legal meeting, or if the general assembly did not convene within two consecutive years without an excuse acceptable to the Ministry;
- 2) when the society makes a violation which forces this step to be taken, and the Minister does not see a reason to dissolve it, whereupon there will be a warning from the Ministry to amend all the violations within 15 days.

*This warning period is not provided in equivalent Article 22 of the Second Draft. But there is an additional requirement that within 60 days of imposition of a temporary board, the general assembly must meet and must submit a report on the temporary body and must elect a new board of directors.*

## **CHAPTER TEN**

### **DISSOLVING AN ORGANISATION OR BOARD AND PUNISHMENTS**

#### **Article 56** (Article 44 of the Second Draft)

The Minister or his/her delegates have the right to order the dissolution of any charitable society, social agency or private institution. They have the right to cancel a permit if: they are convinced that the organization has violated its by-laws; it has not fulfilled the aims for which it was established; it has stopped operating; it has not fulfilled its responsibilities; it has refused to allow officials to search, monitor, or look into its books and records; it has given false information; it has spent its funds on items not mentioned in its by-laws; it has violated any of the provisions of this Law; or if two-thirds of the general assembly who are eligible to vote decide upon this measure.

*The Second Draft increases the number of cases in which the Minister can dissolve an organisation by adding the situation where the general assembly has not convened for 2 consecutive years.*

#### **Article 57** (Article 45 of the Second Draft)

The Minister must inform the society that it will have its permit cancelled at least 15 days before cancellation is due. The Interior Ministry must also be informed.

#### **Article 58** (Article 46 of the Second Draft)

Upon receipt of a dissolution notice a charitable society, social agency or private institution must cease all its activities. The society has the right to appeal the decision legally.

**Article 59** *(Article 47 of the Second Draft)*

If a society is dissolved, a salaried employee will audit its funds and contents, and they will be dealt with according to its by-laws. If the by-laws don't mention how to deal with the funds, the Ministry will transfer the funds of the dissolved society to similar societies, agencies and institutions.

**Article 60** *(Article 53 of the Second Draft)*

The Minister may add any other regulations to execute the purposes of this law.

**Article 61** *(Article 48 of the Second Draft)*

The Minister or his/her delegates may close the headquarters of a society, agency or institution and one or all of its branches, for a specified and renewable period of time, as a temporary step until it is ascertained whether any members of its board of trustees has committed a violation of the regulations in this Law.

**Article 62** *(Article 49(i) of the Second Draft)*

Anyone who violates the regulations of this Law will be fined a maximum of 100 Jordanian dinars, and/or imprisonment for a maximum of 6 months. *This is reduced to 1 month in the Second Draft.*

**Article 63** *(Article 49(ii) of the Second Draft)*

Establishing a secret society without taking this Law into account is punishable with 1 years imprisonment and/or a fine of 3,000 dinars.

**Article 64** *(Article 49(iii) of the Second Draft)*

Submittance of a false affidavit or claim, or falsification of records of a society with the aim of hiding information from officials, will be punished by a prison sentence of minimum 2 months and maximum 1 year, and/or a fine of 1,000 dinars.

**Article 65**

A society which commits an illegal act or violation of public order or morals will be subject to closure, and the member(s) subject to penal law.

**Article 66** *(Article 54 of the Second Draft)*

Each specialised ministry, agency and administrative body will execute the parts of the Law applicable to them.

**Article 67** *(Article 52 of the Second Draft)*

This Law cancels the Ottoman Societies Law of 29 Rajab 1327 Hijri, in effect in the Gaza Strip, and the Jordanian Law of Charitable Societies No.33 of 1966 dealing with societies and administrative bodies in effect in the West Bank, and all other articles which are superseded in this Law.

**Article 68** *(Article 54 of the Second Draft)*

This Law goes into effect on the date it is issued and published in the Official Gazette.

Yasser Arafat

Chairman of the PLO  
President of the Palestinian National Authority  
Issued on \_\_\_/\_\_\_/1995