Palestinian Authority Violations of Right to Freedom of Opinion and Expression

(01 April 2020 - 31 July 2021)

Palestinian Centre for Human Rights
Palestinian Authority Violations of Right to Freedom of Opinion and Expression

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Introduction

This is the 19th edition of the Palestinian Centre for Human Rights series on the freedom of expression under the Palestinian Authority and it covers the period from 01 April 2020 to 31 July 2021. This report is the sixth of its kind to be released after the State of Palestine’s accession to a number of international treaties, including the International Covenant on Civil and Political Rights (ICCPR), where Article 19 ensures protection of the right to freedom of opinion and expression. This accession obliges the Palestinian Authority (PA) to respect, protect and fulfil the freedom of opinion and expression with its three components: freedom of access to information, freedom of opinion, and freedom of expression. Thus, the PA ought to harmonize the domestic laws and policies with these standards and promptly work on this.

According to PCHR’s follow-up, there has been no positive change to the state of freedom of opinion and expression in the PA despite its accession, and the authorities in the West Bank and the Gaza Strip continued their violations of the freedom of expression in numerous ways, as presented hereinafter.

This report is issued under exceptional circumstances as planned general elections for 22 May 2021 were delayed after the conclusion of the stage of candidacy. Also, this is the second report on the freedom of expression theme to be issued since the Palestinian President announced a state of emergency in the occupied Palestinian territory on 05 March 2020 to combat the spread of coronavirus (COVID-19) pandemic. The state of emergency allows the state, in the narrowest terms, to enforce measures that may not necessarily fulfil its human rights obligations to the extent necessary to fulfil the purpose stated in the decree declaring the state of emergency. This report is released following the killing of Palestinian political activist, Nizar Banat, during his arrest by Palestinian security services on grounds of speech and expression. This incident was a stark reflection of the state of PA restrictions and oppression of the freedom of expression and has contributed to the state of self-censorship that both journalists and the public adhere to with regard to anything that may upset authorities.

During the reporting period, PCHR documented several violations of the freedom of expression, especially during protests to the murder of Nizar Banat during his arrest. Meanwhile in the Gaza Strip, violations of freedom of expression continued, particularly on grounds of the Palestinian division. Security services, aided by the Public Prosecution, maintained its systematic policy that aims at creating a state of self-censorship by targeting journalists and opinion makers with arbitrary arrests, false accusations, intimidations, and assault during conduct of journalistic work. The most prominent pattern of violations during the reporting period was summoning, detaining and torturing opinion activists for practicing freedom of expression on social media. Absence of rule of law has created de facto restrictions that overstep the legal restrictions, causing uncertainty among journalists and opinion makers, as they are unable to define the dos and don'ts. Poorly drafted laws relevant to the regulation of freedom of expression and opinion have contributed to this state as they include loosely defined terms that are open to interpretation.
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The Palestinian division has served as the catalyst for the ongoing violations of freedom of opinion and expression in the West Bank and Gaza Strip. Absence of separation of powers, rule of law, legislature, and an independent judiciary; and the concentration of powers in the executive branch are the main factors undermining human rights situation in the Palestinian society, including freedom of expression. As a result, it was almost impossible to enact the law, especially that the law itself is legislated at the whim of division parties as they see necessary to justify their actions or protect their best interest rather than the public’s. In light of this complicated situation, it has become difficult to boost freedom of expression, particularly due to the absence of the right to information access and nonexistence of a legislative council and independent judiciary.

Freedom of opinion and expression is a cornerstone of democracy, and it underpins good governance in any country and is the key to enjoy other freedoms and rights. Furthermore, Freedom of media is a fundamental guarantee of respect for democracy and human rights, as media strengthens the public’s control of the three authorities' performance.

Accordingly, since its establishment, PCHR has given special attention to civil and political rights as part of its work on human rights in general. PCHR has exerted efforts over the past years to develop indicators for PA democratization as part of the Centre’s contribution to democratic governance where citizens enjoy all rights set forth in international covenants through separation of powers, rule of law and political participation.

It should be noted that this report has not addressed the violations of freedom of opinion and expression committed against those practicing the right to peaceful assembly and only addressed violations of freedom of opinion and expression, including freedom of access to information. It also focuses on the assaults against journalists for the nature of their job or practicing freedom of expression, including freedom of publication on social media for journalists and other opinion makers.

- Political situation during the reporting period and its relation to violations of freedom of opinion and expression

After decreeing to hold elections, the Palestinian President issued a presidential decree later on 30 April 2021 to postpone the elections. Also, IOF launched a new military offensive on the Gaza Strip from 10 to 22 May 2021; as a result, 242 Palestinians were killed, and 1864 others were injured in addition to widescale destruction to the infrastructure, civilian houses, factories, and institutions.

This report comes in light of the deadlocked efforts to end the Palestinian division, which institutionalized more after the elections were postponed to further notice despite Palestinian aspirations to finally finding a way out of the division.

This comes at the tail of a series of negative developments resulting from the PA division since June 2007 when Hamas took over the Gaza Strip that seriously affected citizens' daily life. The division developed from a struggle of authority to institutionalization of two separate entities in the West Bank and the Gaza Strip with 2 governments, 2 judiciaries, and 2 legislatures. While the National
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Unity Government had full control over the West Bank, its role was extremely limited in the Gaza Strip. Furthermore, the judicial division continued, with separate judiciaries in the West Bank and Gaza Strip and an independent Supreme Judicial Council in each subject to authorities' influence. As for the legislatures following the disruption of PLC, the Change and Reform Bloc has monopolized issuance of legislations on behalf of the PLC and only applicable in the Gaza Strip while the Palestinian President issues laws by decree, according to article 43 of the Palestinian Basic Law, and they are only applicable in the West Bank. However, the PA in the West Bank still dominates some aspects of life in the Gaza Strip in many ways such as salaries to public servants and allocations to the families of martyrs, injured citizens, and prisoners in the Gaza Strip. The PA utilizes the policy of cutting salaries to restrict freedom of expression as the PA has cut thousands of salaries on political grounds, particularly relevant to freedom of expression.

This situation has created a unique legal status, where the Gaza Strip is theoretically subject to the National Unity Government; however, on the ground this government exercises only limited powers in certain ministries and has no interference in the security or security services. In addition, the parties to the division have not yet unified the judiciary or re-activated the PLC, sustaining the division up to the writing of this report.

• Indicators used to measure PA's respect for freedom of opinion and expression:

PCHR developed indicators to measure the status of freedom of opinion and expression in the PA-controlled areas according to the information collected by PCHR's fieldworkers and its staff experience. The indicators are:

1. Arbitrary arrests and summonses of journalists, bloggers, and opinion makers; some were subject to inhuman and degrading treatment.
2. Banning journalists from work
3. Legal Prosecution on grounds of exercising freedom of opinion and expression.
4. Restrictions on free access to information.
5. Restrictions on freedom of research and creativity.
6. Application of laws that undermine the right to freedom of opinion and expression.
Methodology and Structure

The report adopts descriptive and analytical methodology that is based on qualitative information from primary sources. The report is based on data collected from field investigations during the past year by PCHR fieldworkers, who interviewed the victims, listened to their testimonies, and ascertained, through their experience and sources, that they are consistent, credible, and unbiased. The report is also based on interviews conducted by PCHR staff with various stakeholders and journalists to identify the restrictions on freedom of information and freedom of creativity and research, as well as the degree of self-restraint that has been created amongst journalists and opinion makers by the ongoing violations of freedom of opinion and expression. It should be noted that the report does not adopt quantitative information to avoid its deceptive results with regard to freedoms as number of violations does not necessarily reflect the state of freedom of expression. Furthermore, cumulative violations and ongoing failure of accountability and justice have made citizens cautious to exercise freedom of expression and made them unwilling to file a complaint against oppressors in light of the absence of rule of law or any real mechanisms of control and accountability.

The report is divided into 2 sections:

- The first one reviews PA’s international obligations, the legal framework of freedom of opinion and expression in the PA and the criticisms of relevant laws.
- The second section highlights the violations of the freedom of opinion and expression documented by PCHR in the PA and indicators placed by PCHR to measure freedom of opinions in PA controlled areas in addition to presenting a brief legal analysis of how these violations breach the international standards and the Palestinian Law.

The report concludes with a series of recommendations that would promote the right to freedom of opinion and expression to enhance all efforts to establish democratic governance in the PA controlled areas.
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Part I:

Most Prominent Violations of Freedom of Expression in the West Bank and Gaza Strip

The state of emergency declared by the Palestinian President on 05 March 2020 continued to combat the outbreak of coronavirus (Covid-19) pandemic. Accordingly, authorities were granted extraordinary powers to impose restrictions on some rights in the narrowest terms and without exceeding the declared purpose of the state of emergency. However, over the past year and a half, PCHR did not observe any abuses of the state of emergency, partly because authorities did not respect procedural law before the state of emergency to begin with, and summonses and arrest were often conducted without a warrant from the Public Prosecution. Thereby, we have seen no change in authorities' behaviour relevant to the freedom of expression, except for detention reasons, as arrests occurred for spreading rumours about COVID-19 pandemic during the state of emergency. Furthermore, the state of emergency has granted legitimacy to some of the security forces' behaviours, such as summoning and detaining citizens without a warrant from the Public Prosecution.

This year witnessed a dangerous event relevant to the freedom of opinion and expression when activist Nizar Banat was killed during his arrest on grounds of opinion expression. This incident was a turning point in the status of freedom of expression in the Palestinian Authority as his murder and the successive protests organized against it constituted a new phase of deterring the freedom of expression by the authorities. This was echoed by the self-censorship practiced by journalists and opinion-makers in the West Bank and Gaza Strip, for fear of legal prosecution or extrajudicial assault. In addition, laws undermining freedom of expression continued to be enforced, and freedom of access to information has remained virtually absent, even on the legal level, there is no law that protects freedom of access to information or freedom of the press. PCHR monitored six indicators of violations against freedom of opinion and expression.

The PA’s violations of freedom of opinion and expression in the West Bank and Gaza Strip were accompanied by other human rights violations, as many journalists and opinion-makers were exposed to torture, inhuman and degrading treatment, arrest, and arbitrary summons. This section presents the most significant cases of freedom of opinion and expression violations in the past 12 months, attached to brief victims' testimonies.

I. Arrests and Arbitrary summoning for journalists, bloggers, and opinion makers, subjected to torture, inhuman and degrading treatment.

PCHR monitored many cases where the authorities used recurrent and arbitrary arrests against journalists and opinion makers in the West Bank as a tool to suppress freedoms. Most of those summonses included detention for days or several hours as well as inhuman and degrading treatment.
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The policy of recurrent summonses by security services is the PA’s most threatening tool against journalists because it affects their lives and dignity. Moreover, the absence of oversight and accountability over security services perpetuates these illegal practices. During the reporting period, PCHR documented the most prominent cases of summonses related to torture or degrading treatment against journalists:

Nizar Banat was killed during his arrest by the Palestinian Security Services in Hebron on grounds of his political opinions published on social media. This incident sparked widespread anger among Palestinians as protests were organized, but suppressed by the security services, who also assaulted each journalist trying to cover the protests.

Following is testimony of eyewitness to his murder:

“At around 03:00 on Thursday, 24 June 2021, Nizar was sleeping with his relatives, Mohammed, and Hussein Majdi Banat in a bedroom on the ground floor of Majdi Banat’s house in Jawhar Mosque area, southern Hebron. Suddenly, the bedroom’s window was forcefully opened, and 2 persons in plain clothes carrying weapons and pepper sprays stormed the bedroom. They pepper-sprayed all those inside the room, and another one opened the door to allow in other officers, including 3 wearing shirts marked with the Palestinian Preventive Security. They started assaulting Nizar Banat with sticks and one of them used an iron stick and hit him with it on his head while other security officers were pointing their weapons at Hussein and Mohammed and preventing them from moving. Around 7 minutes later, the force officers dragged Nizar in his underwear out of the room, while he was screaming due to continuously beating him. They confiscated his cell phone and laptop. Around an hour later, he was declared dead in the governmental hospital in Hebron.”

Mohammed Qaribah, a public-school teacher, said that he was summoned 3 times by the General Investigation in Rafah and was detained for hours on grounds of organizing a campaign against a communication company in the Gaza Strip to reduce the prices. The following is part of his testimony:

“I was summoned on 25 October 2020. After investigating with me for 4 hours, I was asked to close the page I created on social media with my relatives to call on a cell phone company to reduce the prices of its services. After I refused and many mediations intervened, we agreed that General Investigations’ accounts would be admins in the page, so they could accept or reject any following requests and monitor the followers’ comments and posts. However, I was summoned again in the next day, 26 October, and was told that there were a lot of complaints filed against me. He also asked me to remove my relatives as admins and only keep the Investigation Services’ accounts. I was released hours later. Again, the next day, 27 October, I was summoned for the third time. I was threatened and exposed to inhuman treatment to force me to close the campaign page. The investigator tried to close the page as he was an admin, but my wife restored it immediately. The investigator then asked for my account password to close the page for good, but I refused, so they put me in a cell in degrading detention conditions. Mediations intervened and I was released on the same day.”
Mohammed Isma’il Khaled al-Haddad (31), a journalist at the International News Agency and Director of Journalist Forum for Human Rights, said that he was summoned and investigated by the GIS in Khan Younis on grounds of his posts on social media. The following is part of his testimony:

“At around 11:00 on the day mentioned above, I went to the GIS headquarter in Khan Younis. I was taken to an office there, where an officer came to take my personal data and accused me of inciting against the government in Gaza. I told him: where did I do that? And he answered there are posts on my page against corruption and the electricity company. I explained that the corruption post was in general and not against a specific party while my post about the electricity comes from the crisis we live daily, and both do not incite against any party. At around, 18:50, I was released on bail and informed that I should come next day to appear before the prosecution.”

Journalist Mahmoud ‘Omar al-Louh (30) was arrested by GIS in degrading detention conditions on grounds of covering the clashes between the police and protesters in front of Wishah family house in al-Buraij. The following is part of his testimony:

“At around 17:00 on 19 June 2020, I was taken to al-Nusairat Police Station, where I was investigated on allegations that I took photos of the clashes and Um Jaber Wishah (who was wounded during the clashes occurred on 18 June 2020) and interviewing her while she was at al-Aqsa Martyrs Hospital. I denied all the allegations, but they then investigated with me about posting a photo of Um Jaber at the hospital and commenting on what happened with her. I told the officers that the photo was already published on social media by a member of her family. The interrogation continued for 4 hours, and I was released at 23:30 on the same day. I was asked to come the next day, and I did at around 09:30. I was interrogated for an hour about the same thing before being released.”

Journalist ‘Ezz ‘Abdel ‘Aziz Ahmed Abu Shanab (36), Editor-in-chief of Sky Press News Agency, was summoned by ISS in Gaza City and interrogated for 3 hours on grounds if his journalistic work.

“I went to the ISS office (al-Jawazat Building) next day upon a summons I received to refer to ISS 06 May 2020 at 10:00. When I arrived, my cell phone was confiscated, and I was interrogated for more than 3 hours. The investigation included questions about my stay for 9 months in Egypt, where I received treatment at Palestine Hospital in Cairo after being shot in my foot while covering the Great March of Return protests on 06 August 2018. I was interrogated about my work with Egyptian media and my relationship with the statement issued by the Palestinian Journalists Syndicate on the summons I received at home. I was released after the investigation ended.”
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Legal Analysis and PCHR’s Position

Arbitrary Summonses and arrests of journalists and opinion-makers without adhering to the conditions codified in Article (19) (3) of the International Covenant on Civil and Political Rights (ICCPR) constitute a violation of Palestine’s international obligations following its accession to the ICCPR. Moreover, the international standards prohibit arbitrary summonses, degrading treatment, and torture. 1

All the cases reviewed in this part are grave breaches of the Palestinian Law, particularly Article 27 of the Palestinian Basic Law and Code of Criminal Procedure of 2001 which only gives the Public Prosecution the full power to issue summonses and subpoenas that should include all charges. All of this is detailed in Chapter III of the Code of Criminal Procedure of 2001. Article 178 of Penal Code (1960) applicable in the West Bank stipulates that: “Every employee detained or arrested person in cases not provided for by law shall be punished with imprisonment of three months to a year.” Moreover, article (112) of Penal Code (1936) applicable in the Gaza Strip criminalizes any abuse of power commuted by a public servant. The torture and degrading is considered as a crime that requires accountability and punishment for its perpetrators, according to the Penal Code of the Palestinian Authority.2

PCHR emphasizes that summoning, detaining, and exposing Journalists to torture and degrading treatment are violations of Palestine’s international obligations, including Articles (7, 9, 19) of ICCPR. This is also in violation of Palestinian laws, including the Palestinian Basic Law, Code of Criminal Procedure and Penal Codes. PCHR stresses that such practices significantly undermine the freedom of expression and journalistic work.

II. Banning Journalists from Work

During the reporting period, PCHR monitored and documented many cases, where journalists were attacked by security services while they were on duty. Those cases included banning journalists from photography, attacking them, closing their offices in addition to other assaults. The monitored case reflects the nature of security officers’ procedures against journalists and journalistic work. Following are cases that PCHR documented:

JMEDIA news agency office was closed on Jerusalem Street in al-Bireh. Following is part of JMEDIA’s Director, ‘Alaa Rimawi’s, testimony to PCHR’s fieldworker:

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1 The International Convention against Torture of 1984, as well as article 7 of the International Covenant on Civil and Political Rights.
2 The Penal Code No. 74 (1936) that remains in effect in the Gaza Strip, the Penal Code No. 16 (1960) that remains in effect in the West Bank, and the Revolutionary Penal Code (1979) that is applied in the military courts and considered by PCHR as an unconstitutional law within the Palestinian Authority as it was not passed by the legislative authority. However, the Revolutionary Penal Code is still applied.
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“I received a phone call from a Palestinian police officer who informed me that they are present before JMEDIA office to shut it down. I immediately went to the office. Upon my arrival, I found a Palestinian police force there with a notice pinned to the main door indicating that the agency is closed. They asked me for the office keys and then I was given a verbal summons to present before the Public Prosecution by 09:00 the following day. I asked to be allowed entry into the office to collect some files and equipment, but I was denied entry. I phoned lawyer Mohannad Karaja and he immediately arrived at the location, called the Attorney General and asked him not to shut down JMEDIA, but he refused the lawyer’s request and informed him that there is a complaint filed by the Palestinian Ministry of Information against the agency.” Al-Rimawi added that the agency employs more than 17 journalists and is officially licensed by the Ministry of Information.” Up to the release of this report, the agency is closed.”

Saja al-‘Alami, Palestine Post Network’s Correspondent, said that she was assaulted by police officer while covering the protests against the murder of activist Nizar Banat. Following is part of her testimony:

‘While covering the incidents with my colleague Fayhaa’ Khanfar on 26 June 2021, clashes broke out between the protesters and Palestinian security officers. A person dressed in plain clothes approached Fayhaa’ and tried to confiscate her cell phone. When I saw him, I held Fayhaa’s cell phone and took her away. He then directly fired a teargas canister at us, so I suffocated and fell on the ground. My colleagues gave me first aid and I felt better. I wore again my Press uniform and returned to cover the incidents. Meanwhile, many persons in plain clothes arrived, attacked every person holding a cell phone and confiscated it. I was holding my cell phone as well, so one of them tried to confiscate it, but I refused. As a result, he pushed me and tried to beat me, so I ran towards one of the buildings. One of them found me and chased me again, but I managed to escape and leave the area. I then hid her press uniform and equipment in a plastic sack.”

Najlaa’ Zaytoun, al-Quds News Network Correspondent, said that her cell phone was seized, and she was banned from work and beaten when she was on duty covering a protest against the murder of Nizar Banat. Following is part of her testimony:

“At around 17:00 on Thursday, 24 June 2021, When I was holding my cell phone and videoing the security services’ suppression of protesters, I was surprised with a person snatching my cell phone out of her hand and screaming at me amid the protests: “you are not allowed to take videos.” He then pushed me trying to keep me away from there. I told him to give my cell phone and he does not have the right to steal it, but he said that he is an Intelligence officer. I told him I am a journalist and doing my job. Meanwhile, another person took the cell phone from him. he headed to a security checkpoint, so I chased him and asked him to give me back my cell phone. He said that he would but on one condition that I do not take videos with it. I told him it is none of his business and took my cell phone to continue covering. On Saturday, 26 June 2021, at around 17:00 while covering a protest as well against the murder of Nizar Banat and wearing the official press uniform, I was surprised with 3 persons in civilian clothes; one of them was holding a stick and hit me on my hand and then my feet. I could not help it and threw myself to the ground. Someone caught me from my t-shirt and confiscated my cell phone. I saw persons, including my colleagues, trying to save me while I was being beaten with sticks and batons. I was not fully
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conscious and not aware of what was going on. I was then taken to the Istishari Hospital in al-Rihan Suburb, where it was found that I sustained bruises in both hands, my leg and all over my body.”

Mojahed al-Sa’adi said that he was arrested and subject to degrading treatment on grounds of his journalist work when covering a protest in Burqin village, Jenin. **Following is part of his testimony:**

“At around 12:00 on Saturday 13 March 2021, I receive a call from women in Burqin village, western Jenin, and the caller told me that a women’s protest will be organized in Burqin village to call for arrest of those inciting strife between 2 opposing families in the village. I went to stand in front of the Palestinian Police Directorate Headquarter in central Jenin, where the protest is organized. When I arrived and pull out my cell phone to video the protest. One of the Palestinian police officers approached me, seized my cell phone, and tried to drag me on the floor. I was then arrested and taken inside the Police Directorate. My 3 cell phones were seized, and I was put in a solitary confinement cell after interrogating with me about the reason I was in front of the Directorate. I told them I am a freelance journalist and work with several local Palestinian agencies. The interrogator accused me of assaulting a Palestinian officer in front of the Directorate, but I denied the accusation. I stayed there until I was taken to jail. Three hours later, I was released upon the Journalists Syndicate’s intervention.”

Mohammed Ghefari said that he was banned from practicing his work when covering a protest on al-Irsal Street in Ramallah. **Following is part of his testimony:**

“I am a journalist at Ultra Palestine News Website. At around 17:00 on Saturday, 26 June 2021, when I was near Ramallah Mall in the beginning of al-Irsal Street, central Ramallah, covering the protest against the murder of Nizar Banat. Another pro-Palestinian President protest arrived and clashed with the first protest, and I was livestreaming via my cell phone. Meanwhile, a person in civilian clothes with an angry face approached me and screamed aloud, “put your cell phone down” while trying to snatch it out of my hand, but I managed to take the cell phone away from his hand without ending the livestream. That person went away and joined in beating the protesters. I resumed covering when a few minutes later the same person noticed me and came towards me with other persons in civilian clothes. He screamed at me saying, “I told you to take your cell phone down and stop videoing.” I then withdrew for fear of beating me or confiscating my cell phone.”

Yousif Khalil Na’im Hassan (25), a freelance journalist from Brazil neighbourhood in southern Rafah, said that he was arrested with 3 others on grounds of his journalistic work. **Following is part of his testimony:**

“At around 17:00 on 04 July 2020, I went to Sheikh Zayed towers in Beit Lahia, northern Gaza Strip, to follow up the suicide of a resident in Sheikh Zayed towers. I interviewed his relatives and friends; afterwards, at around 19:00 when I was on my way back in a taxi, a brown civilian jeep stopped us, and a person in civilian clothes with a pistol stepped out of it, identifying himself from al-Qassam Brigades’ Intelligence/Military Security. He asked about me and ordered me to...
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hand over my cell phone. A white civilian car then arrived with officers inside dressed in civilian clothes and ordered me to accompany them in the white car. I was taken to a site belonging to al-Qassam Brigades and stayed there for a brief time. A police car arrived and took me to Beit Lahia police station, where I stayed for around an hour and a half and gave my testimony about the reason, I was in the condolence house of the abovementioned person. Afterwards, I was released."

Journalists at Palestine TV said that the Palestinian police in Gaza stopped them while making a video interview in Jabalia refugee camp on grounds of not obtaining a prior permit to make the video interview. **Following is part of a testimony by one of the journalists:**

“On 25 April 2020, we were about to make a report in Jabalia refugee camp about the status of markets in light of the difficult living conditions as the holy month of Ramadan was approaching. During the interview with one of the camp’s residents, a group of police officers arrived and one of them, ranked as a major, asked us about who we were making this interview for and if we had a prior permission. We were stopped for some time and then taken to the GIS office at Jabalia refugee camp police station, where we were detained and interrogated about our work and what we were doing. After 2 hours, we were released after signing a pledge not to make any interviews or take videos unless with a prior permission from the Gaza Public Information Office.”

**Legal Analysis and PCHR’s Position**

The abovementioned cases constitute a flagrant violation of the freedom of expression and journalism and thereby contradicting Palestinian’s obligations under Article (19) of the ICCPR. Also, the degrading treatment that journalists are exposed violates Palestine’s obligations under Article (7) of ICCPR and Convention against Torture, which is binding to Palestine after its accession to both conventions in 2014. Those practices are considered a clear violation of the Palestinian Basic Law as well, particularly articles 19 and 27. These cases also violate the penal codes and may constitute a crime of abuse of power.

PCHR emphasizes that banning journalists from practicing their work, particularly during coverage of events, is part of PA’s systematic practices in the West Bank and Gaza Strip. Those practices were featured extensively during the reporting period, especially when journalists were on duty covering the protests organized following the murder of activist Nizar Banat. PCHR points out that such practices are considered only attempts to cover up the violations perpetrated by the security services against citizens as banning journalists from revealing the reality on the ground and confiscating their equipment reflect the attempts to bury the truth.
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III. Legal prosecution on grounds of practicing freedom of opinion and expression

The employment of legal tools to restrict freedoms is one of the policies used to undermine freedom of expression and criticism, in which existing prejudicial laws, which contravene international standards of freedom of opinion and expression, are used to legalize practices that violate freedom of expression. PCHR has documented several cases implicating the Public Prosecution in these practices, as lawsuits have been set in motion without sufficient grounds that were subsequently dismissed by the judiciary; nonetheless, journalist or opinion maker were already subjected to imprisonment and degrading treatment. This approach contributes to creating a state of self-censorship among journalists and opinion makers so that they avoid such an experience. Hereafter are the most prominent cases PCHR documented under this indicator.

Mostafa 'Asfour, a university student, said that he was summoned, detained, and subjected to degrading treatment by the General Investigation Service in Khan Yunis for practicing freedom of expression on social media. Following is his testimony:

"At approximately 09:30, on 24 July 2021, I headed to the General Investigation Service in Khan Yunis upon a summons handed to me. When I arrived there, they interrogated me about my posts on social media, noting that they ordered me to bring my cell phone with me. Also, they forced me to give them the password of my Facebook account. Moreover, they asked me about posts regarding an explosion occurred in al-Zawiya Market3 and other posts criticizing Gaza Government. During the interrogation, they cursed me and asked me who is behind me to write such posts. Also, I was threatened to meet the same fate of Nizar Banat if I will not stop posting on social media. After that, I knew that a decision was issued to detain me for 24 hours pending investigation. Later, I was released on a condition pledging not to write posts on social media and attending to the general investigation service every day from 8-12 clock. I signed the pledge paper and abided by attending to the service every day, but I was shocked on Wednesday, 28 July 2021, that a decision was issued to bring me before the public prosecution. Next day, the public prosecution issued a decision to detain me for 48 hours pending investigation. On 03 August 2021, I was brought before the Magistrate Court and accused of inciting against public policy and armed resistance. The judge then ordered to detain me for 15 days. On Tuesday, 10 August 2021, my father received a phone call from the General Investigation Service informing him that I should go to the prosecution to close the case file."

Journalist 'Ameed Shehada said that he was summoned and detained by the General Investigation Service in Nablus and interrogated about his posts on social media and then referred for the public prosecution. Following is his testimony:

"My sister Raghda and I received a summons by the General Investigation Service in Nablus. They interrogated my sister about owing access digital subscriber line (ADSL) used by unknown person namely 'Ameed Shehada. I told them that the ADSL is registered in her name and 'Ameed

3 An internal explosion that occurred due to storing explosive materials in a shop in Al-Zawiya market in Gaza City, which is an old and popular market in Gaza City.
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Shehada is her brother living with her in the same house. They allowed us to leave. When I returned home, I posted what happened with me on social media. After that, I received a phone call from an officer shouting at me and ordering me to immediately come to the General Investigation Service in Nablus along with my sister, but I refused, telling him that we headed there and told them everything we know. Afterwards, on 30 January 2021, a vehicle belonging to the General Investigation Service came at my house and a security officer told me that there is an order to bring me and my sister to the service. After a long conversation, they accepted to leave on condition that next day morning, I will go to the service. When I headed there, I was interrogated about a post on my Facebook page regarding an event conducted in the shrine of the Prophet Musa and about a post I wrote when they summoned me at the first time. The investigator told me that some of my followers are cursing the security services. He then took me to the director office and told me that I was referred to the public prosecution. They detained me in a room from 09:00 to 21:00. After that, the Palestinian Journalists Syndicate (PJS) intervened and I was asked to apologize for the post relevant to summoning me, but I refused. I was then taken to the cell. After that, a lawyer and the PJS intervened, so I was released, provided that my sister Raghda and I will refer to the General Investigation Service. The public prosecution interrogated me and released me on bail on 31 January 2021. The complaint was then withdrawn by the complainant the matter was ended up."

Journalist Ihab Fasfous said that he was detained and fined after being accused of the misuse of technology, as he published a video for a child subjected to torture in the General Investigation Service in Khan Yunis. Following is his testimony:

“In September 2019, I was detained Khan Yunis Police Station on grounds of photographing and publishing a video for my 15-year-old nephew, Saif Fasfous, on a page created by me and my colleagues titled: "Palestinians Journalists Gathering for Human Rights". In video, the child explained that he had been arrested and beaten by the general investigation officers in Khan Yunis and interrogated him while he is a minor without the presence of his guardians. There were signs of physical abuse on his body. At the time, I refused to be released in exchange for pleading guilty, and I remained in the cell for 4 days. During which, I went on a hunger strike and then I was released on bail. In September 2019, a lawsuit was filed against me in Khan Yunis Magistrate Court. Since that time, I several court hearings have been held, and I have been charged with misuse of technology after photographing and publishing the video of the child. On Monday, 08 February 2021, the sentencing hearing was held with my attendance as the court issued a 6-month suspended imprisonment order and a fine of NIS 400- or two-months’ imprisonment instead of a fine. Following the judgment, I was held in the court detention room for about an hour, until one of my friends arrived, paid the fine, and I was then released.”

4 A concert conducted in the shrine, which was considered as a violation of the sanctity of the place.
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Ameen Khaled al-Hajeen (27) said that he was summoned by the General Investigation Service in Beit Lahia, subjected to torture, and degrading and interrogated about his opinion on social media. Following is his testimony:

"At approximately 18:00, on 20 September 2020, I headed to the General Investigation Service in Beit Lahia. I was detained there until referring me to the Internal Security Service at around 18:30. When I arrived at the Internal Security service, I was placed in a room, and they did not interrogate me. At approximately 09:30 on Monday, 21 September 2020, I was taken to an investigation room, where I was beaten up with a whip for half an hour. I shouted at them to stop beating me. During which, they read my posts published on my Facebook page, in which I expressed the difficult social situation in the Gaza Strip. After that, they returned me to the room. An hour later, I was taken to the investigation room again. They informed me that my brother Ahmed published a post on his Facebook account clarifying that I was detained by the Internal Security Service. They ordered me to phone Ahmed and tell him to remove the post. I phoned him and he removed the post. They promised me that they will release me. Afterwards, internal security officers came and beat me up with a whip for 10 minutes. The director of the service then came and talked with me. He told me that one of the activists who had been detained in the service, had agreed with him that any post will publish on social media, in exchange for every letter in it, the detainee will beat using Falaka (beating at the bottom of the feet). As I was suffering poor health condition, I asked the service director to make the same agreement with me, and he accepted. Next day at approximately 14:30, I was released upon the agreement I made with the director."

Two journalists Mothana al-Najjar and Tareq Isshaq said that they were summoned and detained by Khan Yunis Police Station on grounds of their journalistic work. Following is their statement:

"On 16 July 2020, the police summoned journalists Mothana al-Najjar (36) and Tareq Isshaq (33) after the latter photographed a video showing a female student claiming that her Tawjihi exams result were wrong and uploaded it to his media website (Formedia) while al-Najjar shared the video on his social media page, demanding the Ministry of Education to apologize. After interrogating the journalists and informing them that the student’s result was forged, it was agreed that the journalists would publish a video in which the student and her family apologized for their false allegations, and the journalists were released accordingly. After the apology was published, the journalists deleted it upon a request from the Press Syndicate that issued a statement condemning the prosecution and the Ministry of Education’s manner of addressing the issue. Afterwards, on 19 July 2020, the public prosecution summoned both journalists, detained them in the Sharkia police station and extended their detention for 48 hours. The journalists appeared before Khan Yunis Magistrate Court, which extended their detention for 15 days. At approximately 19:00 on 21 July 2020, the journalists were released. The journalists apologized posted apologies for their action on their social media pages and confirmed in the apology that they were treated in accordance with the law and that they were not subjected to security-related questioning."
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Dentist Ameen Ibrahim Kahla said that he was arrested from his house in Bir Nabala village in Jerusalem by the Preventive Security Service (PSS) - Al-Bireh city. He was detained and brought to trial for his opinion on social media. **Following is his testimony:**

"At around 11:00, on 27 April 2020, a PSS force came to my house and ordered me to go with them. They demanded my cell phone and computer. Also, they asked to search the house. When I asked them about the Public Prosecution’s order, one of them said: "We are in a state of emergency, and we can take and search anything without permission." After that, we headed to PSS in al-Bireh city. I was locked in a dirty and smelly cell. At around 23:30, they got me out of the cell and took me to the PSS in Beitunia. At around 00:30, I was taken to the investigation room and interrogated about my posts on social media. They ordered me to sign a pledge not to post anything on social media, but I refused until the arrival of my lawyer. On 29 April, I was referred to the public prosecution and accused of slandering authorities and prestigious figures as well as abuse of authority, but I denied the charge. My detention was extended for 24 hours. I was taken back to the cell in the PSS in Beitunia. Next day, I was brought before the court, and the prosecution asked to extend my detention for 2 weeks, but the judge accepted to release me until the 2nd court hearing on 09 July 2020, with a fine of 2,000 JD, but my lawyer succeeded in changing the fine into a legal guarantee. I was released in the afternoon and no further action was taken against me."

**Legal Analysis and PCHR Position**

The use of criminal code to deal with the abuse of opinion is rejected in most cases, as the Human Rights Committee, which supervises the application of the International Covenant on Civil and Political Rights (ICCPR), confirmed in General Comment No. (34)\(^5\) that: "States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.” The legislator must consider Palestine’s international obligations by amending the laws to provide sufficient space for the freedom of criticism.

Moreover, PCHR considers the arbitrary use of judicial means to charge opinion makers is a serious violation of freedom of expression and the rule of law. It appears from cases received by PCHR that judicial bodies are involved in the abuse of powers through detaining journalists and opinion makers pending investigation, without sufficient justifications to use this serious power

Furthermore, PCHR affirms that “Detention pending investigation” is one of the PA’s most dangerous legal tools that should only be used in extreme cases where the

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\(^5\) UN Human Rights Commission, General Comment No. 34, 2011.
society as at risk by the accused person or to stop them from tampering with evidence. In opinion cases, it is inconceivable that a person would pose a threat to society or conceal evidence. In addition, a person prosecuted in an opinion case is highly unlikely to try to escape as the prescribed penalty is rather simple and usually does not exceed a fine. PCHR has repeatedly called against the use of “detention pending investigation” against journalists and opinion makers and called for their immediate release on bail and for it to be a judicial norm, until it is explicitly stated in the Code of Procedures.

IV. Restrictions on the Right to Information Access

The right to access information is very essential for journalistic work and scientific research, as it is one of the most important components of the freedom of expression. Although there has been a draft law on access to information for many years, this law has not been approved in the West Bank or in the Gaza Strip. Journalists and citizens suffer when dealing with official authorities that often redact, censor, distort and withhold information from civilians, particularly journalists, perhaps to cover for failures or abuse of powers. Also, many journalists in the Gaza Strip emphasized that Gaza government obsession with security is hampering information sharing. The policy of redacting or blocking information contradicts with the PA's obligations relevant to enabling public access information, which includes the PA's commitment to provide information proactively.  

PCHR researcher conducted several interviews with journalists in the Gaza Strip, where they confirmed official institutions’ lack of cooperation, as their briefings are often concise and inadequate in clarifying facts to the public and journalists. Officials often refuse to take journalists calls concerning certain incidents. Additionally, journalists complained from systemic favouritism and selective treatment towards journalists, as some newspapers are granted a quasi-monopoly on information. The situation worsened after the state of emergency was declared in the oPt, and according to one journalist the reason for it is two-fold: a. authorities feel their powers are absolute in the state of emergency; b. officials claim all information are announced in the daily briefings by official bodies. Journalists complained over the delay and insufficient information delivered in daily briefings and expressed contempt with officials interaction with them and refusal to answer their questions or calls.

Furthermore, security services in the Gaza Strip impose unspecified restrictions on taking photos in public areas, as journalists are detained and prevented from practicing their work. Also, journalists say that despite having press cards, we are exposed to detention and investigation by security officers; most of them in civilian clothes. There are many places, where journalists are unable to photographing it or filming news reports in it, such as the border areas and any areas close to security headquarters or military sites. Regarding the Gaza Strip's small area, it can be said that taking photos or filming in most of Gaza's vital areas is forbidden, as it needs a special permit that is usually not given to independent media or freelance Journalist.

Focus group of journalists and opinion makers, held on 24 August 2021.

Ibid.
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Legal Analysis and PCHR Position

PCHR affirms that freedom of access to information is an essential part of freedom of opinion and recalls that Palestine has an international legal obligation to provide the right to access information, as paragraph (2) of Article 19 of the International Covenant on Civil and Political Rights stipulates: "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Moreover, Article (6) of Press and Publications Law stipulates: "The authorities shall seek to facilitate the work of journalists and researchers by allowing them to view their programs and projects." Consequently, the failure to adopt an act regulating and protecting the right to access information is considered a failure by the state to honor their international obligations. This is confirmed by practices on the ground such as the absence of transparency and restrictions on the right to access information, especially in the Gaza Strip, where security obsession is prevailed while dealing with journalists, especially when they request to obtain any official information or cover events.

V. Restrictions on the Freedom of Creativity and Scientific Research

The freedom of creativity in the Gaza Strip suffers from unjustified restrictions, as sometimes, the security services attempt to impose their cultural vision on performances. Security officers usually attend the art shows and may intervene if the artwork contradicts with traditions from their point of view. For example, they ban the folklore dance, Dabka, performances by teams that include men and women. Also, in Gaza, conducting survey studies without a prior authorization is considered a violation that subjects researchers to security prosecution. Following are statements of some workers in the cultural field:

Director of a cultural organization in Gaza said that there are ideological restrictions imposed on an Institute for Musical and lyrical works. This is his statement:

"I have been working in the cultural field for many years, during which, we exposed to several restrictions, we accepted some of them and refused to obey others. Currently, we do not face many restrictions, as during the past two years, cultural activities have almost stopped due to the lockdown and quarantine measures imposed during the outbreak of the Coronavirus pandemic. Moreover, we were suffering from ideological restrictions, for example: every concert we want to hold, we must obtain a permit from the Ministry of Culture and the Tourism Police, and the police require that the director should attend by himself to take the permit, and an application is filled out with many details. Additionally, they ask us many questions, for example,

8 Focus group of journalists and opinion makers, held on 24 August 2021.
9 The interview was conducted by PCHR's researcher, and the director of the institution preferred not to mention his name or his institution's name to avoid imposing further restrictions on the institution.
about the nature of the activity, girls' participation in it and their age. The Tourism Police prevent a 13-year-old girl from going on stage to sing or playing an instrument and refuse to hold hands in the Dabkeh dance between girls and boys and forbid mixed Dabke from 13 years old. Also, police officers are often present in civilian clothes among the attendance to observe the show or concert, and we may face problems if we do not abide by their instructions. Sometimes, the police refuse to let a girl under 13 years old perform on stage if she shows signs of puberty."

An activist in the cultural field, who formed an artistic group working in the Gaza Strip, stated that there is no freedom for artistic work in the Gaza Strip. Following is his statement:

"I formed an artistic group, and we are trying to present artistic works such as Dabke, Theatrical performances and singing, in collaboration with civil society institutions. We suffer from restrictions on our work in general. For example, we need to take a permission from the Ministry of Culture and the Tourism police to hold an artistic event. When we request to give us the permission, we are interrogated about the nature and content of the activity. Also, they ask to give them the script. Additionally, they ask us about the participation of girls, noting that there are instructions that girls over 14 years old should not participate in the Dabke. Additionally, a person from the Tourism Police usually comes to monitor the holding of any artistic event, and if he sees one of the girls is older than the age allowed for participation, or he sees intermingling of boys and girls, the artistic event is immediately stopped, or its organizers receive a warning from the Tourism police. I feel resentful when the Tourism police monitors our activities, as they believe that what we present is morally and religiously wrong. I am interested in my work, and I avoid dealing with political issues related to the Palestinian authorities, and I try to stay away as much as possible from the ideological caveats of the authorities in the Gaza Strip. The problem we face that artistic and theatrical work requires mixing between males and females, as artistic work reflects the mixed society by its nature."

One of the pioneers of artistic work in the Gaza Strip\(^\text{10}\) said that the situation relating to artistic works in the Gaza has improved comparatively, comparing to the period when the internal division began, as the imposed restrictions were extremely strict. Following is his statement:

"Theatrical work does not face many problems in the Gaza Strip, most of the problems are in folklore, because folk dancing is forbidden for girls in the Gaza Strip. The problems we face in theatrical work are related to the audience, as mixing between the audience is prohibited, and women are forced to sit separately from men, even if they are from the same family. We are also forced to turn on the lights in theatrical and cinematic performances, which contradicts the simplest rules of artistic performance. If the performance holds in large halls such as Rashad Al-Shawa Center, we should obtain a permission from the Ministry of Culture and the Tourism Police. We do not encounter problems to obtain it, but they ask to see the script. The script is usually acceptable to them. As being artists, we have commitment and self-discipline. Also, we try to keep away from everything that might irritate the authorities in Gaza in order to be able

\(^{10}\) The interview was conducted by PCHR’s researcher, and the person who gave the statement preferred not to mention his name.
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to continue our work or we will arrest, and our work will stop. There are some conservative persons in the government, who unfortunately take over the reins and their beliefs dominate the reality in the Gaza Strip."

Legal Analysis and PCHR Position

PCHR confirms that the freedom of creativity is part of the freedom of expression. The right to creativity and expressing ideas in any form, publishing them, and receiving them by the audience are rights that must be respected by the public authorities according to Article (19) of Universal Declaration of Human Rights (UDHR). As mentioned above, the state can impose restrictions on this right, but in the narrowest range, as explained in section II of this report. Also, this restriction become compatible with international standards and acceptable in a democratic state if it was the less intrusive procedure in practicing this right. This was confirmed by General Comment No. (34), which states: "This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others."

Also, it includes political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse".

PCHR affirms that restrictions imposed on the folklore and theatrical and musical work are unacceptable and unjustified in any way. Also, they are considered as a violation of Palestine's international obligations. Additionally, these restrictions ignore the cultural diversity in the Gaza Strip and create a state of cultural isolation that may lead to an intellectual extremism.

VI. Continued Use of Laws that Undermine the Right to Freedom of Opinion and Expression

The use of the laws that undermine the right to freedom of opinion and expression is continued, in addition to the Cyber-Crimes Law, which was newly issued by the Palestinian President in 2018 and was briefly addressed previously on the form of law by decree. These unfair laws are used to undermine the freedom of press work and opinion makers. The absence of the Legislative Council and independent judiciary for 12 years in row, which means the absence of monitoring and adjustment in the PA's associations has aggravated the situation. This reflected on the role of the civil society in pressurizing the decision makers to find better laws and respect the sovereignty of the good law in order to guarantee the freedom of access to information and freedom of the press work. Following are the most prominent criminalization and regulatory texts that undermine the freedom of expression:
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Criminalization Texts that Undermine the Freedom of Expression:

The 1960 Penal Code applied in the West Bank and the 1936 Penal Code applied in the Gaza Strip criminalized some of the freedom of expression forms. The criminalization texts were violating the international standards in several aspects as they are open to interpretation in a way that allows the PA to undermine the freedom of criticism, particularly criticism of prestigious figures such as the President. The most prominent crimes stipulated by these laws are:

Crimes of Slander "Prestigious Figures:"

Article (195) of the 1960 Penal Code applied in the West Bank criminalizes any statement that would harm the dignity of the Palestinian President and others of "prestigious figures", as stipulated in the following:

"Whoever commits one of the following offences shall be punished by imprisonment from one to three years: a. Dared to insult His Majesty the King b. Sent a written or an oral massage or a picture or a comic drawing to His Majesty the king or posted such massage, picture or drawing in a way that would undermine the dignity of His Majesty. The same penalty shall apply if he/she incited another person to any such act. c. Broadcasted in any way what is stipulated in subparagraph (1/b) of this article and disseminated it among the people. d. Falsely accused His Majesty of an act or a say or circulated such accusations among the people."

It should be noted that the word of His Majesty the King (in Jordanian Law) has been replaced by the word "prestigious figures". The courts usually apply this provision to those who give vitriol to the Palestinian president. The text came to make the minimum sentence one year for any prejudice of the dignity of the "prestigious figures". Moreover, the abovementioned text is considered one of the most stringent texts related to the criminalization of freedom of expression. Many activists and journalists have been charged due to this text. This article is arbitrary and inconsistent with Palestine's international obligations with regard to respect the freedom of opinion and expression.

It should be mentioned that there is no similar text in the 1936 Penal Code, which is applied in the Gaza Strip.

The General Comment issued by the Human Rights Committee on the follow-up of the implementation of the ICCPR emphasized this content in its General Comment No. 34, which states:

"As noted earlier in paragraphs 13 and 20, concerning the content of political discourse, the Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. Accordingly, the Committee expresses concern regarding laws on such matters as, lese majesty, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the
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honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.”

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Crimes of defamation and insult:

The two Penal Codes that are in force in Palestine criminalized defamation crimes punishable by a penalty of one year. Article 188 of the 1960 Penal Code states:

1. "Defamation is the imputation of a certain matter to a person – even if it was done with doubt – which might negatively affect his/her honour, dignity and exposes him / her to the hate and scorning of society regardless of if such matter is punishable by law or not. 2. Insult: is assaulting the dignity and honour of another person or his/her reputation – even if it was done with doubt – without accusing him/her with a specific matter. 3. If the name of the victim was not mentioned when the crimes of defamation and insult were committed, or the accusation were ambiguous but there was evidence which leaves no doubt in linking the matter to the victim, the perpetrator of the defamation or insult shall be considered as if he / she mentioned the name of the victim.”

From the previous text, it is clear that the legislator went beyond undermining the freedom of opinion and expression to make any mere word the lead to "offending public figures" is a punishable crime. As it well known, any criticism might lead people to dislike a particular official. It is also true that the legislator created other laws to legitimize the defamation and insult in case that the content has been proved or published in good will, but the practical situation makes this exceedingly difficult. In many times, a journalist needs to draw attention about having corruption in a particular institution, but he does not have evidence for that. Thus, we find that the previous texts contribute to narrowing down the real role of the media in practicing criticism as we previously explained in the commentary to the previous text.

Article (201) of the Penal Code of 1936 defined the act of defamation, which forms the content of the defamation and insult crimes. The abovementioned law differentiates between defamation and insult in the 1960 Penal Code applied in the West Bank as it considered the defamation crime is proven if the content of the defamation was published, whereas the insult crime is proven if the content was uttered to public. The abovementioned article defines the act of defamation as:

"Matter is defamatory which imputes to a person any crime or misconduct in any public office, or which is likely to injure him in his occupation, calling or office, or to expose him to general hatred, contempt or ridicule."

We note here that the definition came with the same content as in Article 188 of the Penal Code of 1960. Therefore, the same criticism applies to it as well.

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The General Comment No. (34) mentioned above affirms the importance to undermine the defamation crime (defamation and insult), or else, the criminal texts are used in profoundly serious cases. It also stressed on the need to prosecute the accused person quickly, not to prolong the procedures or detain the accused person in any case, and only impose a fine or compensation in in case of conviction. The general comment No. (34), stated:

"Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the Defense of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. States parties should take care to avoid excessively punitive measures and penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party. States parties should consider the decriminalization of defamation, and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty." 12

Crime of Stirring up Sectarian Strife:

Article (150) of the 1960 Penal Code stipulated the crime of stirring up sectarian strife and considered it an offense that should be punished. The article stipulated that:

"Any writing or speech aims at or results in stirring sectarian or racial prejudices or the incitement of conflict between different sects or the nation's elements, such act shall be punished by imprisonment for no less than six months and no more than three years and a fine not to exceed five hundred dinars (JD500)."

Article 59 of the Penal Code of 1936, has the same content, but with a different name, where the crime of stirring up sectarian strife was included in the crime of "conspiracy with seditious intention." The article stated that:

"Any person who : ( a ) conspires with any other person or persons to do any act in furtherance of any seditious intention common to both or all of them ; or ( b ) publishes any words or document with a seditious intention ;or ( a ) without lawful excuse is found in possession of a document containing a seditious intention is guilty of a misdemeanour."

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Article (60) defines the seditious intention as:

“A seditious intention is an intention to bring into hatred or contempt or to excite disaffection against the person of His Majesty, or against the Mandatory Power or the High Commissioner in his official capacity or the Government of Palestine, as by law established, or the administration of justice, or to incite or excite inhabitants of Palestine to attempt to procure the alteration otherwise than by lawful means of any matter in Palestine by law established; or to raise discontent or disaffection amongst inhabitants of Palestine; or to promote feelings of ill-will and hostility between different sections of the population of Palestine.”

Although the previous texts agree in principle with international standards of freedom of expression, which under article 20 of the ICCPR affirms the need to criminalize any advocacy of hatred or violence. However, drafting texts in a flexible manner allows the authority to arbitrarily use them. Moreover, Those previous texts were too broad, allowing the authority to infiltrate through them to criminalize legitimate patterns of freedom of expression in accordance with international standards.

When the Human Rights Committee implementation the ICCPR, stressed on the need for laws to be precisely drafted so that they would not be broad and undermines the right. The General Comment No. (34) states:

"A norm, to be characterized as a “law,” must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not." 13

Crime of Disrupting Security and Stirring up Riots:

Article (164) of the 1960 Penal Code provided the crime of “Stirring up Riots” as it stated that:

"If seven or more individuals gathered with the intent to commit a crime or achieve a common goal or they acted in such a way as to make people around them believe that – within the boundaries of logic - they will violate public security and 30 that by them gathering they incite other persons to violate public security, such gathering shall be considered an unlawful one. 2. If the unlawfully gathered persons started to achieve the purpose and aim of their gathering in violating public security in a manner that frightens the public, such gathering shall be called a (riot)."

The 1936 Penal Code applied in Gaza City also contains a number of articles that can be used to undermine the right to freedom of opinion and expression for they were broad. The most prominent of these is article (102) on the crime of breaching peace, which states:

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“(1) Any person who creates a noise or uproar in a public place without reasonable cause in a manner likely to disturb the inhabitants or to cause a breach of the peace, is guilty of a misdemeanour and is liable to imprisonment for three months or to a fine of five pounds or to both such penalties. (2) Any person who in any public place shall insult any other person in such a manner as would be likely to provoke any person present to commit a breach of the peace, is guilty of a misdemeanour and is liable to imprisonment for one month or to a fine of ten pounds or to both such penalties.”

The abovementioned articles empower the PA to undermine the freedom of opinion and expression by bringing political activists, who conduct any public objection, before the public prosecution for trial. This seriously limits civilians' ability to object freely, by threatening their future, stigmatizing, and imprisoning them, or at least introducing them into the complexities of criminal proceedings by bringing them to prosecution and the subsequent imprisonment pending investigation. As a result, this will highly contribute to undermining the right to political participation and the right to freedom of opinion and expression.

Regulatory Restrictions on Freedom of Expression:

The late Palestinian President Yasser Arafat issued Law No. (9) of the 1995 Press and Publications Law. The law included (51) legal articles that regulated particular cases related to press and publications, and legal penalties related to violation of its provisions. PCHR criticized this law because it restricts the space available to exercise the right to freedom of press and publication, and the freedom of individuals to receive and circulate information without any restrictions. These restrictions can be summarized in two main respects:

The law, especially Articles 7, 10, 37, had a lengthy list of prohibitions that were formulated in broad and unclear way as they were open to interpretations. Among these prohibitions (for example, to refrain from publishing what contradicts with the principles of democracy and national responsibility, which means not to include what violates Palestinian morals, values and traditions, and refrain from publishing anything that would fuel violence, intolerance, and hatred), although these concepts are broad and unclear and can be misused. The list of prohibitions also included a ban on external funding and a ban on journalist's communication with any foreign parties except through the foreign media correspondents system.

The law includes a lengthy list of prison sentences that may be applied to the editor, journalist/author of the article, owner of the printing house, and the printing house's owner. This contributed to imposing self-restrictions on the press for fear of prosecution. It would have been more effective for the legislator to stipulate a fine and ensure the victim's right to sue for compensation depending on the context, and not to resort to imprisonment, as long as it is limited to the practice of expressing opinion.
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The prior provisions contradict with the PA's obligations to launch freedom of expression and principles of democracy. The Human Rights Committee relevant to Implementation of ICCPR stressed on the promotion of freedom of press as the cornerstone of any democratic system. The General Comment No.(34) states:

"A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right whereby the media may receive information on the basis of which it can conduct its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output."

It is clear from the previous quotation that the Authority's trends in dealing with freedom of publication contradict with its obligations on the international level and undermines the chances of having a genuine democracy in the State of Palestine. The Committee emphasizes that the exchanging information; one of its methods is publication, is a fundamental issue in the freedom of expression as the public has the right to receive what media produces, without any proactive or subjective monitoring for the purposes of silencing others or denying the authority to criticism.

**Legal Analysis and PCHR Position**

PCHR affirms that amending domestic laws in accordance with Article (19) of the International Covenant on Civil and Political Rights regarding the freedom of expression is one of Palestine's international obligations under article 2 of the Covenant. Consequently, the insistence on enacting laws contrary to international standards, in particular loose texts that allow the expanding of criminalization and include internationally recognized forms of expression that should be allowed in democratic countries is considered a clear violation of the covenant.

PCHR asserts that such texts are also contrary to the Basic Law, in particular articles (19,27) which emphasize freedom of expression and freedom of journalism.

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Palestinian Authority Violations of Right to Freedom of Opinion and Expression

Part II: Freedom of opinion and expression in domestic and international law

The PA is obliged to respect, protect, and realize freedom of opinion and expression under international and national treaties. At the domestic level, the Palestinian Basic Law (PBL) ensures respect for the freedom of expression and media as Articles (19 and 27) stipulate the obligations of the three authorities (executive, legislative and judicial) relevant to respect and protection of the freedom of expression, media outlets and of individuals working in this field. At the international level, Article 19 of the international Covenant on Civil and Political Rights (ICCPR) provides that the State of Palestine shall respect the freedom of expression following its accession to the ICCPR in 2014. Therefore, the PA is obliged to ensure the compatibility of domestic laws with its obligations under the Covenant. However, instead of amending the 1995 Press and Publications Law and both Penal Codes applicable in the West Bank and Gaza Strip, the Palestinian President issued a new law to undermine the freedom of expression on cyberspace, which has become one of the most essential forums for freedom of expression and information exchange, especially in the last decade.

This chapter of the report addresses the PA's international obligations relevant to the freedom of opinion and expression, reviews Palestinian laws that restrict or regulate the freedom of opinion and expression, and outlines PCHR’s most significant criticisms.

I. Palestine's international obligations relevant to freedom of expression:

Many international covenants and declarations have stressed freedom of opinion and expression for its significance and close relevance to good governance and civil peace as it is impossible to have good governance and defend any right without the freedom of opinion and expression. The International Declaration of Human Rights (UDHR) and ICCPR are considered one of most prominent instruments that have emphasized this right:

**Universal Declaration of Human Rights (UDHR):**

Article 19 of the Declaration stipulates that:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Although UDHR is not legally binding, its moral value is significant as is evident in its mention in most United Nations (UN) resolutions and human rights conventions as it includes all UN member states. Furthermore, some of UDHR’s rules and principles have become part of the customary international law, which is binding to all states, even the ones that are not parties to human rights conventions.
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International Covenant on Civil and Political Rights (ICCPR):

The State of Palestine acceded to ICCPR in April 2014, as such, it is obliged to respect all the Convention articles, including Article 19 that protects the right to freedom of opinion and expression:

“1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (order public), or of public health or morals.”

Article 19 outlines the three components of freedom of opinion and expression that are complementary and necessary for its fulfilment: freedom of opinion, freedom of expression, and freedom of access to information. For instance, freedom of expression has no value without freedom of access to information, as each person formulates their opinion and expresses it relying on the information they impart.

The value of freedom of opinion is inconceivable without freedom of expression; the former is absolute in Article (19) since it does not inflect direct harm to anyone. Whereas, freedom of expression was subject to certain restrictions, as stipulated in Paragraph (3) that allow public authorities to restrict freedom of expression and access to information according to the following:

Restriction shall only be by law.
Restriction should be necessary with the least interference possible.
Restriction is consistent with a democratic society, where it can be applicable; and
Restriction is imposed for:
Respect of the rights or reputations of others.
Protection of national security or of public order (order public); or
Protection of public health or morals.

The Signatory States to the ICCPR are committed to incorporate the legal obligations stipulated in the Covenant in their domestic laws according to Article (2) (2):

"Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or

15 UN Human Rights Commission, General Comment No. 34, 2011.
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*other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

It should be mentioned that ICCPR and its articles provides the minimum level of protection and respect for rights and freedoms in general; thus, States are free to allow more rights and freedoms than what is stipulated in the Covenant.

**State's international obligations relevant to freedom of opinion and expression Under the ICCPR**

Human Rights conventions have given States 3 responsibilities relevant to rights and freedoms:
- Responsibility to respect the right.
- Responsibility to protect the right; and
- Responsibility to realize the right.

These State responsibilities apply to the right of freedom of opinion and expression, but the freedom of expression is distinct from other rights as Article (20) of ICCPR stipulates forms of expression that should be prohibited:

**Respect for the right to freedom of opinion and expression:**

The PA is committed to refrain from any action that would undermine the right to freedom of opinion and expression. Therefore, the PA should cease prosecution of opinion makers as long as they adhere to the law, which itself should adhere to international standards of the right to freedom of opinion and expression. In addition, the PA should not undermine the right to access information and should refrain from obstructing and assaulting journalists while on duty. Eventually, the PA should stop issuing decrees or laws that would undermine the right to the freedom of opinion and expression or impose restrictions inconsistent with international standards regarding journalists' work.\(^\text{16}\)

**Protection of the right to freedom of opinion and expression:**

The PA is obliged to provide media outlets and opinion makers the necessary protection from any attack by a third party on grounds of their work. Moreover, the PA should prohibit any action or saying that would incite hatred or violence against opinion makers or media outlets. The PA should take appropriate procedures, including criminal procedures against the offenders. Furthermore, the PA should promote values of tolerance and respect for dissenting opinions to ensure non-occurrence of attacks against opinion makers.\(^\text{17}\)

**Realization of freedom of opinion and expression**

The PA is obliged to ensure realization of the right to freedom of opinion and expression by providing mechanisms that guarantee its respect and protection. Therefore, judicial mechanisms

\(^{16}\) Ibid.

\(^{17}\) Ibid.
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should be established for citizens to seek their right of protection and respect. The PA should also provide the security needed for citizens to practice their right to the freedom of opinion and expression without being exposed to an assault from a third party. Furthermore, in order to guarantee the freedom of opinion and expression, laws should be enacted to protect it; criminalize any attack against journalists and opinion makers and enable citizens' access to information. This obligation requires that the PA provide information on public affairs, either at request or automatically.18

Prohibition of some forms of expression

Article (20) of the ICCPR provides that there are forms of expression prohibited and their perpetrators should be held accountable. These forms are limited to those inciting violence, war, hatred, or discrimination:

"1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

State of emergency and freedom of expression under international law

Article 4 of ICCPR regulates the state of emergency, and has allowed suspension of certain rights introduced in the Covenant in such case:

“1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision."

According to the abovementioned article, Article 19 relevant to the freedom of opinion and expression was not mentioned as one of the rights that cannot be suspended; hence, freedom of expression can be limited in times of emergency but with the following conditions:

Presence of a threat to national security (natural catastrophe, war, pandemic ... etc.);
To be formally announced by the authority designated in the constitution;
To be in in the narrowest scope in terms of space, time, and exceptional procedures.
Security measures shall not contradict other obligations under international law;
without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin.

18 Ibid

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No form of expression is criminalized with a retroactive law or without a semi-criminalization.

States Parties shall be immediately informed of the provisions from which the state has derogated and of the reasons by which it was actuated, and of the date on which it terminates such derogation.

II. PA laws regulating freedom of opinion and expression

Palestinian laws regulated the freedom of opinion and expression, including the 2003 Palestinian Basic Law, both Penal Codes applicable in the West Bank and the Gaza Strip and 1995 Press and Publications Law. The constitutional legislature has worked for protecting this right, stressing the freedom of press, and providing adequate protection for it. However, the legislature has not provided sufficient protection for freedom of expression as will be explained hereinafter. Moreover, the Press and Publications Law regulates publication rights and emphasizes the freedoms of publication and journalism. However, there are many flaws in the laws applicable in the PA controlled areas concerning the right to freedom of opinion and expression. The Following reviews most prominent laws that included articles concerning freedom of opinion and expression:

Palestinian Basic Law

The Palestinian Basic Law provides some protection for the right to the freedom of opinion and expression, precisely in Article (19) of this law:

"Freedom of opinion may not be prejudiced. Every person shall have the right to express his opinion and to circulate it orally, in writing or in any form of expression or art, with consideration to the provisions of the law."

As seen, this article is consistent with the international standards as it has fully unleashed the freedom of opinion and has not imposed any restrictions on it. However, it is in sufficient when it comes to freedom of expression, which was defined by law without placing any restrictions on the legislator who should enact laws not in violation of the international standards.

Article (27) of the Palestinian Basic Law stresses respect for media and prohibits censorship of it, including warning, suspension, confiscation, cancellation, or restriction except by law and pursuant to a judicial ruling; Article (27) stipulates that:

“1. Establishment of newspapers and all media means is a right for all, guaranteed by this Basic Law. Their financing resources shall be subject to the scrutiny of the law. 2. Freedom of audio, visual, and written media, as well as freedom to print, publish, distribute, and transmit, together with the freedom of individuals working in this field, shall be guaranteed by this Basic Law and other related laws. 3. Censorship of the media shall be prohibited. No warning, suspension, confiscation, cancellation or restriction shall be imposed upon the media except by law, and pursuant to a judicial ruling."
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Freedom of expression, the state of emergency and the Palestinian Basic Law

Title Seven – State of Emergency Provisions of the 2003 Palestinian Basic Law (Articles 110 – 114), regulated the state of emergency and identified the following conditions:

There is a threat to national security caused by war, invasion, armed insurrection or in times of natural disaster.

The President of the National Authority may declare a state of emergency by decree, for a period not to exceed thirty (30) days.

The state of emergency may be extended for another period of thirty (30) days if a two-thirds majority of the members of the Legislative Council vote in favour of the extension.

The decree declaring a state of emergency shall state its purpose, the region to which it applies and its duration.

The Legislative Council shall have the right to review all or some of the procedures and measures adopted during the state of emergency, at the first session convened after the declaration of the state of emergency or in the extension session, whichever comes earlier, and to conduct the necessary interpellation in this regard.

It is not allowed to impose restrictions on fundamental rights and freedoms when declaring a state of emergency except to the extent necessary to fulfil the purpose stated in the decree declaring the state of emergency.

Any detention conducted pursuant to a state of emergency decree shall be reviewed by the Attorney General, or by the appropriate court, within a time period not to exceed fifteen (15) days from the date of detention. The detained individual shall have the right to select and appoint a lawyer.

Hence, abrogation of rights is permitted under the Palestinian Basic Law, to the extent necessary to fulfil the aim of the decree of the state of emergency. As such, any restrictions on the freedom of expression that is not required by the state of emergency is considered an arbitrary practice in violation of the Palestinian Basic Law and can be overturned before the Constitutional Court.

Press and Publications Law No. (9) of 1995

The Press and Publications Law includes articles that ensure protection of the right to freedom of expression and publication. However, it will be evident hereinafter with the report’s last indicator that this law contradicts itself, as it ensures freedom of media, publication, and printing, and stipulates loosely defined terms that undermine this right and allow violations under the guise of law. Most prominent articles that protect the right to publication and printing in this law are:
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Article (2): "Every Palestinian has the freedom of expression, press and printing and the right to express his opinion freely in the form of speech, writing, photography and on the media."

Article (6): "The authorities shall seek to facilitate the work of journalists and researchers by allowing them to view their programs and projects."

Article (5): "Any person, including political parties, shall have the right to own and publish press publications in accordance with the provisions of this law."
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Recommendations

− The report exposed the strangling overreach security services have exerted on the freedom of expression and journalistic work. This documentation provides incriminating data against the Public Prosecution in their role directing abusive violations against journalists. Accordingly, PCHR demands:

− Accountability for all those involved in the murder of Palestinian activist, Nizar Banat, who was killed during his arrest on grounds of his opinion. This includes the senior political leaders who issued the arrest warrant.

− Judicial authorities must commit not to detain opinion-makers pending investigation, as this constitutes an abuse of power and effort to undermine freedom of expression and journalistic work.

− The reinstatement of the Public Prosecution’s monitoring authority on the security services, and ending the phenomenon of summons and arbitrary arrests, especially against journalists and opinion makers, especially that security services do not have the authority to summon citizens.

− Judicial authorities to follow-up on allegations of torture at investigation centres in the West Bank and the Gaza Strip against opinion makers.

− The Minister of Internal Affairs and Security Services to issue firm instructions banning summoning civilians through phone calls, and to stress the importance of following due legal process relevant to summonses, especially for journalists and opinion makers.

− Guard freedoms, especially freedom of art, creativity, and broadcast, and abolish all restrictions.

− The PA in the West Bank and Gaza, its services and ministries commit to providing information on all their activities and other field and security updates and refrain from leaving the public in the dark consumed by rumours.

− The promotion of civilians' right to access information, without differentiation based on profession (journalists vs. common citizens).