



PCHR
المركز الفلسطيني
لحقوق الإنسان

Palestinian Authority Violations of Right to Freedom of Opinion and Expression

01 April 2019 – 31 March 2020



Contents

4	Introduction
9	Methodology and Structure
10	Part I: Freedom of opinion and expression in domestic and international law
10	i. Palestine’s international obligations relevant to freedom of expression:
15	ii. PA laws regulating freedom of opinion and expression
18	Part II: Violations of the freedom of expression in the West Bank and the Gaza Strip
19	i. Arrests and Arbitrary summoning for journalists, bloggers and opinion makers, subjected to torture, inhuman and degrading treatment.
26	ii. Banning Journalists from work
27	iii. Legal prosecution on grounds of practicing freedom of opinion and expression
31	iv. Imposing Restrictions on the Right to Information Access
32	v. Imposing Restrictions on the Freedom of Creativity and Scientific Research
33	vi. Continued use of Laws that Undermine the Right to Freedom of Opinion and Expression
41	Recommendations

Introduction

This report, which is the 18th of its kind, addresses the states of the right to freedom of opinion and expression under the PA and covers the period from 01 April 2019 to 31 March 2020. This report is the fifth of its kind issued by PCHR 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 various ways, as presented hereinafter.

This report is issued under exceptional circumstances after Palestinian President announced a state of emergency in the occupied Palestinian territory on 05 March 2020 to combat the spread of corona virus (COVID-19) pandemic, which overtook the world and caused hundred thousand of deaths and brought a global state of emergency. 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. During the state of emergency, which applies to a period covered in the report (25 days), PCHR did not document a case where the state of emergency was abused in terms of violations to the freedom of expression.

During the reporting period, PCHR documented several violations of the freedom of expression, especially during calls for popular movement in the Gaza Strip. Meanwhile in the West Bank, violations of freedom of expression continued, particularly on grounds of the Palestinian division. Security services 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.

practiced different oppressive methods against the freedom of expression during the reporting period, including enacting laws restricting freedom of expression; subjecting opinion-makers to torture and degrading treatment; recurrent summonses to journalists and opinion-makers; placing limitations on journalism as a profession; and arbitrary use of the law for undermining freedom of expression.

All of the above was accompanied with abuse and violation of law as the security services' continue to issue summonses for journalists and opinion makers without the Public Prosecution's permission and subjects them to torture and cruel and degrading treatment in many cases. 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.

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 where legal tools were arbitrarily employed to suppress dissenting opinions, in a zero-sum game where the first victim is freedom of expression and press.

Despite confirmations by both authorities in the West Bank and the Gaza Strip of their respect of freedom of expression, their practices reflect the opposite and explicitly show a systematic policy to nib the free press in the bud and undermine the freedom of expression, particularly on social media, which is under strict censorship by security services, and its activists became a primary target.

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 pub-

lic'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. This situation worsens the consequences of inadequate legal texts, especially those that impose broad restrictions that can be made to fit for anyone.

The PA in the West Bank and Gaza Strip committed various violations of freedom of expression during the reporting period, including summonses, detention and torture of journalists and opinion makers. This accumulating situation over the past years has contributed to an atmosphere of intimidation amongst writers, journalists, bloggers and other opinion makers, and made them reluctant to address many issues, especially those related to financial and administrative corruption.

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.

Therefore, the Palestinian Centre for Human Rights (PCHR) closely monitors and addresses civil and political freedoms in its press releases and periodic reports, including this report in hand. Therefore, 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. In this context, PCHR has devoted great efforts to monitor the right to freedom of opinion and expression in the PA in order to ensure protection and full enjoyment of this right. In this regard, PCHR has issued periodic reports documenting violations of the right to freedom of opinion and expression in the areas under PA jurisdiction.

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**

During the reporting period, there was a significant setback in the efforts exerted to end the division, which has become more complicated due to the many obstacles placed by the parties to the division; foreign interventions; and Israel's explicit desire to maintain it. All efforts towards holding Palestinian elections, which was proposed as a possible exit from the division, failed; despite the Constitutional Courts' decision issued in December 2018 to hold the elections within 6 months.

The new Palestinian government formed by Prime Minister Mohammed Shtayyeh was sworn in on 13 April 2019, after former Prime Minister resigned and his resignation was accepted by the President on 29 January 2019. At the time, Hamas movement considered the formation of a new government without agreement is a new setback in reconciliation efforts. At the end of 2017, Hamas announced the dissolution of the Administrative Committee, which was formed by the Change and Reform Bloc in the Palestinian Legislative Council (PLC) according to the 2016 Government Administrative Committee Law on 07 August 2016. Hence, the Gaza Strip is left without a clear administration to be held accountable. The Gaza Strip is currently run by undersecretaries under the supervision of a committee formed by the Change and Reform Bloc, known as "Committee for Follow-up on Government Work, currently chaired by Dr. Mohammed Awad.

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 Unity Government had full control over the West Bank, its role was very 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.

Part I: 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:

1. International 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.

2. 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 inflict 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 applicable¹; 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 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:

1. UN Human Rights Commission, General Comment No. 34, 2011.

» **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.²

» **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.³

» **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 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.⁴

» **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

2. Ibid.

3. Ibid.

4. Ibid

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 1 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:

1. Presence of a threat to national security (natural catastrophe, war, pandemic ... etc.);
2. To be formally announced by the authority designated in the constitution;
3. To be in in the narrowest scope in terms of space, time and exceptional procedures.
4. Security measures shall not contradict other obligations under international law;
5. without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin.
6. No form of expression is criminalized with a retroactive law or without a semi-criminalization.
7. 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:

1. 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 due 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 insufficient 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.”

- 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:

1. There is a threat to national security caused by war, invasion, armed insurrection or in times of natural disaster.
2. The President of the National Authority may declare a state of emergency by decree, for a period not to exceed thirty (30) days.
3. 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.
4. The decree declaring a state of emergency shall state its purpose, the region to which it applies and its duration.
5. 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.
6. 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.
7. Any detention carried out 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.

2. 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: *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."

Part II: Violations of the freedom of expression in the West Bank and the Gaza Strip

During the reporting period, the Palestinian President declared the state of emergency on 05 March 2020 to combat the outbreak of coronavirus (Covid-19) pandemic. Accordingly, authorities were granted extraordinary powers to impose restrictions on some rights, including the right to freedom of expression, in the narrowest terms and without exceeding the declared purpose of the state of emergency. Up to the release of this report, PCHR did not observe any abuses of the state of emergency to suppress the freedom of expression, partly because authorities did not respect procedural law before the state of emergency to begin with, and summonses and arrest were often carried out 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.

Before declaring the state of emergency, the last quarter of 2019 witnessed an increase in violations of freedom of expression, especially against calls for a youth movement in the Gaza Strip. This was echoed in the West Bank, which witnessed an increase in arrest cases on the same grounds and in the same period. The self-censorship on freedom of opinion has continued to overshadow journalistic work 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 summonses. 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.

The recurrent and arbitrary arrest against journalists and opinion makers was the most prominent tool used by security services in the West Bank and Gaza Strip to suppress freedoms during the reporting period. Most of those summonses included detention for days or several hours as well as inhuman and degrading treatment. The policy of recurrent summon 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.

A summon issued by the security services against opinion makers and journalists without legal justification is a violation of the PA international obligations relating to the freedom of expression. Additionally, it constitutes a clear violation of the Code of Criminal Procedure of 2001. International standards-imposed obligations on the PA to respect the freedom of expression, including the freedom of press, and banned arbitrary summonses, inhuman and degrading treatment as well as torture.⁵The Palestinian Law considers that the Attorney General has the full power to issue summonses and subpoenas, which should include charges. All of this is detailed in Chapter III of the Code of Criminal Procedure of 2001. The torture and degrading treatment that journalists and opinion makers are exposed to in interrogation is considered as a crime that requires accountability and punishment for its perpetrators, according to the Penal Code of the Palestinian Authority.⁶

It should be noted that summoning journalists and opinion makers without legal justification is a violation of the Palestinian Law, as Article (178) of Penal Code (1960) applicable in the West Bank, stipulates that:

“Every employee detained or arrested person in cases not provided

5. The International Convention against Torture of 1984, as well as article 7 of the International Covenant on Civil and Political Rights..

6. 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 applied in the military courts and PCHR considered it 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.

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 committed by a public servant. During the reporting period, PCHR documented the most prominent cases of summons related to torture or degrading treatment against journalists:

- **Nedal Mahmoud Ashmar (32)**, a cameraman at Palestine Today TV and France 24 channel, said that on 23 February 2020, the Preventive Security Service (PSS) in Hebron summoned and detained him on grounds of his Facebook posts.

Following is part of his testimony: “ on 20 February 2020, a force from the PSS came to my house and handed my family a summons to refer to their PPS office in Hebron. On 23 February 2020, I headed to the office at 10:00. I was taken to an investigation room, where the investigator interrogated me for 15 minutes about my work and co-workers and about my posts on social media, especially about a post in which I photographed their arrest of my nephew by kidnapping. After that, they took me to the cell and at 14:15, I was taken to the investigation room again and interrogated by another investigator on the same issues. At 15:30, a security officer gave me my ID and asked me to leave.”

- **Journalist Mohammed Anwar Mona (37)**, said that on 25 February 2020, he was arrested by the PSS from his house in Nablus on grounds of freedom of expression.

Following is part of his testimony: “ At approximately 00:00, a PSS force raided and searched my house in Zota village, west of Nablus. They confiscated my laptop, my mobile phone, and a personal camera and then took me to the PSS office in Nablus. I was detained there for 24 hours, during which, I was interrogated 2 times by investigators. In the first time, a public statement was written, and I was not asked to sign it. In the second time, the investigator asked me about my opinion of President Abu Mazen, the general situation, my work as a journalist, and the topics I write about.”

- **Hasan al-Dawawdi (25)**, said that he was summoned by the Internal Security Service (ISS) and by the General Investigation Service (GIS). During which, he was interrogated on grounds of freedom of expression on social media; the last of which was on 02 February 2020.

Following is part of his testimony: “ on 02 February 2020, I received a phone call and the callers identified himself as an internal security officer. He asked me to come to the ISS officer in Tal al-Sultan neighbourhood in Rafah. When I asked him to send a summons warrant, he told me that they no long send these warrants. He sent SMS message on my mobile. At 09:15 on Monday, when I arrived at the ISS officer, they confiscated my mobile phone and asked me to open my Facebook account. After that I was blindfolded and taken to an investigation room think that there were 3 investigators; 2 of them asked me about my activities on social media and accused me of inciting against Hamas movement and the government. They also asked me about my political affiliation. They ordered me not to criticize Hamas movement or the government, especially at the present time, or I will be punished. I refused their order and told them I will criticize everyone, and I do not incite anyone, but I express my opinion. At 13:00, I was released after taking my mobile phone and belongings. On 23 October 2019, I was summoned and interrogated by the GIS on grounds of my social media activities. They accused me of misusing technology. The investigator ordered me to hand my cell phone and got angry when I told him I did not have it. He then asked for my Facebook username and password, but I refused and told him that he should have an order from the Attorney General to access it. He was outraged and started beating me on my back, telling an officer there to take me to the cell. He added, “According to the law you want me to apply, I am allowed to detain you for 24 hours.” An hour later, one of my relatives arrived, and I agreed to give the Facebook account password. He also forced me to sign a pledge not to incite or call for protests. I was released at approximately 12:30.”

- Islam Mazen Dabour (29), said that on 22 October 2019, he was summoned and interrogated by the ISS on grounds of his posts on social media.

Following is part of his testimony: “ At approximately 08:00, on 22 October 2019, I headed to the ISS office in Dir al-Balah upon a summons handed to my family. When I arrived at the office, they took my belongings and I waited for an hour. After that, a security officer came, take my mobile phone and asked me about the password of my Facebook account. I was then interrogated for my posts on Facebook which called for holding elections and criticized Hamas. Before finishing the investigation that was as a discussion, the investigator asked me not to talk about politics in general or I

will be arrested and the treatment that I would receive would not be like this interview. He showed me a pledge that I had to read and sign, but I asked him if I do not sign, would I be arrested? He answered yes, so I signed after thoroughly reading it and understanding that I would be fined NIS5000 if I do not stop writing on Facebook and calling for protests. I was then detained in a cell for an hour and later released on the condition that I return on Thursday morning, 24 October 2019. I returned on Thursday and they detained and interrogated me for 2 hours. After that, I was taken to the investigation room again and asked about my posts on the Facebook for 30 minutes. At 12:30 on the same day, they gave me my belongings and released me.

- **Ramadan ‘Azazi Baraka (46)**, said that on 28 August 2019, he was summoned, detained and subjected to degrading treatment by the GIS in Khan Yunis on grounds of freedom of expression on social media.

Following is part of his testimony: “At approximately 10:00 on Wednesday, I received a summons to refer to Khan Yunis Police Station. I headed there and when I arrived, a police officer cursed me and asked me about Tamer al-Sultan⁷. Tamer was the son of my colleague at the university. The investigator asked me, why you are sad about Tamer death? and why you are writing incitement posts regarding Tamer death on your Facebook? He talked about a post I wrote on my Facebook page in which I held responsibility for what happened to Tamer to the governors in the Gaza Strip. The investigator cursed Tamer, saying that he is a dog and cursed me as well, saying that you are not a doctor. you are a shoe. I closed my ears in an attempt not to hear insults. I was taken to the investigation room, where the investigator accused me of inciting against the government and resistance and evoking seditious in the society. The investigator threatened me to stop incitement and forced me to sign a pledge. At 17:30, I was released. Next day, I received a phone call from the GIS office in Khan Yunis, ordering me to come to the office. When I arrived there, a security officer cursed and threatened me and then took me to a small cell, where I stayed for few hours without investigation. They released me at 17:30 and ordered me not to write posts that bother them.”

7. Tamer al-Sultan is a Palestinian from Gaza, died on 20 August 2019 while trying to emigrate to Europe. Al-Sultan was ill and received treatment at a hospital in Sarajevo-Bosnia, where he was pronounced dead.

- **Adham Mohammed al-Sarahi (33)**, said that on 28 August 2019, he was summoned by the Intelligence Services office in Deir al-Balah, where he was detained and subjected to torture. He was summoned several times on grounds of his posts on social media (Facebook). Following is part of his testimony:

“At approximately 10:00, I headed to the Intelligence Services office in Deir al-Balah after being summoned for testimony. After waiting for two hours in detention they came to interrogate me about several posts on my Facebook page about the death of Tamer al-Sultan, and some contents criticizing Hamas Movement and their policy, and demanding my followers to promote the Hashtag “We want to live 2”. The investigator charged me for incitement against the government of Gaza by my posts, and that I work for external entities and agendas, then he demanded my Facebook password, so I wrote it. Meanwhile, during the interrogation they slapped my face and kicked my back several times until I was released at approximately 19:00, after ordering me to delete my posts and write an apologize, and return on 03 September 2019, Tuesday. I already deleted my posts, but I did not write or publish any apologies or excuses. At approximately 08:30, on Tuesday, I headed to their office where they shackled (Shabeh) me under the sun and tortured me for not apologizing, then released me again at approximately 16:00, after some relatives’ interventions on condition of writing an apologize and return at approximately 09:00, on the next day morning. I did not return to take my belongings; I sent a lawyer and he brought all my belongings to me”.

- **Bassam Hussam al-Derbashi (23)**, said that on 28 August 2019, he was summoned by the Intelligence Services office in Deir al-Balah, where he was detained and subjected to torture on grounds of his posts on social media. Following is part of his testimony:

“At approximately 10:00, I headed to the Intelligence Services office in Deir al-Balah, where they took all my belongings, then someone came to blindfold and handcuff me and ordered me to stand up. Suddenly, dozens of men came and started beating and cursing me, one of them forced me to write my Facebook password, so I gave him while I was subjected to torture. Furthermore, they kept charging me of incitement against Hamas Movement and that I receive money from foreigners and threatened me that they will take me to al-Qassam Brigades Base and shot my legs and throw me in the Gaza Valley. When they opened my Facebook page and read the posts, they continued beating me even more

to my feet and the investigator said to me “can you sing?!” and ordered me to sing loudly in front of everyone there, then they released me on condition that I must return on Monday and show them that I have already deleted all my posts against Hamas Movement and published an apologize instead, otherwise they will shot my legs. One of them pull his gun’s parts and started playing with it to fear me and forced me to sign a pledge fine of (5000 NIS) to pay in anytime I post things against Hamas or write criticism posts. At approximately 15:00, I was released after they handed me a summons to refer again on Monday, 02 September 2019. When I returned home, I deleted all my posts, but I did not write any apologies”.

- **Mohammed Akram al-Tahrawi (19)**, said that on 22 August 2019, he was summoned by the Intelligence Services office in Deir al-Balah, where he was detained for investigation on grounds of his posts on social media (Facebook). Following is part of his testimony:
*“On 25 August 2019, after I refused to return to the Intelligence Services office, they promised my father that they will treat me properly. I went there at approximately 10:30 and waited in the waiting room. After 10 minutes, six officers were wearing black uniforms came and handcuffed my hands to the back and blindfolded me then started interrogating me about my posts on Facebook while I was sitting on my knees on the floor. They also accused me of incitement and calling for the popular movement “We want to live 2”. They kept interrogating and severely beat and kicked me with their legs and hands to my back for two consecutive hours until I was taken to a 1.5*2 meters cell. I stayed two hours before they took me to the Internal Security officer’s room who ordered me to sign a pledge fine of (5000 NIS) to pay in anytime I post incitement posts, or present in places that the government banned demonstrations in it. They also ordered my father to bring my other cell phone and come to sign and guarantee me, then I was released at approximately 16:30, on 25 August 2019”.*
- **Ghassan Hasan al-’Arabeed (26)**, said that on 28 August 2019, he was summoned by the Intelligence Services office, where he was interrogated and subjected to torture on grounds of his posts on social media. Following is part of his testimony:
“At approximately 11:30, on Thursday, I received a phone call from the Intelligence Services office and ordered me to refer to their office in Qasr al-Hakem in the Gaza Strip to ask for something for a

few minutes only. At approximately 12:10, I headed to the Intelligence Services office for investigation. The investigator asked me about what I do not like in the city. And the situation in the Gaza Strip is bad for all the people in general not only me. I replied: “the people in Gaza are besieged, and the leaders in the Gaza Strip and the West Bank are living freely”, he cursed me and I told him that I have the right and freedom of expression according to Article (19) of the Palestinian Basic Law. Suddenly, four persons came to blindfold and handcuff me, and they started beating me for more than an hour, and then they put my hands on the floor and put the chair’s legs on my hands, and someone came and sat on the chair. After a few hours, they released me and ordered me to return on 18 August 2019, but I did not”.

- **Shawkat Abu Safeya (57)**, said that on 17 August 2019, he was summoned by the Intelligence Services office in the Gaza Strip, where he was interrogated and subjected to torture after accusing him of responsibility for the popular movement “We want to live 2” and incitement against Hamas. Following is part of his testimony: *“At approximately 15:00, on Tuesday, I was summoned to the Intelligence Services Office in Qasr al-Hakem in the Gaza Strip. As soon as I arrived, a police officer came and introduced himself as a public relations officer in the Internal Security Services and took my cell phone and started interrogating me from 15:30 to 19:00. He asked me about the popular movement “We want to live 2” and about my political points of view and released me at approximately 19:30, on condition that keeping my cell phone with them until tomorrow. On the next day, they asked me to come again, so I headed there at approximately 10:00, on 09 August 2019, they asked me again about my political opinions and about a contact number in my cell phone, so I replied that I do not know him. Meanwhile, they handcuffed, cursed, and violently beat me with their hands and legs all over my body, and ordered me to confess that I am the leader of the abovementioned movement and I am inciting against Hamas Movement on my Facebook page on Social Media. Furthermore, they brought my laptop and ordered me to enter my password and started viewing and searching in it, then they put me in a cell until they released me at approximately 21:00 and ordered me to return on 19 August 2019. At approximately 09:00, on 19 August 2019, I headed there and released again at approximately 11:30, but without giving my laptop and cell phone back to me.”*

- **Khaled Shbaita (41)**, said that he was summoned for two times by the Preventive Security in Qalqilya, on grounds of freedom of opinion. Following is part of his testimony:

“I criticized the Communication Committee formed by the Palestinian president, shared a video on my Facebook page, and wrote a caption that everyone has to oppose the PLO, not only the Communication Committee. On 13 February 2020, I was summoned by the Preventive Security in Qalqilya because I criticized the Palestinian president’s speech in the USA by saying that it’s no more than acquaintance, so they detained me until 20 February 2020. Previously, on 19 June 2020, I received a summons by the Preventive Security in Qalqilya. At approximately 12:00, on Tuesday, I headed there to interrogate me on grounds of my posts on Facebook, they asked me about the posts I wrote on corruption, high prices, and calling for the civil disobedience. At approximately 17:00, 19 June 2019, I was released”.
- **Khaled Thwaib**, said that on 23 April 2019, his son Khalil Khaled Thwaib (22), a freelance photojournalist, was arrested by the Preventive Security in Bethlehem on grounds of his journalistic work. Following is part of his father’s testimony:

“At approximately 13:00, 23 April 2019, the Preventive Security forces stormed our house in Beit Sahour, and arrested my son Khalil. They interrogated him about the nature of his work and about shooting the events of the Palestinian Prisoners’ Day and released him on condition that refers again to continue interrogation. After 3 times of summoning him, Khalil refused to refer to them, so a force from the Preventive Security stormed our house and detained Khalil by force.”⁸

ii. Banning Journalists from work

During the reporting period, PCHR documented one case in which one journalist was attacked by security services while he was on duty. The monitored case reflects the nature of procedures imposed on journalists by obtaining multiple permits to enter some places or even doing photography on the streets. Through its contacting with journalists, PCHR found that journalists imposed a self-restraint state on themselves in order not to irritate the authorities. Following is the case that PCHR documented:

8. This period witnessed an Israeli military escalation as its forces bombarded several areas across the Gaza Strip.

- **Muthanna Suleiman al-Najjar (35), journalist at al-Quds Radio and al-Hadath Newspaper, said to PCHR that he was banned from photography in a public place in al-Nuseirat refugee camp on 23 April 2019. He stated that:**

“At approximately 14:00 on Tuesday, 23 April 2019, I was photographing a Ramadan Cultural Competition with people in al-Nuseirat refugee camp in the central Gaza Strip, when a member of General Intelligence Service intercepted me and banned me from photographing, alleging that I did not obtain a permit from the Ministry of Culture. Although I presented my press card to the officer, he forced me to stop photography and ordered me to review the Ministry of Culture, and I had to leave.”

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, that 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.

The Human Rights Committee, which supervises the application of the International Covenant on Civil and Political Rights (ICCPR), confirmed in General Comment No. (34)⁹ 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.

9. UN Human Rights Commission, General Comment No. 34, 2011.

During the reporting period, PCHR documented a number of cases where opinion makers and journalists were charged on grounds of expressing their opinions. Despite that charges are usually made in accordance with Palestinian laws, they represent a breach of the PA's obligations as a State Party to the Covenant according to Article (19) of ICCPR, and some of these charges are considered an abuse of power. 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:

“Detention pending investigation” is one of the PA's most dangerous legal tools that should only be used in extreme cases where the society is 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. Following is the most prominent cases PCHR documented in this category:

- **Hussam Mahmoud Khader (59), Member of the dissolved Palestinian Legislative Council (PLC),** said to PCHR that on 05 March 2020, Khader was detained and attacked by Palestinian Preventive Security Service (PSS) in Nablus on grounds of expressing his opinion on social media:

“On 05 March 2020, at midnight, I was at home in Balata refugee camp in Nablus when a group of officers from PSS knocked the door. They showed me a search warrant signed by the Public Prosecution and then arrested me. I was dragged and pushed in a humiliating way to one of their vehicles. An officer hit me with the rifle's butt on my left shoulder and 2 others beat me on my head and pulled me from my hair. When I arrived at the detention centre, I was presented before a doctor whom I informed that I declare a hunger strike. In the next day, I was brought before inspector and later referred to the office of the PSS where I was taken to the investigation department. Officers negotiated with me to end the hunger strike. at approximately 10:30 on the same day, the Attorney General arrived and informed me with the President's deci-

sion to release me. I was arrested on grounds of a post I published on page on one of the social media in which I called to present the President before Psychiatry to ensure his mental well-being.”

- **Ayman Faisal Qawariq (32)**, a freelance journalist, said that on 02 March 2020, he was detained and questioned about his posts on the social media. Following is part of his testimony:

“At approximately 12:00 on 02 March 2020, I was detained at a checkpoint established by the Palestinian PSS on the road linking between Ourta and Beta villages, southeast of Nablus. I was put in a vehicle and taken to the PSS’s office in Nablus. in the first day of detention, I was investigated about my posts I published on the social media in which I criticized the PA and an official. In the next day, I was brought before the Public Prosecution, which extended my detention. After 4 days of detention, I was released.”
- **Emad Abdul Karim Omer Izriqat (26)**, was arrested by the PSS in Hebron and brought before the Public Prosecution on charge of defaming the authorities. Following is part of his testimony:

“A PSS force arrested me after searching me without a search warrant. I was investigated about my posts on my Facebook page. I was brought before the Public Prosecution that issued a decision to detain me for 48 hours after accusing me of defaming authorities under the Cybercrimes Law, Article (45). In the next day, I was brought before Hebron’s Magistrate Court and my detention was extended for 4 days on the same charge. On 10 February 2020, my detention was extended again for 3 days and then I was released.”
- **Bassam Mohammed Muheisen (40)** said that on 22 October 2019, he was summoned and detained at the PSS in Gaza City where he was investigated on grounds of his post on his Facebook page. Muheisen was tortured during investigation⁴⁰. Following is part of his testimony:

“At approximately 08:00 on Wednesday, 23 October 2019, I referred to the head office of the Internal Security Service. After I waited for an hour, I was entered into a room called “the Bus” in which I stayed for 40 minutes. After that, an inspector came and questioned me about my posts on Facebook page. I was accused of threatening revolutionary unity and I am funded by some party. The officers then put a bad smell cloth bag on my head and moved me to another room where they left the bag off my head and whipped me with a hose in my feet for 15 minutes. The inves-

tigator came back and asked me the same questions and accused me of collaboration with Ramallah. when I denied the charge, I was transferred into another room in which 3 inspectors were present and they investigated with me under torture during which I was severely beaten. The same method of investigation was repeated the following day. Investigation with me continued under torture in various ways, and my account information in all social media sites was taken. On 02 November 2020, I was released after I signed a pledge paper not to write any posts. I was released at 14:00 after I took my belongings.”

- **Mujahed Abdullah Qet (29), who works at al-Quds News Agency, said that on 08 September 2019, he was summoned and detained by the Palestinian PSS in Nablus and was tried on grounds of his press work. Following is part of his testimony:**
“At approximately 10:00, my brother received a phone call from the PSS informing him that I should refer to the PSS’s head office in Nablus. I was detained on grounds of my press work in al-Quds News Agency, which is licensed. I was brought before the court on 12 September 2019 where my detention was extended. I was brought before the court on 18 September 2019, and on 20 September 2019, I was brought before the court for the last time and was charged with filming activities of the Hamas Movement and receiving money from them in exchange for photos sent to them through my work. I was, after that, released on a bail of about JD 2000, provided that another session is held in a specific date they define and would inform me. (This was not done until this report was prepared)”
- **A Ruling Issued on Gaza City to Deny Entry of al- Hayat al-Jadida Newspaper into the Gaza Strip**
On 08 May 2019, Majid Al-Rimawi, General Manager of al-Hayat al-Jadida Newspaper, received a subpoena before the Gaza Magistrate’s Court on June 10, 2019, to try him in preparation for disrupting the issuance of publications of al-Hayat’s publications and denying its entry to the Gaza Strip according to Articles (37, 42, 47) of the Press and Publications Law. This came after the Ministry of Interior and National Security and the Ministry of Information - the Governmental Information Office filed a complaint for Attorney General in Gaza City, Diya’a al-Madhoun, against al-Hayat al-Jadida Newspaper. The latter submitted an application to the Magistrates Court in Gaza, as he is the representative of the gov-

ernment agencies, in which he demanded “a fair decision in the presence of one team to prevent the entry of al-Hayat newspaper into the Gaza Strip. The summonses claimed that the newspaper publishes inciteful material that evokes violence, hatred and sedition and calls for attacks on public and private property, which cause harm to security and safety of the society and stir up sectarian strife among Palestinian people. The decision was ultimately not implemented after several political and human rights organizations intervened.”

- Yasser Khalid Manna’a (30) said to PCHR that on 06 May 2019, he was detained by the PSS in Nablus on grounds of his writings on his Facebook page. Following is part of his testimony:

“At approximately 01:00, I was surprised with a heavy knocking on my house’s door. When I opened the door, a large number of masked Palestinian PSS officers raided the house, took our cell phones and my ID card, handcuffed me and took me to one of their SUVs. I was taken to al-Juneid Prison in Nablus where I handed over all my belongings. I was moved into a solitary confinement where I stayed for 2 days without being interrogated or recognize my charge. I was after that transferred to the Public Prosecution and the Attorney General told me that my file was empty, and he does not know why I am detained. Later, I was referred to the court that extended my detention for 7 days at a request by the PSS’s legal advisor. I was returned to al-Juneid Prison where I was interrogated about my writings on my Facebook page. I was interrogated for no more than an hour a day about the same matter, and I was released on Monday, 13 May 2019.”

iv. Imposing Restrictions on the Right to Information Access

The right to access information is one of the most important components of the freedom of expression. The freedom of journalistic, scientific or intellectual production is related with the freedom of information access. Despite that Article (6) of the Press and Publications Law stressed the necessary to collaborate with journalists and provide information for them, the Palestinian system in the West Bank and Gaza Strip lacks any law that protects civilians and journalists’ right to access information. 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. 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 in early time.

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.

v. Imposing Restrictions on the Freedom of Creativity and Scientific Research

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. This restriction become compatible with international standards if it was the less intrusive procedure in practicing this right in regard to universal human rights. 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.

In the West Bank, PCHR monitored many cases in which restrictions were imposed on the freedom of written literary creativity. During the reporting period, PCHR documented one case in which Mujahed al-Sa'di, coordinator of the ceremony for Darb al-Sadeqin Book by Mohammed Abu Tabikh, a Palestinian detainee in the Israeli prisons from Jenin, said to PCHR:

“On 08 April 2019, Palestinian security services stormed al-Hasan Printing House in al-Bireh and confiscated copied of Darb al-Sadeqin Book. The book is divided into 2 parts and about 1000 copies were printed of each part. This book addressed stories about 42 detainees who were sentenced to life imprisonment in the Israeli prisons. The book was supposed to be published on 09 April 2020 in Nissan Hall in Jenin. Ahmed Nasser (52), who is responsible for publishing the book. Palestinian security services alleged that the book contains “inciteful material” in addition to lack of coordination with the Ministry of Culture to print and publish the book.”

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:

1. 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:

a. Crimes of Slandering “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 message or a picture or a comic drawing to His Majesty the king or posted such message, 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 govern-

ment, 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 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.”¹⁰

b. 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 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 were 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 very 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

10. United Nations Human Rights Committee, the General Comment No. (34) (2011).

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 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.

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 very 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. Care should be taken by States parties 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.”¹¹

11. United Nations Human Rights Committee, the General Comment No. (34) (2011).

c. 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.”

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 implemented 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.”*¹²

d. 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 so 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:

“(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.”

12. United Nations Human Rights Committee, the General Comment No. (34) (2011).

The abovementioned articles empower the PA to undermine the freedom of opinion and expression by bringing political activists, who carry out 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 in undermining the right to political participation and the right to freedom of opinion and expression.

e. 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 special 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 long 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 long 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 in 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.

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 carry out 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.”¹³

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 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.

13. United Nations Human Rights Committee, the General Comment No. (34) (2011).

Recommendations

PCHR emphasizes the importance of the freedom of opinion and expression in democracy building, and stresses that all Palestinian Authority (PA) services in the West Bank and the Gaza Strip must respect and protect it. Additionally, the freedom of the press is a fundamental guarantee for public and community accountability of decision makers. Therefore, PCHR recommends:

1. State of emergency shall not be used to impose unwarranted restrictions on the freedom of expression or to limit citizens' freedom to criticise and access information.
2. 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.
3. Judicial authorities to follow-up on allegations of torture at investigation centres in the West Bank and the Gaza Strip against opinion makers.
4. The Public Prosecution to examine allegations of violations to the freedom of expressions and verify the credibility of lawsuits against journalists and opinion makers.
5. 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.
6. Guard freedoms, especially freedom of art, creativity and broadcast, and abolish all restrictions.
7. 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.
8. The promotion of civilians' right to access information, without differentiation based on profession (journalists vs. common citizens).

