

**Palestinian Authority Violations of Right to Freedom of  
Expression**

**(Periodic Report)**

**(01 April 2021-31 March 2023)**



**Palestinian Centre for Human Rights**

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## Palestinian Authority Violations of Right to Freedom of Opinion and Expression

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### Introduction

Prolonged division in Palestinian Authority (PA) and ensuing human rights violations have caused a state of self-censorship among journalists and opinion makers refraining them from all what may offend the authorities. The Palestinian Centre for Human Rights (PCHR) monitored violations of freedom of expression that reflect a setback for freedoms under the PA. This report reviews the status of the right to freedom of opinion and expression under the PA during the period from 01 April 2020 to 31 March 2023. This report is the twentieth of its kind and ninth to be released after the State of Palestine's accession to 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 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. Through PCHR's follow-up, there has been no positive change to the state of freedom of opinion and expression in the PA despite this accession and even the authorities in the West Bank and the Gaza Strip continued their violations of the freedom of expression in many ways as presented hereinafter.

During the reporting period, PCHR monitored and documented several violations of freedom of expression. Security services, aided by the Public Prosecution, perpetuated its policy that has created a state of self-censorship by targeting journalists and opinion makers with arbitrary arrests, intimidations, and assaults during conduct of journalistic work. This state has risen to prominence in society, except for a few voices that still can express themselves and bear the high price of speaking out against the authorities despite the prevailing intimidation. This has also undermined the freedom of peaceful assembly, considering it as a form and means of expression. The ongoing violations of this right have created a state of self-censorship that refrains persons from organizing peaceful assemblies due to the complicated measures and investigations that whoever intends to hold peaceful assemblies will be subjected to. PCHR addresses the state of peaceful assemblies in a separate report, where it monitors cases of suppression and prevention of peaceful assemblies and the illegal restrictions imposed on the right to peaceful assembly.

The most prevailing pattern of violations during the reporting period was summonses, detentions accompanied with torture on grounds of practicing journalistic work and covering incidents as well as freedom of expression on social media. Absence of rule of law has created de facto restrictions that significantly violate the legal restrictions,

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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 have contributed as well to this state as they include loosely defined terms that are open to interpretation leading to imposition of further restrictions.

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, an independent judiciary, and the disruption and later dissolution of the Legislative Council; are the main factors undermining human rights situation in the Palestinian society, including freedom of expression. As a result, it was almost impossible to put in place controls that align the conduct with the requirements of law, which itself is legislated and formulated at the whim of division parties representing their political interests rather than the public's interest. In light of this complicated situation, it has become difficult to promote 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 a necessity for obtaining other human rights, and it underpins good governance in any country and is the key to enjoying freedom of opinion and expression and paving the way to fulfilling other rights and freedoms. Accordingly, since its establishment, PCHR has given special attention to civil and political rights as part of its work on human rights in general that are indivisible. PCHR has exerted efforts over the past years to develop indicators for freedom of expression, as part of the Centre's contribution to democratic governance where citizens enjoy all rights set forth in international covenants and instruments 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 expression committed against those practicing the right to peaceful assembly, which is displayed in a separate report on the right to peaceful assembly. Thus, in this report, PCHR only addresses violations of freedom and expression, including freedom of access to information, and focuses on the assaults against journalists for the nature of their job or against persons 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 expression**

During the reporting period, the PA controlled areas went through a series of significant incidents, most prominently the Israeli aggression on the Gaza Strip in August 2022, the ongoing Israeli closure, and the Palestinian political division. This report came after a Palestinian reconciliation agreement was signed in Algeria in November 2022, yet the Palestinian division remained in place, as no progress has been taken on the ground to end it. This comes at the tail end 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

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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 and 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, allocations to the families of martyrs, injured citizens, and prisoners in Israeli prisons from the Gaza Strip, banks, and the budgets allocated to the Gaza Strip. This situation has created a unique legal status, where the Gaza Strip is theoretically subject to the Government in the West Bank; however, on the ground this government exercises only limited powers in certain ministries and has no interference in the security or security services in the Strip.

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

PCHR has developed five 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 out of 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- Intimidating or preventing journalists and opinion makers from practicing their work.
- 3- Restrictions on free information access.
- 4- Restrictions on the freedom of creativity and scientific research.
- 5- Continued 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 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 access and freedom of creativity and research, as well as the ensuing status of self-censorship that may have been created amongst journalists and opinion makers due to the ongoing violations of freedom of opinion and expression. It is noteworthy that the report does not rely on quantitative information to avoid its deceptive results with regard to freedoms as the number of violations does not necessarily reflect the state of freedom of expression. Furthermore, cumulative violations and inability to seek justice encourage self-censorship that prevents citizens

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from exercising freedom of expression and makes them unwilling to file a complaint against oppressors believing in absence of rule of law or real mechanisms of oversight and accountability.

### **The report is divided into 2 sections:**

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

The report concludes with a set 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: Most Prominent Violations of Freedom of Expression in the West Bank and Gaza Strip**

The state of self-censorship has prominently increased causing journalists and opinion-makers to refrain from addressing whatever draws the ire of the authorities . The mainstream culture in the PA controlled areas has become to avoid criticizing the authorities, reinforcing an idea that criticism does not change reality and exposes those expressing critical views to security-related prosecution and sometimes detention and torture. On the other hand, 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 the procedural law before the state of emergency, and summonses and arrests were often conducted without a warrant from the Public Prosecution. Thereby, we have seen no change in authorities' behavior relevant to the freedom of expression, except for detention reasons, as arrests occurred for spreading rumors about COVID-19 pandemic during the state of emergency. Furthermore, the state of emergency has granted legitimacy to some of the security forces' behaviors, such as summoning and detaining citizens without a warrant from the Public Prosecution.

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 during the reporting period.

**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 arbitrary arrests against journalists and opinion makers in the West Bank and Gaza Strip. Most of those summonses included detention for days or several hours as well as inhuman and degrading treatment. 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' illegal practices. During the reporting period, PCHR documented the most prominent cases of summons related to torture or degrading treatment against journalists and opinion makers:

**Human rights defender Mohammad Al-Tilbani said that on 06 November 2022 he was summoned by the police in Gaza on grounds of his posts on social media but was released on the same day after signing a pledge not to offend nor harm Hamas and its government in Gaza and not to "misuse technology". The following is part of his testimony:**

*"At around 10:00 on Sunday, 06 November 2022, I received a call from the Gaza Police's digital forensics unit and asked me to come to Al-Shuja'iya Police station. This came on grounds of a previous summons and interrogation on 26 September 2022 due to my posts on social media. The officer told me that there was a complaint filed against me for protesting execution of death penalties in the Gaza Strip and describing Hamas as extremist in one of my posts. The officer made me sign a pledge not to misuse technology nor offend Hamas and its government in the Gaza Strip, and to attend when summoned. He added that signing this pledge would prevent referring my case to the Public Prosecution, and accordingly I signed."*

**Mer'ie Basheer (36) said that on 18 January 2022 he was summoned by the Internal Security Force (ISF) in Deir Al-Balah and was interrogated about his posts on social media before his release. The following is part of his testimony:**

*"At around 08:30 on Tuesday, I headed to the ISF Headquarter in Deir Al-Balah, where they confiscated my cell phone, ID card, car keys, and wallet. I was taken to a room and waited there for 30 minutes until the person, who confiscated my personal belongings, came and force me to wear black glasses that completely blocked my vision. Afterwards, he accompanied me to another room, forced me to sit on a chair and left. Later, someone asked me to take off the glasses and I saw an investigator in plainclothes sitting at a desk in front of me. He started asking me about my personal data and the nature of my work. He then interrogated me about my Facebook posts and criticizing the Gaza Government, accusing me of 3 charges: incitement against resistance, inciting the people in the West Bank against Gaza Strip, and alleged secularism. The interrogation lasted for two hours and ended with him telling me that*

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*I was summoned not for the posts but for a call I made from my cell phone in July 2021 to an Israeli Orange number, that according to him belonged to an Israeli intelligence officer, and fortunately, the latter did not pick up. I said to the investigator how did you know it was an Israeli officer that did not answer my call, but he did not reply. The investigator then asked for my cell phone password, but I refused and told him to bring my cell phone to unlock it. Another person then brought my cell phone that I unlocked, and they took it and left the room. They returned an hour later and gave me my phone and personal belongings but told me they would verify the information and I will be summoned again. I was released around 14:00 on the same day.”*

**Safinaz Al-Louh, a journalist at Amad Media, said that on 03 July 2022 she was summoned and interrogated by the so-called “Institution Investigation Apparatus” in Gaza, on grounds of her journalistic work.**

*“I received a call from the Government Information Office in Gaza, informing me that I had a summons from the Institution Investigation Apparatus, and asked me to come to their HQ in Ansar in Gaza on 04 July 2022 on grounds of a report I made for Amad Media on the elections of the Palestinian Nursing Syndicate in the Gaza Strip. I made the report in December 2021 and published it on 17 February 2022 on Amad Media webpage. At around 08:30, I went with my brother to the Institution Investigation HQ, and entered a room where someone told me that a prosecuting attorney will interrogate me. The attorney started interrogating me about the nursing syndicate report that included fake names and about insulting Hamas and the government in the report. He asked me about a post I shared on Facebook about being summoned and that it was just an inquiry that does not require to be posted about and cause such chaos. I told him that summoning me by the Prosecution and Investigation Services raises suspicions since I am woman, so I had to make it clear as I am also a journalist. At the end of the interrogation that lasted for 30 minutes, he asked me to share less posts that criticize the government, but I told him that I am a journalist and write about people’s sufferings.”*

**‘Alaa ‘Afif Rab’ie (28) said that he was summoned by the General Intelligence Service (GIS) in Hebron on 04 August 2021 to refer to its HQ in Dura, where he was interrogated about running pages on Facebook and their content. The following is part of his testimony:**

*“I work in digital media and received a phone call from GIS asking me to come to its HQ in Dura on Wednesday, 04 August 2021. As soon as I arrived, I was interrogated about the Facebook pages I run and why I focus on the incidents in the West Bank apart from those in the Gaza Strip. I was also asked about my point of view on Nizar Banat’s murder, the political situation, and the parties I work for as a journalist. In addition, I was asked about participating in activities calling for an investigation into the killing of activist Nizar Banat. I was held in a cell in inhuman and degrading conditions until I was released on 08 August 2021, without any further procedures nor charges.”*



### **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 ICCPR constitute a violation of Palestine's international obligations following its accession to the ICCPR. Moreover, the international standards prohibit arbitrary summonses, inhuman and degrading treatment, and torture.<sup>1</sup>

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 a 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 committed by a public servant. The inhuman and degrading treatment is considered a crime that requires accountability and punishment for its perpetrators, according to the Penal Code of the Palestinian Authority.<sup>2</sup>

Exposing journalists and opinion makers to inhuman and degrading treatment and torture is a violation of the Convention against Torture, to which Palestine acceded in 2014, as well as violation of Article (7) of ICCPR.

## **II. Intimidating or preventing journalists and opinion-makers from practicing their work**

During the reporting period, PCHR monitored and documented cases where journalists were attacked by security forces while they were on duty. Those cases included banning journalists from photography, attacking them, closing their offices in addition to other assaults. The monitored cases reflect the nature of security officers' procedures against journalists and journalistic work. The following are most prominent cases that PCHR documented:

**Ayman Al-Masri, a lecturer at An-Najah National University, said that his car was shot on 10 March 2023 while it was parked in front of his house in Nablus on grounds of**

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<sup>1</sup> The International Convention against Torture of 1984, as well as Article 7 of the International Covenant on Civil and Political Rights.

<sup>2</sup> 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.

**exercising freedom of criticism on Facebook according to his testimony. The following is part of his testimony:**

*“My 2012 Volkswagen Touran car was shot at dawn on Friday, while I was asleep in my house at 04:30. The car was parked next to my house on the street leading to Al-Rawda College, east of Nablus. As a result, bullets penetrated the outer body of the car, broke the windshield and side windows, and punctured the tires. I immediately called the Palestinian police and reported the incident. The Criminal Investigation arrived and opened an investigation; they asked me about the reason behind the shooting and I told them that I had no enmities. It is worth noting that I criticized the government and its performance on Facebook and when checking the surveillance cameras, we found that the shooters were two people wearing helmets on a motorcycle; they entered the street and one of them opened fire at the car with an automatic firearm before leaving the area. I assume that the shooting came due to exercising freedom of expression and criticizing the government since I have no enemies.”*

**Mohammad Turkman, a photojournalist at Al-Jazeera TV, from Ramallah, said that on 10 January 2023, he was prevented from photography while on duty covering a protest. The following is part of his testimony:**

*“At approximately 16:30 on Tuesday, 10 January 2023, I was covering a march at the Martyr’s Square in central Nablus, organized by the families of political detainees and dubbed as “we want our sons back home”. As I was covering, Palestinian security services officers suppressed the peaceful march with tear gas canisters and dispersed it. Afterwards, three to four masked officers dressed in military uniform approached me, asked me to stop videoing and shouted at me to close the live broadcast despite identifying myself as a journalist and wearing the PRESS vest. After ending my live stream, three to four people in plainclothes approached me, asked for my ID card, and confiscated it as well as my cell phone. I waited for half an hour with my colleagues when a person in civilian clothes asked about me, gave me my ID card and cell phone, and I left the area.”*

**Journalist ‘Amr Al-Tabash, a journalist at Al-Koufiya TV, said that on 16 May 2022, he was severely beaten by the police in Khan Yunis, while on duty.**

*“On the abovementioned day, I went to Khan Yunis Youth Club with my colleagues opposite to Mecca Mall in Khan Yunis, to cover a football match that started at 16:30. As soon as it finished at 18:30, I left the stadium. When I was crossing to the sidewalk in front of Mecca Mall, I saw the fans of the two clubs fighting in front of the stadium. The police tried to disperse them when suddenly one of the police officers hit me with a baton. I told him that I was a journalist, but he pushed me and hit me again with the baton without giving me the chance to show him my Press card. I stepped back while telling him I was a journalist but in vain. Police officers then took me to a police pickup ignoring what I was saying. Even when I told them to let me sit in the front seat, they refused and pushed me onto the back seats in the pickup, where one of the police officers hit me with a baton on my back and knees, as I was alone with them. We*

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*arrived at the police station, where the officer apologized to me, and I told him then what about all the degrading treatment I was subjected to. He apologized once again, and I was forced to sign a pledge not to post on my accounts on social media about what happened, informing me that the case was closed.”*

**Photojournalist Laith Ja’ar, a photographer for J-Media, said that on 08 June 2022, security services officers in plainclothes attacked him and broke his journalistic equipment while covering an event in Nablus:**

*“I was invited by the Islamic Bloc students at An-Najah National University in Nablus to cover a press conference on the University’s policy towards the student blocs at the University at 12:00 on Wednesday, 08 June 2022. Upon this invitation, I was on duty as a photographer for J-Media and arrived right on time in front of An-Najah National University’s academy, where there were many journalists. I attached the camera to the tripod, preparing for streaming the press conference. As soon as I finished preparing my equipment, the members of the Islamic Bloc gathered. Suddenly, five people in plainclothes attacked me. They were from GIS and the Fatah Student Youth Bloc and started beating and cursing me. They took my Sonic camera that costs 6,000 shekels, broke it and then broke the live streaming device which costs 10,000 shekels as well as my camera tripod which costs 1,000 shekels.”*

**On 21 September 2021, several students at Al-Azhar University in the Gaza Strip were arrested and subjected to inhuman and degrading treatment on grounds of wearing the Palestinian kufiyah. The following is part of their testimonies:**

**One of the students (21) said to PCHR’s fieldworker that:**

*“Today, at approximately 08:30, when I was about to enter the eastern campus via the university’s northern gate, the Police Director at the university ordered me to take off the kufiyah upon a police order to ban it. I refused, so he took me to the police booth near the university gate, where police officers started punching and beating me with sticks after taking my kufiyah. They ordered me to sign a pledge not to wear the kufiyah again, but I refused and managed to reach the campus. They kept beating me until students gathered and I managed to get away.”*

**Another student (21), said that:**

*“At approximately 09:00, I was standing on the Engineering Department’s staircase when police officers approached and asked me to take off my Palestinian kufiyah, but I refused. They took me to the security booth and started beating and insulting me. They pulled my kufiyah and confiscated my cell phone before ordering me to wait at the booth door and not to move. Half an hour later, they returned my cell phone and kufiyah, ordering me not to wear it again.”*

Al-Azhar University published a statement, saying “al-Azhar University in Gaza denounces the police’s assault on students and university security officers on Tuesday, 21 September

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2021, The University regrets such conduct in the university campus, which is a sacred site..."The university also urged "the competent authorities to take immediate action in order to protect the university, its students and employees and ban any interference into the university campus from non-competent authorities." Later, the police issued a press statement saying, "The police have followed with the Office of the President of al-Azhar University regarding the events that took place at its campus earlier today, involving a student, university security, and university police office. The police denounce the University's press release, which included false accusations against the police officers. The press statement bent the truth; meanwhile, the police and university are in constant communication to solve the issue. The police assert that it is its top priority to maintain calm and order at all university campuses."

### **Legal Analysis and PCHR's position**

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

### **III. Restrictions on the right to information access**

The right to information access is essential for journalistic work and scientific research, as it is one of the most important components of freedom of expression. During the reporting period, there was no progress in the status of the right to information access, and no law has been enacted in this regard neither in the West Bank nor in the Gaza Strip. Journalists and researchers suffer when trying to obtain information from the official authorities that often block information from citizens, particularly journalists, perhaps to cover for failures or abuse of powers.

Officials practice discrimination and selectivity against journalists when the latter exercise their right to information access. While the state and party-owned media in general receive the sheer amount of information, freelance journalists and independent agencies are denied access to information. Meanwhile in the Gaza Strip, invoking protection of national security hampers journalists' access to information that is most explicit during and following Israeli aggressions on the Gaza Strip. Furthermore, security services in the Gaza Strip impose unspecified restrictions on freedom of photography in public places, as journalists are detained and prevented from practicing their work. Also, journalists say that despite having press cards, they are exposed to detention and investigation by security officers, who are often in plainclothes. There are many places where journalists denied photography or making news reports such as the border areas and any areas close

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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 journalists. The following are testimonies on the restrictions imposed on freedom of photography:

**Mahmoud Abu Rizq, a journalist for Al-Hayat al-Jadida newspaper, said that he was arrested and tortured on 23 March 2023 by the police in Gaza on grounds of journalistic work. The following is part of his testimony:**

*"At approximately 17:30 on Thursday, I was with journalists who work for different agencies taking pictures of Ramadan vibes near Saraya intersection in central Gaza City. Meanwhile, a traffic policeman asked us to show the "photography permission", but I told him that we were journalists and showed him the press card; However he said "I don't care about the press nor if you were journalists or not, if you do not have a photography permission then leave immediately" I told him "this card proves that we are journalists, so what do you think of me videoing you while saying that you do not care about the press card?" Meanwhile, the policeman lost his temper and violently pulled my right hand, and a verbal altercation erupted between us. Then, a police force arrived and took me to Al-Remal 'Abbas' police station. On the way, my cellphone rang and when I tried to pick up, one of the police officers insulted me and punched my face several times. When we arrived at the police station, the policeman who invoked my arrest accused me of assaulting him. After interrogating with me, a police officer asked me to sign a pledge, and when I read it, I noticed that there was a term saying that to be released I shall not mention, write, or publish what happened with. I refused to sign, and they sent me back to the cell. At around 01:00 on Saturday, 25 March 2023, members and dignitaries of my family as well as my colleagues, came to the office of the police chief, and I was released upon the guarantee of my family and my colleagues to come back the following day to solve the problem with the traffic policeman who filed a complaint against me. I left the station at 02:00 of the same day."*

### 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..." 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 fulfill 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

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dealing with journalists, especially when they request to obtain any official information or cover events.

### IV. Restriction on the Freedom of Creativity and Scientific Research

The freedom of creativity in the Gaza Strip is subject to unjustified restrictions, as sometimes, the security services attempt to impose their cultural vision on shows and performances. Security officers usually attend these shows and may intervene and cut the show if it contradicts traditions from their point of view; for example, they ban the folklore dance, Dabka, performances that include men and women. Also, there are restrictions imposed on freedom of scientific research and conducting surveys as the Ministry of Interior obliges research centers to obtain prior permissions before distributing any surveys for scientific research. The ministries initiated an information request form where the requester shall provide full information about the purpose of obtaining the information and all the details of the scientific research project. These requests are often rejected regardless of the body asking for the information, such as the number of suicide attempts in the Gaza Strip, or information on violence against women, and other information that the authorities in the Gaza Strip think that disclosing it would offend their rule in the Strip. Also, the Ministry of Interior in Gaza considers conducting survey studies without a prior authorization a violation that subjects researchers to security prosecution.<sup>3</sup> The following are statements of some workers in the cultural field:

**Director of a cultural institution<sup>4</sup> said that there are restrictions imposed on Institutes that present Music performances. The following is part of his statement:**

*"I am the director of a cultural institution, where we face several restrictions that we have refused some of but accepted others and become an integral part of our work. Ideological restrictions were imposed related to gender-mixing and participation of girls and women in performances. For each event, we need a permit from the Ministry of Culture and Tourism Police, which requires the presence of the director himself to obtain the permit and fill a request that includes many details. In order to obtain the permit, we are asked many questions about the nature of the activity, the donor, the cause we will address and any other details relevant to the show. It is worth noting that Tourism Police prevent girls above 13 years old from going on stage to sing or play an instrument and ban girls and boys from holding hands in the Dabke dance in addition to banning mixed Dabke for 13 years old and above. Also, police officers show up to observe the show, and we may face problems if we violate any of their instructions."*

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<sup>3</sup> Focus group of journalists and opinion makers held on 24 August 2021.

<sup>4</sup> 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.

### **Legal Analysis and PCHR position**

PCHR confirms that the freedom of scientific and literary creativity is part of the freedom of expression and among the 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 should be compatible with the international standards, acceptable in a democratic state, and the least intrusive measure 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... 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, constituting a violation of Palestine's international obligations. Additionally, these restrictions disregard the cultural diversity in the Gaza Strip and create a state of cultural isolation that may lead to an intellectual extremism.

## **V. Continued Application of Laws that Undermine the Right to Freedom of Opinion and Expression**

Application of laws that undermine the right to freedom of opinion and expression continued in addition to the Cybercrimes Law by Decree that was enacted by the Palestinian President in 2018 and was earlier discussed in brief. These unjust laws are applied to undermine the freedom of Journalists' work and opinion makers. The absence of the legislative council and independent judiciary for the last 12 consecutive years and the ensuing nonexistence of oversight and accountability in the PA's institutions have aggravated this situation, affecting civil society's role in exerting pressure on the decision makers to enact better laws and respect the rule of good law in a way that guarantees the freedom of access to information and freedom of journalism. The Following are the most prominent criminalization and regulatory provisions that undermine the freedom of expression:

### **1. Criminalization provisions that undermine the freedom of expression:**

The 1960 Penal Code applicable in the West Bank and the 1936 Penal Code applicable in the Gaza Strip have criminalized some forms of freedom of expression. The criminalization provisions violate the international standards in several aspects as they have been introduced in overbroad terms that allows the PA to restrict the freedom of criticism, particularly criticism of official figures such as the President. The most prominent crimes stipulated in 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 undermine the dignity the Palestinian President and other "prestigious figures", as it says 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 or directed a written or oral message, an image or a comic to His Majesty the king or placed such message, picture or comic in a way that would undermine the dignity of His Majesty or broadcasted in any way the above and disseminated it among the people. The same penalty shall apply if any of the above was directed to His Majesty the King, Crown Prince, regents, or members of the Public Prosecution."*

It should be noted that the word of His Majesty the King (as the law is Jordanian) has been replaced by the word "prestigious figures". The courts usually apply this provision to those who voice scathing criticism against the Palestinian president. This article makes the minimum sentence one year for any prejudice of the dignity of the "prestigious figures". Moreover, the abovementioned provision is considered among the most stringent provisions related to the criminalization of freedom of expression as many activists and journalists have been charged in this regard. This article is arbitrary and inconsistent with Palestine's international obligations regarding respect of the freedom of opinion and



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

The General Comment issued by the Human Rights Committee that monitors the implementation of the ICCPR emphasizes this content in its General Comment No. 34, which states:

*“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 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.”<sup>5</sup>*

### **B. Crimes of defamation and insult:**

The two Penal Codes that are in force in Palestine have criminalized libel and defamation crimes punishable by confinement for a term not more than 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 honor, 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 honor of another person or his/her reputation – even if it was done with doubt – without accusing him/her of 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.”*

Considering the abovementioned article, it is clear that the legislator has gone beyond restricting the freedom of opinion and expression to making any mere word the lead to "offending public figures" is a punishable crime. As is well known, any criticism might lead people to dislike a particular official. It is also true that the legislator has created other articles 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

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<sup>5</sup> United Nations (UN) Human Rights Committee, General Comment No. (34) (2011).

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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 provisions contribute to cracking down on the genuine 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 misdemeanor of libel as it forms the content of 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 occurrence of a defamation crime when the content of the defamation was published, whereas the insult crime occurs if the content was uttered to public. The abovementioned article defines the misdemeanor 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 criticisms apply to it as well.

General Comment No. (34) mentioned above affirms the importance to stifle the scope of defamation crime (defamation and insult), or else, the criminal provisions shall be used in the most serious cases. It also stresses the need to prosecute the accused person expeditiously, 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 defenses 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 defense. 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."<sup>6</sup>*

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<sup>6</sup> Ibid.

**C. Crime of stirring up sectarian strife:**

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

*"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 has been included under 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 (c) without lawful excuse is found in possession of a document containing a seditious intention is guilty of a misdemeanor."*

**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 sects of the population of Palestine."*

Although the previous provisions 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 provisions in overbroad terms allows the authority to arbitrarily use them. Moreover, those previous provisions have been loosely defined, allowing the authority to criminalize legitimate patterns of freedom of expression in accordance with international standards.

The Human Rights Committee that monitors the implementation of ICCPR has stressed the need for laws to be drafted with extreme care so that they would not be overbroad and undermine this 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*

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*guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not."*<sup>7</sup>

### **D. Crime of disrupting security and stirring up riots:**

Article (164) of the 1960 Penal Code provides 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 their 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 also contains articles that can be used to undermine the right to freedom of opinion and expression for they are overbroad. The most prominent of these is article (102) on the crime of disturbing peace, which states:

*"(1) Any person who creates 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 misdemeanor 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 misdemeanor and is liable to imprisonment for one month or to a fine of ten pounds or to both such penalties."*

The abovementioned articles allow the authority 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 restricts civilians' ability to object freely, by threatening their future, stigmatizing, and imprisoning them, or at least introducing them into complex criminal proceedings by bringing them to prosecution and subjecting them to 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.

### **2. 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) articles that have regulated 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

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<sup>7</sup> Ibid.

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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 overbroad terms and open to interpretations. Among these prohibitions for example, (to refrain from publishing what contradicts 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 overbroad, unclear and can be misused. The list of prohibitions also included a ban on external funding and a ban on journalists' communication with any foreign parties except through the foreign correspondence system.
- The law includes a lengthy list of imprisonment sentences that may be applied to the editor, journalist/author of the article, owner of the publication, 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 that the party affected files a context-sensitive compensation case, and not to resort to imprisonment, if it is limited to the practice of expressing opinion.

The prior provisions contradict PA's obligations to allow full practice of freedom of expression and principles of democracy. The Human Rights Committee that monitors the Implementation of ICCPR has stressed the promotion of freedom of press constitutes the cornerstone of a democratic society. The General Comment No. (34) provides:

*"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."<sup>8</sup>*

It is clear from the previous citation that the PA's orientation when dealing with freedom of publication contradicts its international obligations and undermines the chances of having a genuine democracy in the State of Palestine. The Committee emphasizes that communication of information, publication as one of its methods, is essential to ensure freedom of expression as the public has the right to receive media output, without any proactive restraint or self-censorship for the purposes of silencing others or prohibiting criticism of authority.

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<sup>8</sup> Ibid.

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### Legal Analysis and PCHR Position

PCHR affirms that amending domestic laws in accordance with Article (19) of the ICCPR regarding the freedom of expression is of Palestine's international obligations under article 2 of the Covenant. Consequently, the insistence on enacting laws contrary to international standards, in particular overbroad defined provisions that expand scope of criminalization and include internationally recognized forms of expression that should be allowed in democratic countries, constitutes a blatant violation of the covenant. PCHR asserts that such provisions are also contrary to the Basic Law, in particular Articles (19 and 27) which emphasize freedom of expression and freedom of journalism.

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

The PA has an international and national obligation to respect, protect, and realize freedom of opinion and expression. At the national level, the Palestinian Basic Law (PBL) ensures respect for the freedom of expression and journalism 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. Meanwhile, at the international level, Article 19 of the 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 exchange of information, especially in the last decade, in the PA-controlled areas.

This part 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 in two respects.

### 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. 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 a significant restraint and evidently incorporated in most United Nations (UN) resolutions and human rights treaties as it has served as a common standard for all countries. Furthermore, some of UDHR's rules have become international customary law, which is binding to all states even those 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's 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 appropriate 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 allows public authorities to restrict freedom of expression and access to information according to the following:

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- 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<sup>9</sup>, and
- Restriction is imposed for:
  - Protection of national security or of public order (order public).
  - Protection of public health or morals.
  - Respect of the rights or reputations of others

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 provide 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 laws compatible with the international standards of the right to freedom of opinion and expression. In addition, the PA should not undermine the right to information access 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.<sup>10</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.



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

The PA is obliged to provide media outlets and opinion makers with 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.<sup>11</sup>

### - **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, to guarantee 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.<sup>12</sup>

### - **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."*

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

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## Palestinian Authority Violations of Right to Freedom of Opinion and Expression

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### - 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 in the provisions that cannot be suspended; hence, freedom of expression can be limited in times of emergency but under 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 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, color, sex, language, religion, political or other opinion, national or social origin.
6. No form of expression is criminalized with a retroactive law or without 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 have 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 on protecting this right, ensuring 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:

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## Palestinian Authority Violations of Right to Freedom of Opinion and Expression

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### 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 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 mentioned above.

Article (27) of the Palestinian Basic Law stresses respect for media and prohibits censorship on media output, 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 of the 2003 Palestinian Basic Law (Articles 110 – 114) has regulated the state of emergency and set forth the following provisions to declare a state of emergency:

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.
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.

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## Palestinian Authority Violations of Right to Freedom of Opinion and Expression

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7. 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, restrictions on rights are permitted under the Palestinian Basic Law to the extent necessary to fulfil the purpose 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 revoked 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 when distributing and publish various publications. 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 overbroadly 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."*

### Recommendations

The report has exposed the strangling overreach security services have exerted on the freedom of expression and journalistic work. Accordingly, PCHR demands the following:

1. Judicial authorities must commit not to detain opinion-makers and journalists pending investigation, as this constitutes an abuse of power and undermines freedom of expression and journalistic work.
2. Journalists and opinion makers must abide by their moral obligations towards their causes, and not effect self-censorship.
3. The restoration of the Public Prosecution's oversight authority on the security services, and end of the prevalence of arbitrary summonses and arrests, especially against journalists and opinion makers, with emphasis on noncompetency of security services to summon citizens.
4. Judicial authorities to follow up allegations of torture against opinion makers and journalists at investigation centers in the West Bank and Gaza Strip.
5. The Minister of Internal Affairs and security services to issue firm instructions banning summoning citizens through phone calls and to stress the importance of following due legal process relevant to summonses, especially for journalists and opinion makers.
6. Allow full practice of freedoms, especially freedom of art, creativity, and broadcast, and not to impose any restrictions.
7. The PA in the West Bank and Gaza Strip, its services and ministries commit to providing sufficient information on all their activities and other field and security updates and refrain from leaving the public in the dark consumed by rumors.
8. Enable citizens' right to information access, without differentiation based on profession (journalists vs. common citizens).