THE HUMAN RIGHTS OF THE PALESTINIANS UNDER ISRAELI OCCUPATION AND PALESTINIAN AUTONOMY

The question of human rights plays only a marginal role in the agreements. A section of Article 19 of the Interim Agreement reads that both parties will execute their power and responsibilities within the frame of internationally recognized norms and principles of law and human rights. Neither side does justice to this resolution.

The violations of the human rights of the Palestinians by the Israeli occupying power have not decreased despite the peace process and there is no difference between the Labor Party and the Likud bloc. The list of the offenses is long: torture, arbitrary killings and arrests, the demolition of houses, the restrictions imposed on the freedom of movement, violence against Palestinians, land confiscation and the construction of settlements, the 'quiet deportation' of the Palestinians from East Jerusalem, collective punishments, such as the total closure of the territories and curfews, and the limitation of the right to education and employment.

The list of human rights violations involving Palestinian victims for which the Palestinian Authority is responsible is similarly long: torture and maltreatment, the denial of fair trials before military courts and the State Security Court, which has the power to issue the death sentence, the intimidation of undesirable persons, the restrictions on the freedom of speech and the press, and the hampering of the work of human rights organizations. These offenses can only be judged appropriately if one considers the fact that with the Oslo Agreement, Arafat committed himself to guaranteeing the security of Israelis in the autonomous territories. How he faces the critics of the peace process and deals with the terror is left up to him. These constraints cannot be regarded as an excuse for the violations of the human rights of the Palestinian people for which Arafat's security services are responsible. Human rights organizations in Israel and Palestine pointed very early on to the fact that with the establishment of a Palestinian authority, the situation of the Palestinians in the autonomous areas would deteriorate further.

Since the beginning of the peace process, there has been an absurd discussion going on amongst the Israeli public that could be summarized in four

points: one does not have to bother with the human rights in Israel and the autonomous areas, since there is now a peace process; human rights violations should not be discussed publicly; the question of human rights would now be connected to political questions; and human rights must take a back seat in order for the peace process to succeed, i.e., the continuing land confiscation, killings and torture should not be discussed. In addition, the political class tries to divert attention from the violations of its own government by pointing to the human rights violations under the Palestinian Authority.

1. International Law and Occupation

The Israeli-Palestinian regional conflict still carries the potential to become an even larger conflict. The Arab-Palestinian population of Jordan and Israel has been denied the right to self-determination ever since 1967, a right whose historical roots in International Law evolved from several instances of alien rule and colonialism. The UN Charter and the human rights pacts of 1966 are based on the principle of equality and the right to self-determination of all peoples, and all UN contracting parties are obliged to honor and promote both principles. However, there is a certain area of conflict *vis-à-vis* the unscathed territorial and political independence of the individual member states. In this instance, the possessor of this right does not appear as a state but as a people, i.e. the Palestinians, while on the other hand, the exertion of the self-determination right is in their case limited because it involves territory under the sovereignty of another state. According to valid International Law, Israel as an occupying power has no legal sovereignty claim and also no legitimate sovereignty over the West Bank and Gaza Strip.

The treatment of the Palestinians in the occupied and autonomous areas repeatedly raises questions pertaining to the basics of International Law regarding occupation. International Law provides states with an instrument for the peaceful regulation of their relations. The main source of the humanitarian International Law consists of international contracts or agreements, as well as international common law. It may sound paradoxical, but the entire international martial law is actually humanitarian international law. In The Hague Land Warfare Ordinance (LWO) of 18 October 1907, important points concerning the rights of prisoners of war and the civil population as well as the laws and customs pertaining to land warfare were laid down for the first time. Moreover, the four Geneva conventions of 12 August 1949 regulate among other things the treatment of the civil population and prisoners of war. These Geneva conventions and the LWO form the basis of International Law in regard to the territories occupied by Israel.

The international protection of human rights serves the protection of the individual. The system of human rights protection of the local population in times of peace is based on the will of the states, as they are only subject to International Law, i.e., executors of rights and duties. In the International Pact for civil and political rights of 19 December 1966, it is stipulated that the individual on the level of International Law can only be protected by his homeland state because he is not recognized as subject of International Law. A 'martial occupation' - and this is here the case - is only allowed in case of defense; thus, it is limited in terms of time. An occupier does not obtain sovereignty over the territory in question, nor does he have the right to control its resources or to execute new legislative authority, and the local population maintains its right to self-determination. Before International Law, the annexation of territory is forbidden and in the event that it nevertheless takes place, it is null and void. The occupier is obliged to reestablish public order - which includes guaranteeing a normal life for the civil population - as far as possible, and has the right to protect his army.

According to the English legal system – and Israel has taken over this tradition – international common law is always applied domestically if the parliament does not decide something to the contrary; and international treaty law is only binding after it becomes an integral component of domestic law. In Israel, only the LWO is thus valid. The 'humanitarian stipulations' of the Geneva Conventions apply but are not justifiable before Israeli courts, which has far-reaching consequences. The court represented the opinion that the acts of the military have to be judged by international common but not treaty law. Although it has recognized international common law as binding for the Occupied Territories, it has limited it by saying that it may not contradict domestic law. The fact that Israeli Law is not being applied at all to the Occupied Territories was ignored.

Although Israel signed the Geneva Convention in 1951 without reservations, the government denies its applicability to the Occupied Territories. It explained its position with Article 2 of the Convention. According to the article, the rules are to be applied "in all cases of a declared war, or any other armed conflict, that develops between two or more of the supreme contracting parties, even if the state of war is not recognized by one of these parties...should one of the powers participating in the conflict not be a contracting party to the present agreement, then the contracting parties continue to be bound in their mutual relations by the agreement, even *vis-à-vis* this power, if it accepts and applies its stipulations." No state can withdraw itself from the obligation that results from the Convention, whereby it does not matter whether there was a declaration of war or whether one of the parties denies the state of war. In addition, the Israeli Government considers neither Jordan nor Egypt 'high

contracting parties': they had no legitimate sovereignty because Jordan annexed the West Bank illegally in 1950, while Egypt only administered the Gaza Strip and therefore one cannot talk about occupation, but only about 'administered territories'. International Law does not recognize such a term. The International Committee of the Red Cross (ICRC), the majority of the legal experts of Israel, the UN, and all international lawyers of standing have rejected this position, saying that the question of legitimate sovereignty was not relevant in regard to the Geneva Convention. Rather, the Convention was applicable to all territories that were occupied in the course of an armed conflict regardless of their status.

2. Israeli Human Rights Violations *Vis-à-vis* the Palestinians

An occupying power has the duty to care for the security of the civil population. It is allowed to establish military courts and to issue military ordinances, and it is with such military ordinances in particular that Israel is governing the Occupied Territories. They are even still valid in the so-called autonomous areas. The former director of the Israeli Human Rights Organization, B'Tselem, Yizhar Be'er, explained at a human rights workshop that took place in Jerusalem on 17 and 18 September 1994 the following: "All the world is speaking about change. Only the Israeli and Palestinian human rights organizations do not see any fundamental change."[1] The summary of another workshop, held by the Israeli human rights organization HaMoked in Jerusalem on 7 November 1995, confirms that nothing has changed with regard to the absolute control of Israel in the political, economic and cultural spheres or with regard to the human rights situation.[2]

The Western powers until today do not take note of the systematic violation of the human rights of the Palestinians, even though there is now a peace process.[3] Since 1994, the annual report of the US State Department has claimed that the peace process has had a positive influence on the situation of human rights, and in the latest report, the Israeli 'sovereignty' over the occupied territory is no longer questioned. Some of the offenses

[1] Yizhar Be'er, as quoted in Ludwig Watzal, "International Human Rights Enforcement: the Case of the Occupied Palestinian Territories under Political Transition," 17-18 September 1994, Jerusalem in *Orient*, 36 (1995) 1, p. 28. See also the conference proceedings: *International Human Rights Enforcement*. Ed. by The Center for International Human Rights Enforcement, Jerusalem, March 1996.

[2] See HaMoked, Newsletter, No. 17, December 1995, p.3.

[3] See Ludwig Watzal, *Frieden ohne Gerechtigkeit? Israel und die Menschenrechte der Palästinenser*. Köln, Weimar, Wien, 1994; L. Watzal, "Die Menschenrechtspraxis im israelisch-palästinensischen Verhältnis" in *Orient*, (1993) 4, pp. 625-35; L. Watzal, "Die Menschenrechte in Israel/Palästina im Friedenspozeß" in *Humanitäres Völkerrecht*, 8 (1995) 2, pp. 94-101; L. Watzal, "Menschenrechte und Friede im Nahen Osten" in *Vorgänge*, 34 (1995) 3, pp. 1-9.

of the Palestinian as well as the Israeli authorities are being concealed or only partially documented.

Even before Arafat arrived in Gaza, the Israeli army had completely closed off the territories and imposed a curfew. These measures had already in the past proven inefficient, though they disturbed the daily life of the Palestinians to the utmost. Although the intensive actions on the part of the military in densely populated residential areas left numerous Palestinians dead, the lives of the Israeli soldiers were very rarely threatened by attacks. Their victims, meanwhile, were usually hit in the upper part of the body.[4]

On 28 March 1994 in the refugee camp of Jabalia in the Gaza Strip, members of an undercover unit - or what some refer to as a death squad - shot and killed six masked Palestinians who were distributing leaflets. According to eyewitness reports, the Israeli soldiers disguised as Arabs did not shoot in self-defense, but with the intention to kill. One moderately injured Palestinian who wanted to flee was arrested and literally executed with a shot in the head. The other five were also shot from very close range.[5]

One soldier who did his reserve duty in one of these units in Ramallah reported that they literally exercise "the procedures followed in order to ensure death... What does it mean to ensure death? We shoot them in the head." He was surprised that he had during his regular military time not been confronted with a need to follow the 'ensuring death' procedures. That these undercover units are continuously in action is clear in the following:

- According to Amnesty International (ai), London, on 6 January 1995 soldiers in civil clothes shot and killed four Palestinians aged 16 to 32 who were travelling in a Volkswagen bus near Beit Liqya without giving them even the slightest chance to surrender. Minutes later, the regular Israeli army moved the corpses away.
- On the night of 6 June 1996, undercover soldiers killed 20-year-old Daoud Shweiki who was in front of his house in Ras Al-Amud in East Jerusalem. When he approached his white Ford transit, he was shot from within another vehicle. In addition, his brother was injured by a bullet wound to the chest. The investigations were called off at the beginning of August according to Eran Shendar, the head of the Police Investigation Department at the Ministry of Justice. It was said that the incident was the result of an unhappy chain of events; Shweiki had thought the car was being stolen and the undercover unit 'mistook' the Palestinians as terrorists. B'Tselem comments that in 12 out of 13 cases, the argumentation is similar.
- On 13 November 1996, Israeli soldiers belonging to an undercover unit shot and killed 18-year-old Iyad Dadran at a roadblock between Ramallah and Nablus. According to the report of the driver, they had opened fire on the car even after it came to a stop.
- On 25 February 1997, soldiers in civil clothes 'exercised' in the village of Hizma (Ramallah district). They began to shoot and injured several inhabitants, among them 57-year-old Mohammed Al-Hilu, who was hit in the leg. When the pain caused Al-Hilu to sit down, a soldier hit him on the head with a radio for some 20 minutes, which brought about his death. The security forces, who had been informed about what was going on by the village inhabitants, refused to enter the village. An army spokesperson later claimed that the soldiers had only fired after being attacked, adding that one inhabitant had been killed and a few others injured.[6]

Seven out of ten commanders were charged in relation to such incidents. Nevertheless, Israel is proud of its 'death squads'. General Yair Naweh explained: "Duwdewan (cherry) is an extraordinary unit with wonderful fighters." Sometimes their actions also result in the death of an Israeli, such as the car driver from the south of Israel who, after refusing to be checked near Hebron, was shot and killed by soldiers. Since the beginning of the *Intifada*, 162 Palestinians have been killed by undercover units, 30 of them since the signing of the Oslo Agreement.

Since the beginning of the peace process, a large number of innocent Israelis have been killed through terror attacks conducted by radical Palestinians. The Israeli Government justified its numerous actions against the Palestinians and the measures in violation of International Law with its security concerns. These measures include land confiscation, the demolition and sealing of houses, the restrictions on the freedom of movement, the granting of further freedoms to the security service agents in regard to the use of violence in interrogations, as well as the extending of the of the administrative detention period from six months to one year. Legitimate security interests and the overzealous authorities were also the standard justifications for Israeli offenses and human rights violations. If one weighs up Israeli politics *vis-à-vis* the Palestinians, he will arrive at the conclusion that the security argument is only being used as a pretext in order to sup-

[4] See B'Tselem, *Lethal Gunfire and Collective Punishment in the Wake of the Massacre at the Tomb of the Patriarchs*. Jerusalem, March 1994; Felicia Langer, *Wo Haß keine Grenzen kennt. Eine Anklageschrift*. Göttingen, 1995.
[5] See B'Tselem and Palestinian Lawyers for Human Rights, *Summary Execution: Jabalya Refugee Camp*, 28 March 1994, p. 6.
[6] See B'Tselem, *Lethal Training. The Killing of Mohammed Al-Hilu by Undercover Soldiers in Hizmeh Village*. Jerusalem, March 1997.

press the Palestinians, exploit them economically and take the land in a manner that violates International Law.

Before the Israeli army withdrew from the population centers in the autonomous areas, it arrested numerous Palestinians who were known to be opponents of the peace process and put some of them under administrative detention. Prior to the signing of the Oslo Agreement, some 800 prisoners were in Israeli prisons; in September 1993, 277 were in administrative detention. Since then, their number has fluctuated and currently there are more than 500 administrative detainees. The Israeli authorities choose this form of detention if a certain person is believed to pose a potential security threat. In the case of administrative detention, it is not necessary to charge the person and the detention period can be extended several times for a period that was increased from six months to one year in February 1996. Some prisoners spend years in administrative detention without ever being charged. Thus, this kind of custody forms an instrument of prevention and of punishment. The prisoners, 13 or more of whom have remained in prison for more than three years - Ahmad Qatamesh, who sat in prison for five and a half years, was finally released on 15 April 1998 - are rarely told why they are being detained. The authorities apply this kind of detention more and more as an alternative form of punishment, especially if they lack sufficient evidence. Justifications are usually very general, and since all 'pieces of evidence' are kept under lock and key, being considered 'secret', the accused has no opportunity to disprove them.

The 'legal basis' for this kind of detention is Military Order No. 1229 of 1988. International Law permits administrative detention only under certain conditions and stipulates criteria other than those included in the military orders.[7] The Israeli Government claims it chooses administrative detention only due to security-political considerations. According to information from B'Tselem, this kind of detention is "often used as an easy alternative to proper trial and punishment; and 'security' is defined in terms broad enough to include non-violent political activism and the expression of a political opinion."[8] If Israel is convinced that these prisoners are 'dangerous', then it should charge them and not keep them in this form of arbitrary security custody for years.

Imad Sabi, for example, was arrested in December 1995 and released after 20 months. The army agreed that he could leave the country in order to study in Holland on condition that he would not return to the West Bank

[7] See Watzal, 1994, op.cit. (footnote 3), p. 215ff.; B'Tselem, *Prisoners of Peace. Administrative Detention During the Oslo Process*. Jerusalem, July 1997, p.9-18.
[8] B'Tselem, ibid., p. 39, see also Amnesty International, *Israel/Occupied Territories. Administrative Detention: Despair, Uncertainty and Lack of Due Process*. London, April 1997.

for four years. This agreement was negotiated between the State Attorney and the lawyer Tamar Pelleg-Sryck just before the Supreme Court was due to deal with the case. A year before, Sabi had filed an identical release application which, however, was rejected on 'security' grounds. On 26 August 1997, he was finally released because his seven-year-old son suffered from kidney problems. Had he really been a security risk from the beginning, the army would hardly have released him on humanitarian grounds.

A particularly delicate topic is the torture of Palestinians by the Israeli domestic security service, Shin Bet. In June 1994, the Washington-based Human Rights Watch released a comprehensive document, while on 17 November the same year, B'Tselem issued another report; both reports illustrated that since the beginning of the peace process, the use of torture during interrogations had continued. Although fewer imprisoned Palestinians die than before, the torture has presumably increased. The interrogation establishments of the security services are located in a separate part of the prisons or military installations over which neither the military commander or the prison director has any jurisdiction. The International Commission of Lawyers in Geneva and ai both pointed to the continuing torture by the Shin Bet, which acts in a legal vacuum, at the beginning of February 1995.[9] This was confirmed to me at the beginning of June 1997 by the general secretary of the Public Committee Against Torture in Israel (PCATI), Hannah Friedman. When the Palestinian Abdul Samed Harizat died on 26 April due to violent shaking four days after his arrest, his death unleashed a controversial discussion in Israel concerning the interrogation methods of the Shin Bet. These methods, which are based on the secret part of the Landau Report, have always been strongly controversial as they allow for the application of 'moderate physical force' i.e., torture.[10] According to The Mandela Institute, Harizat - who was charged with membership of Hamas and having participated in several attacks - was admitted as a completely healthy person to the prison, and the autopsy revealed that he had died due to internal head injuries. For the first time, the Israeli Government admitted that a Palestinian had died through the interrogation methods of the Shin Bet. The B'Tselem report concludes with the following appeal: "The Israeli Government must immediately introduce steps that put an end to torture during interrogation once and for all." What is strange is that Harizat, according to the Israeli army radio, had been tortured by Palestinian collaborators on the order of Shin Bet agents.

[9] See B'Tselem, *Torture During Interrogations: Testimony of Palestinian Detainees, Testimony of Interrogators*. Jerusalem, November 1994.
[10] On the history of the Landau Report and the practice of torture see Watzal, 1994, op.cit. (footnote 3), p.84-115.

The youngest Palestinian prisoner to die was 18-year-old Nidal Abu Srour, who allegedly hung himself on 29 January 1998. On 6 January, he had been arrested and brought to the interrogation department of the Shin Bet at the Russian Compound in Jerusalem. On 17 January, he was admitted to Hadassah Hospital, where he died 12 days later. The autopsy showed that Abu Srour had already been brain-dead for ten days. According to the Mandela Institute, the body had not shown any signs of external violence, and human rights organizations assume that the Shin Bet had applied new methods of interrogation to this prisoner, whose death led to violent clashes in Bethlehem. Suicide can be excluded because Srour was put in the same cell with common Israeli criminals.

Prime Minister Yitzhak Rabin confirmed in 1995 that the violent shaking method had been applied to approximately 8,000 Palestinians. While he generally defended this method, then Minister of Justice David Libai and the General State Attorney Michael Ben Yair demanded a stricter interpretation of the regulations. In an interview with the legal magazine *HaLishka*, excerpts of which were quoted by *Ha'aretz* on 19 October 1995, Ben Yair criticized the Shin Bet for putting itself above the law. The shaking can lead to death and cause brain damage. "I am not ready to accept that any young Palestinian with a beard who is arrested suffers brain damage...in this country, the law applies to all governmental bodies, including the Shin Bet, and those who are responsible for it, i.e., the Prime Minister." Rabin and the Shin Bet accused the General State Attorney in return that he would bind the secret service's hands in its fight against terrorism. The interrogation methods of the Shin Bet did not change. Following a terror attack in January 1995, the government even allowed the Shin Bet to apply undefined 'extraordinary methods' over a limited period. Among the normal interrogation methods of the Shin Bet were the following: sleep deprivation, which could last for weeks; beatings involving all parts of the body; verbal abuse; prolonged standing or sitting in uncomfortable positions; imprisonment in very confined spaces; and exposure to extreme temperatures.

Most of the tortured prisoners were released without ever being charged. B'Tselem comments as follows: "This suggests that physical force is a standard rather than an exceptional part of GSS interrogations."[11] On 1 December 1995, 15-year-old Abdul Rahman Assad Shamlah had to be admitted to hospital after two months of intensive interrogation in the prison of Ashqelon because he could no longer control his motor abilities. At around the same time, 18-year-old Islam Sharif Abu Al-Izzah lost an eye in Jalma Prison after being viciously beaten by his interrogators. Palestinian human right organizations, The Mandela Institute and Al-Haq

[11] B'Tselem, "Israel Proposes to Legalize Torture" in *The B'Tselem Human Rights Report*, 4 (Spring 1996) 1, p.14. (GSS = General Security Service/Shin Bet).

drew attention to the killing of three Palestinians in Israeli prisons by other Palestinians. For the torture, Israelis also use Palestinian interrogators from time to time. However, this does not release them from their responsibility concerning the ill treatment of prisoners.

Of a similar shattering nature is the declaration of 20-year-old Abdul Rahman Al-Ahmar from the Dheishe Refugee Camp in Bethlehem. On 19 November 1995, he was put under administrative detention and on 14 February 1996, brought to the interrogation department of the Shin Bet at the prison in West Jerusalem. The head of the military court Shlomo Isaacson extended the interrogation period although Al-Ahmar had claimed that he had been tortured.[12] The Shin Bet used a particularly perfidious sort of interrogation in the case of the married couple Salem and Hannan Ali from the village of Bani Na'im near Hebron, who were played off against each other and humiliated; some of the verbal abuses were of a sexual nature. The husband in particular was badly maltreated.[13]

On 11 January 1996, the Supreme Court allowed - for the first time ever - the Shin Bet to resort to the use of 'moderate physical force', thereby setting a precedent in Israeli legal history. The human rights organizations saw in this decision a setback in their fight against torture and the maltreatment of Palestinians. In a joint press statement of 28 January 1996, B'Tselem, HaMoked, PCATI, and Physicians for Human Rights (PHR) condemned these interrogation methods as torture. One of those concerned was the Palestinian Abdul Halim Balbisi who was arrested on 6 December 1995. Balbisi was interrogated for 18 days by the Shin Bet, which accused him of participating in terrorism, in spite of the fact that his lawyer had assured in writing that his client had not been involved in terror attacks. After a few days, during which Balbisi was not exposed to the use of force, he confessed that he had produced in his house the bombs that had been detonated by two suicide bombers in Beit Lid and killed 21 Israelis. A third bomb could not be used because the potential suicide bomber had not appeared. Balbisi divulged his hiding place.

Balbisi's confession and the fear of possible further terror attacks induced the court to suspend the temporary injunction against the Shin Bet. This, however, did not justify illegal measures as such interrogation methods were only permitted in order to prevent further attacks. This argumentation is based on Article 34 of the Criminal Code, which guarantees the State

[12] See Allegra Pacheco, *Torture by the Israeli Security Services: The Case of Abdul Rahman Abdul Ahmar*. Ed. by PCATI, Jerusalem, June 1996; see also *April 17 Bulletin*. Information and Support of Palestinian Political Prisoners, 22 October 1995 – 15 March 1996, ed. by the Alternative Information Center, 15 March 1996, p.3f.

[13] See B'Tselem, *Detention and Interrogation of Salem and Hanan Ali, Husband and Wife, Residents of Bani Na'im Village*. Jerusalem, June 1995.

representatives immunity from punishment if their measures are taken in order to save human lives or the property of others from damage. The Supreme Court offered a similar argumentation in the cases of Mohammed Abdul Aziz Hamdan of 14 November and Khader Mubarak of 17 November 1996.[14]

During the negotiations in the Hamdan case, lawyer Rosenthal got into a difficult situation. The court constructed the following scenario: a possible bomb attack involving a skyscraper was announced and the interrogator had a premonition that the prisoner knew the hiding place. There is still a chance to defuse the bomb and thus to save human lives. What should the officer do? When the lawyer replied that even in such a case no physical force may be applied, the judge remarked as follows: "But this is immoral: such a position I have never heard before! There is the possibility that thousands of people could die and you suggest that nothing be done!"

The Supreme Court decided on 7 and 11 January 1998 that the Shin Bet could also practice its methods in the case of Abdul Ghneimat and Fuad Qu'ran. The fears of the human rights organizations that such decisions could become the general rule are valid. The Supreme Court gave in to the pressure of the secret service although the UN Committee Against Torture found in May 1997 that the interrogation methods of the Shin Bet contradict the UN Convention Against Torture, which was signed by Israel in 1991. The Supreme Court also failed to intervene in the decision of the military court to prolong the interrogation of Ghneimat. The weighing up of the Supreme Court is problematic. A state of emergency cannot be considered a justification for a citizen to commit a crime. Consequently, a state cannot use a state of emergency to dictate to their officers that they act illegally in foreseeable situations. According to International Law it is even forbidden to torture prisoners of war for the purpose of obtaining secret information. Torture is also forbidden according to Israeli Law. The court adopted the viewpoint of the police, namely that the prisoners are 'ticking time bombs'. It is on this assumption that the justification theory is based, which according to the opinion of Israeli legal experts opens the door to systematic torture. The 'ticking time bombs theory' does not prevent attacks. Secondly, one does not know for sure at the beginning of the torture that the prisoner possesses life-saving information. Thus, the assumption of innocence unless proven guilty is being turned upside down and the 'State under the rule of law' is turned into its opposite. If 'moderate force' does not lead to the goal, then measures are increased and this

[14] See for the three justifications of the ruling: B'Tselem, *Legitimizing Torture: The Israeli High Court of Justice Rulings in the Bilbisi, Hamdan and Mubarak Cases. An Annotated Sourcebook.* Jerusalem, January 1997.

is why people continue to die as a result of being tortured. Even a due criminal proceeding turns into a farce if the confession is obtained by force.

In the Knesset, the following laws are currently being discussed, all of which would legalize the application of force in interrogations:

- The Penal Law (supplement – prohibiting torture) of 1995;
- The supplementary law of 1995 that regulates all rules referring to the confession of the accused and the circumstances under which a trial can be resumed;
- The General Security Service (GSS) Law (intended to regulate any activity of the GSS).[15]

When these laws were introduced in the Knesset, they were met with strong protest on the part of some parliamentarians as well as Israeli and international human rights organizations. According to one paragraph of the GSS Law, titled 'Special Interrogation Powers to Prevent Terrorism', the GSS interrogator has the authority to use 'force' if it is suspected that this could prevent an act of force against the State or its citizens. The methods of the use of force are determined by rules that shall remain secret. With this, all measures that the Shin Bet already uses and which are laid down in the Landau Report would be implicitly legalized. The GSS interrogator may 'use force' on the precondition that the method does not cause 'strong pain' and does not damage the health of the prisoner; the question of what is regarded as 'strong pain' remains open. In an amendment to this law, torture is defined as "strong pain or suffering, whether physical or mental, with the exception of pain and suffering that is being caused by interrogation methods or legal punishment." The secret service agents are guaranteed immunity from punishment for 'justified acts' that were committed 'in good faith and in fulfillment of their duties'. This draft law contradicts the Israeli-signed UN Convention Against Torture; if it is adopted in the Knesset, torture will be explicitly legalized for the first time in Israel.

PCATI criticized the fact that the law against torture and the law concerning the secret services are implemented rather haphazardly although according to the UN Convention Against Torture, a state of emergency may not be misused in order to justify torture. With this, the Israeli Government manages to use a sophisticated trick: it would never violate its own laws because the application of torture by the Shin Bet is not torture

[15] See the State of Israel Ministry of Justice, Proposed Law of the General Security Service, 1996, version 10 of 18 January 1996. See also the objections of PCATI: *Comments and Objections by the PCATI to the Final Report of the Committee on Legislation Against Torture* (of the Ministry of Justice and the Office of the Attorney General, issued 7 July 1995, Jerusalem) of 23 October 1995.

in legal terms and the supplement to the Penal Law, which clearly forbids torture, additionally safeguards the government. On 4 February 1996, Mordechai Kremnitzer, a well-known legal expert from the Hebrew University in Jerusalem wrote in *Yediot Aharonot*: "Only in form would this be a law. Its contents would obviously be illegal." Israel would be the only country that legalizes through law the causing of pain during interrogation, although it would certainly be imitated in other countries. B'Tselem was able, through its intensive campaign, which it carried out with other organizations, to convince the committee that was responsible for this legal package of the problematic nature of the formulations. The committee decided to strike out the definition of torture as well as the Shin Bet's 'special interrogation methods' in the drafts. The passing of a law against torture alone implies that there is torture in Israel.

The Israeli Cabinet has now passed the law on the Shin Bet, thereby putting its work for the very first time on a legal basis. Since it does not mention the interrogation methods, the Shin Bet will continue to secretly implement them during interrogations. Amongst those the Shin Bet reports to is a secret service committee and a committee presided over by the Prime Minister, to which the ministers of Defense, Justice and Public Security belong and to which the Shin Bet reports every three months. Shin Bet employees may continue to use pseudonyms in court.

On 30 July 1997, the Knesset dealt with a law that the human rights organizations also rejected in a first reading.[16] This law, which was introduced by the Labor Party when it was still in power, denies all Palestinians or the families of Palestinians who were killed or injured by Israeli security forces the right to claim any compensation. According to currently valid civil law in Israel, a soldier enjoys immunity if he was participating in a 'clash'. The Supreme Court in Israel limits the immunity to 'clashes' that would under normal circumstances be considered unlawful acts. In the draft submitted by the government, all measures against terror and for the security of the State are included in the 'clashes' and the narrow exception rules are turned into general rules. The circumscription of the 'guarantee of security' includes the risk of injury and death; thus, the activities of the security forces would be completely excluded from the law.

According to this draft, a 'victim' has only one year in which to file a complaint and the burden of proof is left to him. If this law should be passed, the State of Israel would be acquitted of its violations of International Law during the occupation. This would be a welcomed opportunity for the security forces to take reckless action against the Palestinians. If,

[16] See Human Rights Watch/Middle East, Israel. *Legislating Impunity. The Draft Law to Halt Palestinian Court Claims*, 9 (July 1997) 6.

with this law, the State of Israel rids itself of any responsibility *vis-à-vis* the Palestinians who have suffered any damage through the occupation, it would have disastrous consequences: even more frustration, even more violent confrontations, and new acts of desperation.

In the context of torture, the role of the doctors or physicians in the system has often been discussed. At a June 1993 conference in Tel Aviv,[17] harsh accusations were made against doctors who work in the prisons, amongst whom are many immigrants. A report by ai[18] reveals that many doctors working for the military identify with its goals and see the security of the Israelis threatened. In addition, the Israeli Medical Association has failed to come with a clear position. According to the ai report, "In continuing on the one hand to care for the victims of torture so that they can be tortured again and on the other hand in not doing anything in order to bring these torture practices to end, the Israeli doctors and others members of the medical profession who are responsible for the Palestinian prisoners during the interrogations violate their professional code of ethics and let others make them an essential component of the system of torture."

The occupation of the West Bank and the Gaza Strip has repeatedly and continuously led to heavy clashes between the occupying power and the occupied. Even after the partial separation the violent measures did not stop. The brutality of the Shin Bet is duplicated in large parts of the military, the border police and the regular police. Palestinians who try to enter Israel illegally are often brutally ill treated at the checkpoints or inside Israel and sent back to the autonomous areas. This, in spite of the fact that it is only desperation that drives them to seek work in Israel, knowing as they do that they will not be granted permits. On 20 November 1996, the Israeli Television broadcast for the first time a video that documents such violent excesses: two border policemen maltreated six Palestinians with slaps around the ears and brutal kicks to the head and lower body, humiliated them by shouting obscenities at them in Arabic, forced them to do pushups and rode on their shoulders.

[17] See Neve Gordon/Ruchama Marton, *Torture - Human Rights, Medical Ethics and the Case of Israel*. London 1995; for the proceedings of the conference see Ludwig Watzal, "Die Bürokratisierung der Folter" in *taz*, 17 June 1993; Ludwig Watzal, "The International Struggle Against Torture and the Case of Israel" in *Orient*, 34 (1993) 2, pp. 190-94; Ludwig Watzal, "Zur Lage der Menschenrechte. Die 'Folterkonferenz' in Tel Aviv" in *Die Neue Gesellschaft/ Frankfurter Hefte*, 40 (1993) 10, pp. 919-925.

[18] See Amnesty International, *Under Constant Medical Supervision: Torture, Ill-Treatment and Health Professionals in Israel and the Occupied Territories*. London, August 1996. – For the situation of the physicians see also: The Public Committee Against Torture in Israel/ IMUT- Mental Health Workers for the Advancement of Peace, *Dilemmas of Professional Ethics as a Result of the Involvement of Doctors and Psychologists in Interrogations and Torture. A Symposium*. Jerusalem, April 1993.

After the broadcast, Israeli politicians expressed a certain degree of shock, spoke of shame and disgrace, of moral norms, the 'purity of weapons', and the high discipline among soldiers under the occupation. Despite the moral indignation, nothing has changed, as confirmed by B'Tselem whose investigations show that violence is the daily routine.[19] As is often the case, the messenger of the bad news was punished: Azzam Marakah, who had recorded the video and his two brothers have constantly been bothered by the border police, the police and the Jerusalem Municipality, without ever having been guilty of any crime. On 28 November, inspectors and border police attacked Azzam's brother Husam, arrested him and accused him of having hindered the police in carrying out their duty. On 19 December, Azzam's brother Ghassan was arrested, allegedly because he had pushed a municipal employee. When Azzam attempted to help his brother, he was arrested once again. On 21 December, Azzam had to strip completely at the police station, where he was called obscene names and made fun of by four policemen, as he told Najib Abu Rokaya, a B'Tselem worker. Consequently, B'Tselem filed a complaint with the general inspector of the police, and although B'Tselem never received an answer, the harassment stopped.

The brutality of the army and the border police affects rich and poor Palestinians alike. On 11 November 1996, an Israeli sniper killed seven-year-old Ali Jawariesh as he stood amongst a group of young stone throwers near Rachel's Tomb. Eleven days later, 36-year-old Jimmy Kanawati was killed at the Bethlehem checkpoint by Israeli border police as he was returning from a dinner in Jerusalem. Kanawati came from one of the richer families in Bethlehem, while Jawariesh belonged to a poor Jerusalemite family. The soldiers had opened fire after Kanawati had passed the checkpoint in Bethlehem. As eyewitnesses reported, more than three hours passed before an ambulance arrived. Kanawati's passenger was arrested, brought to Jerusalem and released after being interrogated. A day later, Western news agencies reported that Israeli police had chased Kanawati's car and that the border police had opened fire when the driver failed to stop. Both passengers had been drunk. The most recent act of violence occurred on 17 March 1998 at a military checkpoint south of Hebron where soldiers 'accidentally' shot and killed three Palestinian construction workers. For the first time, an Israeli prime minister publicly apologized for the incident and mentioned the names of the soldiers involved.

The violence of the soldiers and the security forces sometimes involves sexual harassment. During house searches in Hebron, in which some bullets, weapons and drugs were found, officers of the security forces forced women aged 17-69 to undress in front of them as well as the women's relatives and strangers. In addition, one man and 18 children less than 14 years of age were also forced to undress. Police officers forced two women to stand completely naked in front of them. Such orders are often accompanied by the calling of names and beatings. During house searches, security forces often cause considerable damage: they destroy furniture, throw food on the floor, slash mattresses, and destroy clothing and photographs. With such illegal actions, the police officers destroy more than the little property of the people concerned. Particularly humiliated was 32-year-old Itaf Abu Miyale who was forced to strip naked and sit on a chair in handcuffs. Although the young woman said that she was pregnant in the third month, she was mistreated and beaten by a female police officer. The troop's commander remained in the room for ten to 15 minutes but did not interfere.[20]

Very rarely is a charge made against the security forces. Either the victims' files are not accepted or, as is more common, they 'vanish in the sand'. If it comes to sentencing, it is often more a ridiculing of the victims than a punishing of the perpetrator. For example, on 19 November 1996, four soldiers were found guilty before an Israeli military court of having displayed negligence in shooting and killing an 18-year-old Palestinian. The punishment handed down was an hour in prison suspended sentence and a fine of one agora, which is less than one cent. At best, this created astonishment because the agora coin is not even given as change.

That the Shin Bet often acts violently is known everywhere. The statements of a former high-ranking officer of the secret services confirmed claims by human rights organizations that it does not even stop at deliberate murder. In the *Yediot Aharonot* of 26 July 1996, Ehud Yatom admitted that he had smashed with a stone the heads of the brothers Subhi and Majdi Abu Jamea on the order of then secret service chief Abraham Shalom. In 1984, the two brothers, along with two other Palestinians, had hijacked a number 300 bus. Their accomplices had been killed when the bus was stormed. According to Yatom, current Minister of Defense Yitzhak Mordechai had also beaten the Abu Jamea brothers with this pistol. Despite these statements, the general was not publicly asked to resign. The anger was directed once again against those who broke the 'law of silence'.

Yatom justified the fact that the secret service sometimes kills Palestinians: "In the fight against terrorists, and in order to prevent the death of innocent people, one has to do things that do not always conform with perfect values. There is only one way to stop terror organizations that do

[19] See B'Tselem, *Beatings, Maltreatment, and Degradations of Palestinians by Police During June-July 1996*, Jerusalem, September 1996; B'Tselem, *Sheer Brutality: The Beatings Continue. Beatings and Maltreatment of Palestinians by Border Police and Police Officers During May- August 1997.*

[20] See B'Tselem, *Sexual Harassment in the Name of the Law. Violence and Degradation During Searches of Palestinian Homes in Hebron.* Jerusalem, December 1996, p.5.

not differentiate between young and old, and that is this one." He admitted, however, that a 'mistake' had been made: the media had obtained access to too much information concerning the 'operation'. He added that he had fought terrorism under four prime ministers and that he was still convinced that "this method *per se* was correct."

An investigation commission assigned by the government determined that Mordechai bore responsibility for the storming of the bus and the mistreatment of the prisoners, but ten years later, a military court acquitted him of all charges. The then Shin Bet chief Shalom and other agents involved in the affair were despite public protests not called to account for their acts. Then President of the State of Israel Chaim Herzog gave amnesty to the agents and the government refused to fire Shalom. Yatom's statements have revealed the lies of the secret service but the fact that Shin Bet agents who publicly boast of the murders they have committed are not accused invites further torture. The Palestinian Human Rights Center in Gaza has pointed to unsolved murders committed in the years 93/94: Omar Khamis Al-Ghoula, Ayman Nassar, Jamaa and Yousef Abu Mohaisen, Salim Mowafi as well as the shooting to death of six members of the Fatah hawks by undercover units in Jabalia.[21]

After Oslo, the demolition of houses, the expansion of settlements, the confiscation of land, and the associated construction of bypass roads as well as the closure of the occupied and autonomous areas made up the main part of the human rights violations committed by Israelis. According to statements made by the Israeli Ministry of Defense, 140 houses were destroyed in 1996 and 145 in 1997. In the West Bank alone, some 900 additional house demolitions are pending. Between 1987 and 1997, a total of some 1,800 houses was destroyed, and in the period between Oslo (September 1993) and March 1998, 469. All the buildings were categorized as illegal constructions. Since the Palestinians almost never receive construction permits, they have no choice but to take such 'illegal' measures. Even the deterrent effect of the draconian house demolition measure is repeatedly named as an argument: not only the perpetrator is punished, but also his entire family and community.[22] It is worth noting that in the

[21] For this and for the hijacking of the bus no. 300 see: Palestinian Center for Human Rights, Special Report. *Senior Israeli Intelligence Officer, Ehud Yatom, Reveals Extra-Judicial Killings of Palestinians by Israeli Security Forces*, 3 August 1996. For the interview with Ehud Yatom see: Amos Wollin, "Israelischer Geheimdienstler gesteht Doppelmord" in *taz*, 26 July 1996; Inge Günther, "Ein Befehl läßt den Mann vom Geheimdienst nicht zweifeln" in *Frankfurter Rundschau*, 27 July 1996; "Befehl zum Mord" in ibid.; "Verteidigungsminister mißhandelte Gefangene" in *Süddeutsche Zeitung*, 27/28 July 1996.

[22] For details on the house demolitions see B'Tselem, *Demolishing Peace. Israel's Policy of Mass Demolition of Palestinian Houses in the West Bank*. Jerusalem, September 1997, p.18; see also the chapter on "house demolitions" in B'Tselem, *Without Limits: Human Rights Violations under Closure*. Jerusalem, April 1996, p.5-11; LAW - The Palestinian Society for the

West Bank, the majority of houses that were destroyed were located near settlements or bypass roads.

In justifying these actions, which are in violation of International Law, Israel always refers to Article 119 of the Emergency Defense Regulations from the British Mandate period. According to Article 53 of the Geneva Convention, however, an occupying power may only out of 'absolute military necessity' destroy houses. Palestinians can appeal in writing against the demolition orders to the responsible military commander, and if the appeal is rejected, they have the right to appeal to the Supreme Court. So far, however, in almost all cases of a demolition order being issued, the army was given the right to go ahead. Since the occupation of East Jerusalem, all Israeli governments have pursued the goal of changing the demographic development in favor of the Jewish inhabitants. Thanks to a targeted settlement policy, their efforts paid off in the year 1993: after a settlement belt had been created around East Jerusalem, 155,000 Israelis and 150,000 Palestinians were estimated to be living in this part of the city. By 1996, the Israeli authorities had confiscated 34 percent of the Jerusalem area for 'public purposes' and declared 40 percent 'green areas' in order to prevent Palestinians from building there. When a settlement was planned, the status was cancelled like in the case of the case of the hilly territory west of Shu'fat and on Jabal Abu Ghneim (Har Homa).

Since the beginning of the occupation, Palestinians living in East Jerusalem have constantly been the victims of racial discrimination. Following the election of Mayor Ehud Olmert, who is continuing the intensive policy of Judaization, there was a considerable increase in the number of house demolition orders in East Jerusalem compared to during the time in office of 'liberal' Teddy Kollek (1965-1994). In the currently ongoing politically motivated campaign, Olmert is supported by his deputy Shmuel Meir, who has the backing of religious-nationalistic settlement groups.[23] If the authorities order that construction come to an end, the individuals concerned can file an objection and try to obtain a permit, although this method is almost exclusively applied in West Jerusalem only. A demolition order that is issued due to criminal acts on the part of Palestinians is followed by a long trial and is usually accompanied by the issuing of an administration order. In these cases, the deadline to file an objection expires at the end of a 24-hour period, after which the demolition takes place immediately.

Protection of Human Rights and the Environment, *Annual Report of LAW. Human Rights Violations in Palestine - 1996*. Jerusalem 1996, p.29-35; Watzal, 1994, op.cit. (footnote 3), p.148-162.

[23] See LAW, *House Demolition and the Control of Jerusalem. Case Study of Al-Issawiya Village*, Jerusalem, June 1995.

Since the rise to power of Benyamin Netanyahu, a policy has been pursued in East Jerusalem that is characterized by human rights organizations as the 'quiet deportation'[24] of Palestinians. The main instruments of this policy are besides the restricted issuing of construction permits, a rigid attitude *vis-à-vis* family reunification, land confiscation, and a minimum of investment in infrastructure. In 1996/97, more than 500 houses were slated to be destroyed in Jerusalem - a new record. The Palestinian lawyers are convinced that the High Planning Council will not take a single decision in favor of the house owners, according to Khader Shqeirat, the Director of LAW, in a conversation with the author in June 1997. Palestinians are denied construction permits in principle and not because they violate construction regulations. Since the occupation of East Jerusalem, some 38,500 housing units have been built for Israelis but not one for the Palestinians. "Jerusalem only grows for Jews," Jörg Bremer concluded in the *FAZ* of 1 April 1997.

The former mayor Kollek pointed in a letter to the editor to several services for the East Jerusalem inhabitants that were rendered only out of selfishness on the part of the Israelis and due to concern regarding unhygienic conditions. Kollek did not pursue a policy that was different to Olmert's but he knew how to cover it more cleverly; this became clear in the following interview, which appeared on 10 October 1990 in *Ma'ariv*. After the massacre at Al-Aqsa Mosque, he openly spoke about Israel's political goals. "We said things without meaning them and we never acted on them. We repeatedly declared that we would adjust the rights of the Arabs and the rights of the Jews, but it was all empty talk. Levi Eshkol and Menachem Begin promised them the same rights - both broke their promises... Never have we given them the feeling they are equal before the law. They were and remain second or third-class citizens... For the Jewish Jerusalem, I did something in the past 25 years... For the eastern part, nothing! Pedestrian walkways? Nothing! Cultural establishments? Not a single one! Yes, we constructed a wastewater system for them and improved the quality of the water. Do you know why? You believe that it was for their benefit or advantage? You can forget that. We had some cholera cases there and the Jews were worried that they would get infected. Because of the cholera, we installed the sewage system and improved the water." In a session of the City Council on 27 December 1994, Kollek said: "Everyone who thinks that the Arabs have it good here is simply wrong... take Beit Safafa as an example. Part of their land was used for Katamon, a part for 'Itri', some for Gilo and some for a transit road in the neighborhood and for pott... I could tell you the same story in regard to any other village."

[24] HaMoked/B'Tselem, *The Quiet Deportation. Revocation of Residency of East Jerusalem Palestinians.* Jerusalem, April 1997.

The policy of 'quiet deportation' has dramatic consequences for the inhabitants of East Jerusalem. According to Israeli Law, Palestinians who live in the city have the right to permanent residency. In contrast to the inhabitants of the Occupied Territories, they are allowed to exit and re-enter and they can work in Israel without special permits. The Entry Law stipulates that the Palestinians lose their permanent residency right if they have or obtain a similar status in another country, take on its citizenship or live abroad continuously for more than seven years. Until mid-1996, this regulation was only applied very sporadically. In addition, the Gaza Strip and the West Bank have in the past not been regarded as 'abroad'. From the end of the 1980s until 1994, some 50 inhabitants lost their Jerusalem ID card. In 1995, it was already 96, in the following year, 689, and in 1997, the number of expatriates reached approximately 1,000, its highest level to date. The alleged liberalism of the past years has revealed itself as a trap. In the past years, Palestinians have increasingly moved to the West Bank because a family member - despite marriage - was denied residency in East Jerusalem. The Israeli Ministry of the Interior has rejected applications of Palestinian women from East Jerusalem for family reunification on the grounds that it is usual for women to move into the house of their husband. Applications filed by men were usually approved.

The current strict handling of the Entry Law could have grave consequences for the some 70,000 Palestinians who do not permanently live in Jerusalem. "Using laws, regulations, court judgements, and administrative tactics, Israeli authorities are expelling thousands of persons from the city. Not only are these Palestinians compelled to leave their homes, but they also lose their social benefits and the connections with their families. They must start life anew in another location... This quiet deportation is a direct continuation of Israel's overall policy in East Jerusalem since 1967, whose goal it is to preserve a permanent majority of Jews in the city so that the Israel's sovereignty in East Jerusalem cannot be challenged."[25] Every Palestinian must prove that he lives in the city or that his center of life is there otherwise he has to leave the city within 15 days and may henceforth not use its cultural establishments or visit its religious sites. For example, water and electricity bills, school certificates and other documents must be submitted; thus, responsibility for proving each case rests on the individual. The authorities do not have to explain the revocation of identity cards.

This policy is an elegant variant of 'legal ethnic cleansing' that for various reasons violates International Law principles: East Jerusalem is still occupied territory, and all unilateral measures are null and void. Israel's differ-

[25] Ibid., p. 33.

entiation between Jewish settlers and Palestinians equals blatant discrimination and contradicts the principle of equality. In the past 28 years, Israel also recognized *de facto* the right of people from the West Bank to live in Jerusalem, but today, people who built their lives on this are now abused by the change in policy, which is applied retrospectively. Palestinians are required to provide so many documents in order to satisfy the Israeli demands pertaining to the 'center of life' requirements that even permanent residents of East Jerusalem have problems in providing them in full.

Besides the previously mentioned administrative restrictions, Israeli settlement expansion continues in the city. It should here be mentioned once more that the construction of settlements and the transfer of an occupying power's own population for the purpose of colonizing alien land is forbidden according to Article 49 of the Fourth Geneva Convention. The Israeli Supreme Court, however, sanctioned in the 1970s the confiscation of private land for military purposes, *de facto* in order to build settlements there at a later date. The confiscation of State Land was also approved.

The Oslo Accords further restrict the living space of the Palestinians. While 1,000 settlers have on average 27.5 square kilometers at their disposal, the same number of Palestinians has only 1.7. The Rabin-Peres government confiscated five percent of additional land in the West Bank for the extension of settlements and the construction of bypass roads.[26] Arafat has only three percent of the area under his rule. Since the occupation of the West Bank, Israel has confiscated approximately 65 percent of the total area.

After the signing of the Interim Agreement, the construction of a 400-kilometer-long separate road network began for 'security reasons', being designed to connect the settlements with each other as well as Israeli population centers. It is based on plans that were drafted in the 1980s by the Gush Emunim bloc. Some of these roads are for 'Jewish traffic' only, for example, the tunnel road that connects the Etzion bloc with Jerusalem. With the bypass roads the West Bank is being further fragmented and the Israeli military control over Palestinians permanently secured. Although Rabin said in *Al-Hamishmar* of 27 January 1995 that the settlements were not significant for Israel's security and even referred to them as a burden, his government invested US$46 million for the 160,000 settlers in 144 settlements - essentially more than the previous government under Shamir. This investment has paid off: by 1996, the number of settlers in the West Bank had increased by 48 percent and in the Gaza Strip by 62 percent. The settlement freeze officially announced by the Rabin-Peres government was thus a farce. While Rabin and Peres were in office, 93 houses were demolished and 32,495 olive trees uprooted; when it came to the right wing and nationalistic settlers, Peres was more than prepared to make far-reaching concessions in order to secure their support in the elections.

[26] See LAW, *By-Pass Road Construction in the West Bank. The End of the Dream of Palestinian Sovereignty*. Jerusalem, February 1996.

The aforementioned facts clarify the discrepancy between public perception and reality during the government period of Rabin and Peres (1992-1996). These 'peace politicians' legitimized land confiscation, expansive settlement policy, and the construction of bypass roads through negotiations and the conclusion of the aforementioned agreements, which will not help the Palestinians to achieve sovereignty over an independent state.

Netanyahu invalidated the settlement freeze. The plans of the Israeli Ministry of Housing, published in *Ha'aretz* on 9 January 1998, reveal that by the year 2000, 30,000 additional housing units are supposed to be built in the settlements, half of these by the end of 1998. Moreover, the number of settlers shall be increased to 500,000 by the year 2000. The decision to build the Har Homa settlement in East Jerusalem is a normal consequence of the Israeli policy sanctioned by Arafat and the international community.

After each terror attack, the Israeli Government ordered a complete closure of the territories, i.e., no Palestinians were allowed to leave the 465 autonomous 'islands' without permission. This collective punishment along with bureaucratic harassment has proven a particularly effective instrument for the strangulation of the Palestinians. Israel is keen to wear the Palestinians down so that they will be more ready to accept the Israeli security ideas in the peace process. The policy of partial or permanent closure that was introduced by Rabin is being justified with the need to ensure the security of the Israeli population. For the act of an individual, entire villages or the entire population of the territories are being punished. For example, when a complete curfew was imposed on Hebron after the massacre in the Ibrahimi Mosque, over 100,000 Palestinian inhabitants were obliged to suffer its consequences for approximately six weeks, whereas it would have been far more appropriate if instead, the 450 radical settlers in Hebron or the 6,000 inhabitants of the Kiryat Arba settlement had been put under a curfew because it was from among their ranks that the mass murderer originated.

During the closure, Palestinians cannot move from the Gaza Strip to the West Bank *and vice versa* although the agreements provided for a special transit road. Prior to the conclusion of the agreements, this had been linked with numerous bureaucratic conditions but was not excluded. The Ben Gurion Airport in Tel Aviv is also out of bounds for the Palestinians during periods of closure, and they can only leave the country via the Gaza Strip – in this case, only to Egypt – or via Jordan.

The closures have considerable effects on medical care. In the Gaza Strip, only primary healthcare exists and anyone needing more sophisticated treatment must be referred to hospitals in the West Bank or Israel. The organization Physicians for Human Rights (PHR) applied to the Israeli authorities for numerous permits for patients, but only a few were granted. According to the opinion of PHR, the medical care in the territories has deteriorated since Oslo and especially during 1996 and 1997.[27] The chairman of the organization stated at a conference in Beersheva in June 1997 that Israel used its monopoly recklessly as a means of suppression in order to make the Palestinians even more dependent on Israel.[28]

B'Tselem has documented incidents that clearly fall into the category of 'the deliberate withholding of medial assistance'. On 11 March 1996, for example, soldiers stopped a car at the checkpoint near the village of Husan for so long that one of its passengers, a heavily pregnant woman, gave birth to twins in the car. Eventually the driver drove the woman, without permission, to the hospital in Bethlehem where the only thing doctors could do was to pronounce the twins dead. When, near the village of Rantis, the Palestinian Ali Mustafa Thabet lost consciousness during a check, the soldier called for an ambulance, only to be asked by the person on the other end of the line whether the person requiring an ambulance was an Arab or a Jew. The soldier replied that he was an Arab. It then took the ambulance 45 minutes to arrive, even though the next settlement was only three kilometers away. The Palestinian was already dead.[29]

The weeks-long closures of the Gaza Strip and the withdrawal of work permits have devastating effects on the entire economy and every single family. The percentage of unemployed has increased at times to over 65 percent and the purchasing power has decreased enormously. Since no transports of goods are handled during closures, much of the harvest rots at the border crossings. During the period 1992-1996, the losses due to closures amounted to some US$6 billion.

Israel also violates the human rights of its Arab citizens, i.e., those Palestinians who did not flee in 1948 from what is today Israel. They live mainly in the north of Israel in the Galilee. Officially, the 850,000 Israeli Palestinians - 18 percent of the total Israeli population - are 'equal', but in reality, they are discriminated against through various laws and administrative regulations, which effectively make them second-class citizens. Many of them are loyal to the State, but Israeli Jews generally mistrust the Arabs.

[27] See Physicians for Human Rights, *Annual Report 1996*. Tel Aviv, 1997.
[28] See Ludwig Watzal, "Thirty Years Since the Six-Day War: Economical and Social Perspectives" (8-9 June 1997, Beersheva) in *Orient*, 38 (1997) 3, p.449-455, here p.454.
[29] See B'Tselem, op.cit. (footnote 19), p.24f.

With the exception of Druze and Circassians, Israeli Palestinians are not allowed to serve in the military and thereby lose certain advantages. As Arabs - like foreign non-Jews - they cannot purchase property in the Israeli sector, which is why the confiscation of land hits them doubly hard. In addition, the disadvantages in the education sector are still considerable. The living standard of the Israeli Palestinians nevertheless grew over the past years, but there are grave differences between the social spheres. The per capita income of the Israeli Palestinians - of whom 30 percent live under the poverty line - is US$400, whereas the per capita income of the Israelis - of whom only 16 percent live under the poverty line - is US$1,000. Almost half of the Arabs finish high school as opposed to 90 percent of the Israelis, and the Israeli Palestinians will never find work in fields related to security.

The Bedouins, who belong to the lowest strata of the Israeli society, are also subject to discrimination. In 1952, they were for the first time dispersed from their original living space in the Negev Desert and were supposed to settle. The official reasoning was that the army needed the Negev for an exercise area and that nomadic life was not in keeping with the times. Even keeping sheep was forbidden and the Bedouin's herds were confiscated.

Since 1993, the Catholic human rights organization Society of St. Yves has struggled before the Supreme Court against the renewed dispersion of the Jahalin Bedouins, who were standing in the way of the expansion of the settlement of Ma'ale Adumim. The society lost and the Jahalin were transferred to a spot next to the central garbage dump of Jerusalem.[30] The Israeli Government could have offered them apartments in Ma'ale Adumim except for the fact that as in kibbutzim, no non-Jews are allowed to live there.

The considerable discrimination in the economic and social spheres is hardly perceived by the Israeli public, in spite of the fact that the Palestinian economy has become subordinate to the political and economic interests of Israel. For Israel, the territories serve, despite the closure policy, as an enormous reservoir of cheap labor. The Palestinians that are obliged to offer themselves to the Israeli employers in the slave market are now in competition with guest workers from Romania, Thailand, the Philippines, Turkey, China, Columbia, Ecuador, Chile, Bolivia, Bulgaria, the Ukraine, Moldavia, India, Ghana, and Nigeria. Of these guest workers, approximately 120,000 have a permit, while a similarly large number is in the country illegally.

[30] See Wiltrud Rösch-Metzler, *Ohne Wasser, Ohne Land, Ohne Recht. An der Seite der Palästinenser die israelische Anwältin Linda Brayer*. Ostfildern, 1997, pp. 140-155.

A guest worker costs the Israeli employer approximately 2,100 NIS per month, a Palestinian worker 3,110 NIS. Based on a gross income of 2,085 NIS, a guest worker will receive net wages of 1,363 NIS, a Palestinian 1,812 NIS. Since the guest workers are without their families and usually live at their places of work, they are always available. The employer, on whose guarantee their visas are issued, pays for their travel expenses in advance and takes their passports in order to bind them to him. After two years and three months, the guest workers must leave Israel. As for the illegal guest workers, they enter the country on a tourist visa. For them, the laws of the free market apply: supply and demand. Both groups have no social rights, and in the event of a work-related accident, they receive medical treatment but must then leave Israel. For most foreign governments, it does not really matter how their citizens are treated in Israel, as Hannah Zohar from the worker's organization Kav LaOved stressed in a conversation with the author in June 1997. Since the beginning of the autonomy, Gaza has been a closed military zone and Israeli workers' organizations are no longer allowed to represent the interests of Gazan workers.

Today, nobody speaks about the 3,000 Palestinian political prisoners in Israeli prisons. Israel has only released one fifth of them since the signing of the Oslo Accords, although Article 16 of the Interim Agreement stipulates that all of them should be released. Moreover, further Palestinians were arrested all the time, imprisoned, and charged before military courts. Before signing the agreement ending apartheid, Nelson Mandela had insisted that all prisoners who had fought against the apartheid regime in South Africa should be released. Arafat on the other hand accepted a Bantustan with numerous privileges for himself and his followers, and many of those who struggled for the freedom of Palestine and for his return are still in prison. Arafat calls for their release, but Israel does not stick to the arrangements laid down in the agreements, and to date, only the 20 female prisoners have been released.

In this context, it is important to remember the Lebanese prisoners in Israel and in the internment camp in Khiam in the Israeli-controlled security zone in South Lebanon. The government spreads contradictory if not totally wrong information about them or else keeps silent. In reality, these prisoners are hostages, the idea being that they will one day be exchanged for Israeli soldiers who were captured in Lebanon.

Among the most prominent prisoners are Sheikh Abdul Karim Obeid and Mustafa Ad-Dirani. Neither of the two men has contacts with the outside world and their whereabouts are kept secret. The deputy Israeli Minister of Defense, Uri Or declared the following to ai on 9 February 1996: "We will release them once we have more information concerning Ron Arad."

(Arad was shot down over Lebanon and has been considered missing ever since.) Rabin and Peres confirmed this connection.

Currently, there are besides the 21 Lebanese some 120 prisoners from other Arab countries and Iran in Israeli prisons. For these 'forgotten' prisoners, the usual visiting regulations do not apply, and their lawyers have only very restricted authority and must undergo strict security procedures. The trials are closed to the public. Eleven have already served their sentence but nevertheless remain in prison.

In 1985, Shimon Peres ordered that journalists should no longer be granted access to the so-called security zone in South Lebanon. In the fight of the Israeli and the South Lebanese Army (SLA) against the Hizbollah, curfews, closures, road blocks, and the destruction and sealing of houses are part of the daily routine. Here an absolutely legal vacuum prevails and the inhabitants are subject to far more repression than those of the Palestinian occupied territories are: Human Rights Watch and ai concur with each other in their reports concerning the large-scale human rights violations including intensive torture. One Israeli lawyer put it this way: "Just like in the Wild West, the sheriff does whatever he likes."

Monique Weil, the Chairwoman of the French Human Rights Committee called Khiam a "sort of Nazi concentration camp." The approximately 150 internees, some of whom have been held there without charge for over 12 years, live under extreme conditions. Only very few lawyers have access to the camp, and although the road to the Israeli Supreme Court is officially open to these prisoners, so far, all applications for release have been rejected. Khiam is administered by the SLA, "but it is obvious to everyone that the SLA is only a sub entrepreneur, an unskilled worker who is not taking any step without his big master, the State of Israel" as Aviv Lavie writes in a shocking report that appeared on 17 January 1997 in *Kol Ha'ir*. "In Khiam, there are no judges, criminal trials, lawyers, evidences, or counter evidence. There is neither right nor law. An Israeli military jeep or a Mercedes of the SLA stops in front of a house and its passengers order someone to accompany them for a conversation. He might return after five or ten years, or he might never return," Lavie goes on. According to statements of a high-ranking Israeli officer, the prisons in the Occupied Territories are compared to Khiam five-star hotels. Amin Issa, a former prisoner, testified as follows: "Life there is hell. Every day, we lived at the edge of death." From the point of view of International Law, Israel as an occupying power is responsible for the conditions and the mistreatment of prisoners.[31]

[31] See Human Rights Watch/Middle East, *Israel. Without Status or Protection. Lebanese Detainees in Israel*, 9 (1997) 11; Amnesty International, *Israel/South Lebanon. Israel's Forgotten Hostages: Lebanese Detainees in Israel and Khiam Detention Center*. London, July 1997.

The Israeli soldier A. said the following about the internees and their treatment: "In the interrogations, they take two telephone wires, attach them to the body and increase the electricity flow. From time to time, secret service employees come in. In reality, however, these are the death squads, which our people have trained. These people had free access to Khiam and could sort out their affairs. If someone had a dispute with a prisoner from his village, he would come and eliminate him. We didn't know who the men in the prisons were. Some were terrorists, others collaborators, and some were there without reason; everybody who went to the street without having a good reason for doing so was considered a potential terrorist."

In 1997, the Red Cross succeeded for the first time in entering the internee camp, but it is not allowed to discuss its visit publicly. Until 1988, relatives of the prisoners could talk to them for five minutes per month. Since 1995, the visiting prohibition has been suspended but only with regard to certain selected prisoners, one of whom was able to see his nine-year-old daughter for the very first time. Prisoners who have been detained in Khiam as well as prisons inside Israel testified that in some cases they were interrogated by the same security forces. Often Israelis asked the questions while SLA members administered the maltreatment.

Should not the European Union take up the case of Khiam? The American Government and media keep silent about the torture. In turn, Pat Robertson, a Christian fundamentalist, is allowed, not far from the prison, to spread with his TV and radio station salvation messages and pro-American propaganda to the countries of the Near and Middle East.

Officially, Israel has remained a democracy in which law and order and the freedom of opinion are secured. However, the gap between the huge amount of information and public reaction is huge; no Israeli could claim that he would not have known about these human rights violations.

3. Palestinian Human Rights Violations *Vis-à-vis* Palestinians

Arafat has been forced by the Israelis and the United States as well as by extremist groups such as Hamas and Islamic Jihad in Gaza to take on the role of a despotic peace angel. The security guarantees, however, cannot justify the fact that the PA has pursued from the very beginning a repressive policy against any sort of opposition and violated the most basic rights of the Palestinians – the right to life, freedom of assembly and speech, peaceful opposition, and personal security.

Since his arrival in Gaza, Arafat has had critics of the peace process intimidated, threatened, arbitrarily arrested and mistreated, and he has succeeded in corrupting some of the secular critics.[32] The work of journalists, human rights organizations and lawyers is also being impeded. Arafat takes particularly firm action against Hamas and Islamic Jihad, which undermine his authority and provoke with their terror attacks the counter reactions of the Israelis. For example, following the terror attacks of February and March 1996 and September 1997, he ordered the mass arrests of members or supporters of these organizations. Those arrested were denied contact with their lawyers for a month or else contact was made difficult. Meanwhile, numerous social and charitable organizations that are run by Hamas were outlawed in spite of the fact that they fulfilled an important function in the Gaza Strip.

The PLO chief immediately established a comprehensive security apparatus. Besides the regular police, the following eight security services are active: the General Intelligence Service (GI), the Preventive Security Service (PSS), the Presidential Security, Force 17, the Criminal Investigations Bureau, the Military Intelligence (MI), the Naval Police, and the Disciplinary Police. All of these have their own prisons and work without legal regulations. On 7 February and due to pressure from the United States and Israel, Arafat formed a State Security Court, which supposedly serves the 'legal' fight against terrorism. The Palestinian secret services have learned from their mentors, the Shin Bet, and work with both the Shin Bet and the American secret service very closely.

Torture and arbitrary arrests are among the common methods,[33] but there have also been killings that could not be solved. On 4 July 1994, i.e. immediately after Arafat's arrival, the first torture victim was to be mourned. His father stated to the press, "I didn't worry because I knew that he was in the hands of our own people and not in those of the Israelis. I would have never thought that they would be worse than the Jews."

With so many secret and security services, all of which compete with each other, it is difficult for relatives to find out who has dragged off or tortured their loved ones. Even the district governor to whom these services are subordinated is not informed about their actions and cannot interfere when it comes to the violation of people's rights. Arafat's services also disturb the work of the human rights organizations. Director of the Gaza Center for Rights and Law, Raji Sourani, and Jan Abu Shakrah of the Palestinian Human Rights Information Center (PHRIC) had to resign due to their criticism of Arafat's dealings and the State Security Court.

[32] The author pointed this out in the *taz* of 24 September 1994, at a time when most of the world was still enthusiastic.
[33] See Amnesty International, *Palestinian Authority. Prolonged Political Detention, Torture and Unfair Trials*. London, December 1996.

The board of trustees of the Gaza Center for Rights and Law explained Sourani's departure by referring to his 'leadership style'. Both organizations, which made a major contribution to revealing Israel's human rights violations have lost credibility under their new directors. Raji Sourani has built up a new organization, the Palestine Center for Human Rights; Abu Shakrah has returned to the United States because she believes that under the given circumstances there is no future for her in Palestine.

The human rights activist Bassam Eid belongs to the group of people who openly criticize the shortcomings of the PA. The report of his organization[34] reads as follows: "The PNA has chosen to subvert the rule of law...it ignores court rulings, including those handed down by the High Court." The role and function of the military courts are not clearly defined and they accept confessions made under extreme pressure. Haidar Abdul Shafi confirmed this criticism in *The Jerusalem Times* of 30 January 1998: "I can't overemphasize the negative aspects of the judicial system. The Attorney General is deprived of any effective authority and court rulings are not respected." He added: "The PNA are not embarrassed by anything they do."

The PSS and the other security services stick neither to right nor law. Among their activities are kidnappings, torture, and the arbitrary arrests of Palestinians from the West Bank and Gaza Strip. The arrested, who are either interrogated in police stations on the spot or brought forcibly to Jericho, are accused of 'moral violations' such as prostitution or extramarital sexual relations, the use or peddling of drugs, theft or collaboration with the Israeli authorities. Only in a few cases was an arrest warrant issued, a charge formally made, or a defense lawyer accepted. "Torture is a routine and everyday reality in the autonomous areas."[35] The methods used equal those of the Shin Bet, down to the last detail. According to information provided by the Mandela Institute for Political Prisoners in Ramallah, however, torture does not occur as systematically as under the Shin Bet, i.e., not all Palestinian prisoners are mistreated. So far, 18 Palestinian have died whilst in PA custody. The Palestinian authorities like the Israelis put some of these death cases down to suicide, heart failure, or even to a 'mistake'. These explanations are sometimes true, but the use of extreme violence during interrogation cannot be ruled out. Neither the reports on the investigation of 16 death cases nor that on the work of the Authority has yet been made accessible; it is not the prime aim of the PA to reveal injustice and avoid in the future injustice, rather to prevent negative headlines. In the majority of cases, families learn about the death or arrest of their relatives via neighbors or the press.

[34] See The Palestinian Human Rights Monitor, *The State of Human Rights in Palestine in 1997*. Jerusalem, 1998.
[35] *The Jerusalem Times*, 26 December 1997, p.2.

Some death cases should be mentioned here. For example, 26-year-old Mahmoud Jumayyel was admitted to Nablus Hospital under a different name because members of the '*Dahariyye*' (Naval Police) had seriously injured him in the city's prison. From Nablus Hospital he was transferred to Ramallah, where he died on 31 July 1996. Following this, violent demonstrations against the more dubious activities of Arafat's security services erupted. The State Security Court in Jericho sentenced two of the officers involved to 15 years of hard labor and a third one to ten years.

Under unclear circumstances, 24-year-old Nahed Mojahed Dahlan died on 7 August 1996 in the Nasr Hospital in Khan Younis, where he had been brought from Al-Qarara Prison. According to official PA statements, he had committed suicide. After Mahmoud Yousef Dahman, the director of the human rights organization Addameer (Conscience) demanded that the death be investigated, he was arrested on 12 August and accused of the dissemination of incorrect information. He was released on 27 August following international protests. On 11 August 1996 66-year-old Khaled Issa Al-Habal died in police custody in Ramallah. Allegedly, he had also committed suicide. The result of an autopsy conducted in Tel Aviv was not made public.

Over 1,000 prisoners sit in Palestinian prisons for years without being charged. On 22 August 1996, lawyer Husni Kalboni of the Palestinian Society for the Protection of Human Rights and the Environment (LAW) visited prisoners in Jneid Prison in Nablus. When he left the prison, the naval police confiscated his papers on the grounds that he had received the permit for the visit only as a human rights activist and not as a lawyer; prisoners were not allowed to receive legal assistance.

According to *The Jerusalem Times* of 2 February 1996, 15 Palestinians in the district of Bethlehem were badly mistreated by Palestinian security forces. Several members of the PLC demanded an immediate halt to torture. Nevertheless, Nasser Radwan was to become the latest Palestinian for whom there is evidence pointing to death as a result of such treatment. Radwan was arrested on 23 June 1997 by Force 17, beaten and admitted with serious head injuries to hospital where he died on 30 June. An officer testified that he had wanted to teach Radwan a lesson because he had advised the wife of a security officer to dress more moderately in public. The sentencing of the security officers involved took place on 3 July before a military court, which applied Articles 384 and 165 of the 'Law of the Palestinian Revolution'.

On 3 February 1998, 25-year-old Nasser Hiroub died in Dura Prison near Hebron. The evening before, he had been arrested by the police force's

Criminal Investigation Unit. According to the testimony of the police chief of Hebron, he was found the next morning with a shoelace tied around his neck. The Palestinian human rights organizations LAW and PHRMG doubt this suicide thesis, not least of all because the doctor who pronounced Hiroub dead noted that there was blood coming out of the ears and mouth: "This points to internal injuries caused by beatings, presumably involving the head." Jabril Rajoub, Chief of the PSS in Jericho - who spent 17 years in Israeli prisons before being deported to Lebanon in 1988 - has frequently been mentioned in the context of torture against Palestinians. At a press conference in October 1995, he attacked the "politically motivated" human rights activists, especially Bassam Eid, a longtime employee of B'Tselem, and accused him of having worked for the Israeli police as an agent - which equals a death sentence. Bassam Eid and staff of other human rights organizations complained to Yasser Arafat who had his spokesman declare that Eid's life was not in danger but without taking back the accusations. On 2 January 1996, Eid was taken from his apartment in the refugee camp of Shu'fat in East Jerusalem to the police station in Ramallah and kept at the Force 17 headquarters for 24 hours. The background to this incident was that Eid, in a public letter to Arafat, had condemned the closing down of the *An-Nahar* newspaper, referring to it as a harsh attack on human rights "which leaves bad fears concerning democracy in a future Palestinian state."

The attempts of the Palestinian authorities to intimidate their opponents were successful. The Israeli human rights organization B'Tselem is a praiseworthy exception. In its report of August 1995, it listed the torture methods used by the PSS: extremely violent beatings, sleep deprivation, threats, humiliations, and hours-long binding. Some prisoners or persons that were to become such were shot in the legs without reason. PSS Chief Rajoub rejected these accusations, but failed to prove they were wrong. His threat *vis-à-vis* a journalist whose torture he had supervised is also quoted: "I can call the President personally and tell him that I want to kill you and the President will give me his blessing."[36] The B'Tselem report ridicules the following statement of Rajoub, quoted in *Al-Quds* of 10 July 1994: "Most importantly we have to follow law and justice including the principles and the respect of human rights..."

Officially, the PSS may only operate in the Gaza Strip but *de facto* it is effective through Arafat's Fatah movement in every location throughout the West Bank. According to Article 43 of the LWO, Israel is still responsible for the security and welfare of the population under its occupation. However, since it tolerates these activities of the PSS, Israel bears joint responsibility for the numerous violations of the human rights of the Palestinians. The close cooperation between Israeli and Palestinian security services has already led to a secret agreement between the GSS and the PSS. The PSS chief in the West Bank, Rajoub, and his counterpart in Gaza, Mohammed Dahlan, met in January 1994 with then Israeli GSS Chief Ya'acov Peri and then deputy General Chief-of-Staff, Amnon Lipkin Shahak, in Rome. The recently deceased Knesset Member and Minister of Environment, Zevulun Hammer complained on 24 July 1995 that the agreement with Rajoub had never been discussed in the Knesset or submitted for approval and that the government was obliged to submit this document as well as the Rome agreement to the Knesset. Meanwhile, both security services cooperate quietly and effectively on the basis of the Rome agreement. So far, 15 wanted Palestinians have been arrested by the Israeli secret service due to information it received from the PSS.

The State Security Court in particular is scandalous. It operates beyond the regular justice system and is presided over by three incompetent military judges whose decisions must be approved by Arafat. The foundation decree points to the fact that this court is based on the Egyptian procedure regulations of 1962. The court is to deal with crimes that concern "the security in the country and outside" and "other crimes that undermine the security and the welfare of the security authorities," which include offences committed by members of the Palestinian security forces. Everyone who "deliberately commits an act that harms the independence of the State will be sentenced to death."

The court violates even the minimal standards required for a fair trial. The prisoners and their relatives are informed about the charges only immediately before the beginning of the trial, press representatives are not allowed, and the only lawyers accepted are those assigned by the court who belong, in part, to the security services. In addition, no minutes of the trials are made available. The court convenes almost exclusively by night according to former Palestinian General State Attorney Khaled Al-Qidrah, the trials end the same night they begin, usually within minutes, and it is impossible for outsiders to talk to the judges or the sentenced. The court issues draconian punishments against which one cannot raise objections and the sentenced can only appeal to the mercy of Arafat who has the power to increase or reduce a punishment.[37]

[36] See B'Tselem, *Neither Law nor Justice. Extra-Judicial Punishment, Abduction, Unlawful Arrest, and Torture of Palestinian Residents of the West Bank by the Palestinian Preventive Security Service.* Jerusalem, August 1995; see also LAW's Report on *Security Services' Violations against Citizens*, Jerusalem 1997.

[37] See Amnesty International, *Trial at Midnight. Secret, Summary, Unfair Trials in Gaza.* London, June 1995.

This secrecy protects the court from criticism by the public, the press and the human rights organizations. Nevertheless, it has been praised by certain sides, which seem to be more interested in the maintenance of a dictatorship than in law and order. Before the court convened for the first time, US Vice President Al Gore voiced his admiration of it according to *The Los Angeles Times* of 26 March 1995, referring to it as "an important step in the direction of confidence building measures in this peace process and the effort of the Authority to control violence and stop terrorism as well as to defeat the enemies of the peace process." In a speech before the Institute for Near-East policy in Washington on 5 April Al Gore spoke about the controversy over the State Security Court. "I personally believe that the accusations are wrong and that the Palestinians do the right thing and go forward with the court judicial procedures." The former Israeli Minister of the Environment also expressed satisfaction after the first sentences as one could read in *The Jerusalem Post* of 12 April 1995: "We had special demands, one of which was to bring the terrorist to court, which happened yesterday, and this is how it should be. If we become convinced that this is not a one-time action, but part of a determined and permanent policy, then I believe that the chances for the finalization of the negotiations by 1 July and their implementation in the autumn will increased." Neither the deputy spokesperson of the State Department Christine Shelly nor Foreign Secretary spokesman Nicholas Burns saw reason in April 1995 to find fault with the performance of the court. Upon being asked a question in this regard, Burns only said that he hoped that certain human rights standards and law and order principles would be respected by the court. Palestinian human rights organizations and the Palestinian Bar Association, however, had immediate reservations. Subordinate to the State Security Court are special military courts that work according to the orders of Arafat, who also decides upon the judges prior to each new trial. The Supreme Courts in Ramallah and Gaza are reproductions of the Supreme Court in Israel. Arafat and his secret services ignore their decisions if they are not to their liking. For example, on 18 August 1997, the Supreme Court ordered the release of ten Birzeit University students who had been imprisoned in Ramallah without charge since March of that year. However, they were only released months later.

How the courts function in the autonomous areas is not widely known. The following report allows an insight into the work of the military courts. Arafat had ordered Jibril Rajoub to sentence three Palestinians within a few hours in August 1997 following the killing of an Israeli taxi driver. Two hours before the 15-minute trial began, the court was put together upon Arafat's instructions: it consisted of three policemen, two of whom had just passed their legal exams, while the third had no legal knowledge whatsoever. The trial took place in the police station since all

of the three accused men had made a comprehensive confession; one of the policemen even said that he did not understand why they should waste time with a trial. The prosecutor informed the accused of the charge and shortly after the sentences were announced: two of the men received life sentences and the other 15 years of hard labor.

General State Attorney Fa'ez Abu Rahmeh was shocked as he told *Yerushalayim* of 27 August 1997: "As a Palestinian lawyer, I am ashamed about what happened this weekend in Jericho. I cannot understand how such a trial could take place without my being informed about it beforehand. Nobody bothered to inform me, neither before nor after the trial." Before Abu Rahmeh had taken on his new post, he had been the chairman of the Palestinian Bar Association. How powerless the general State Attorney is was also illustrated when he ordered the release of Rajab Hassan Al-Baba and the man was re-arrested by the security services the very same day. When asked about this incident, Abu Rahmeh replied, "that some responsibilities are reserved for other departments." This is a legally unacceptable situation, and any future reform of the legal system must start with the secret services.

Two weeks after the trial mentioned above, the military court convened in Nablus with a completely different composition to sentence five Palestinians from Tulkarem who were accused of disrupting public security to long-term sentences. They had been arrested during a demonstration against the PA.

According to the Oslo Accords, Arafat is obliged to hand over criminals to Israel. Since he could be accused of failing to do this, he tolerates trials that are more than questionable from a legal point of view. Only few Palestinians dare to come out with such clear criticism as a well-known lawyer from Ramallah: "We make ridiculous our whole profession and the judicial system in appearing before this court [the State Security Court]." The so-called peace camp in Israel around Peace Now or the Meretz Party has never moaned about the humiliating trials.

The Palestinian psychiatrist Iyad Sarraj said in an interview with *The New York Times* of 6 May 1996 that in the autonomous areas, chaos, arbitrariness, suppression, and complete legal insecurity prevail: "The people feel intimidated. There is an overwhelming feeling of fear. The regime is corrupt, dictatorial and suppressive. I am saying that with a feeling of sadness, but during the Israeli occupation I was 100 times freer. I wrote in the Israeli and Arab press, whereas today I am being boycotted by our press and television. There are many arbitrary arrests without charge and without reason. The authorities maintain nine security services, each of which

has its own prisons. People are systematically tortured." With regard to the Israeli occupation, Sarraj said the following: "Under the occupation, we felt the brutal violence but we did not feel the daily humiliation that we experience today now that we are being suppressed by our own government...This process has turned Gaza and the West Bank into a new prison. President Arafat is being humiliated; his people are humiliated. We are not proud of our government." He added that the pressure would increase through the catastrophic economic situation: "The people are thrown back to their natural instincts and they react apathetically if they hear anything about democracy and human rights. What they are concerned with is bread. The atmosphere in Gaza is not positive. The people feel alienated, depressed, and desperate."

Sarraj heads the Palestinian Independent Commission for Citizen's Right (PICCR), which was established according to a decree issued by Arafat on 30 September 1993 (published in the Official Gazette no. 59/1995). He has stood up for many years for 'peace in dignity' with Israel. As he told *The New York Times*, "The kind of peace we have equals a total psychological surrender. It is much more harmful to the individual than the leading of a war."

Sarraj stressed that the Oslo Agreement has brought neither human rights nor peace and that "the situation is worse than before." He said that Arafat described to him his mission with the following words: "I don't care anything about human rights. I have to care about security. No one will stop me founding this state." For two years, the General State Attorney has not answered the letters of Sarraj: "Without human rights and democracy we have no future." Before the Palestinians can find a way out of their dilemma, they according to Sarraj have to "cope with their own internal diseases."[38]

Sarraj has intervened following the arrest of lawyers and human rights activists as well as in regard to torture and other violent encroachments of the PA. In its annual report of 1995/1996, the PICCR recommends to Arafat's PA measures that could make an essential contribution to the legal security and the guaranteeing of civil rights: a reduction of the security apparatus, the cancellation of the death sentence, a presidential decree to guarantee the rights of the citizens; and many other things.[39]

[38] See Ludwig Watzal, "Iyad As-Sarraj" in *Orient*, 37 (1996) 4, p.573-577; Ludwig Watzal, "Ein korruptes und diktatorisches Regime – Es gibt unter Arafats Herrschaft schwere Verletzungen der Menschenrechte" in *FAZ*, 14 November 1996.
[39] See the Palestinian Independent Commission for Citizen's Rights. Second Annual Report, 1 July 1995 to 31 December 1996, n.p., n.y. [1997].

On 18 May 1996 Sarraj was arrested by the PSS in Gaza and only released after intensive international protests on 26 May. According to General State Attorney Khaled Qidrah, the investigation continued. Sarraj had to sign a 'binding promise' that he would make no further comments to the local or international press that contradict the law. The security forces threatened to kill him if he made one more critical public statement.

On 10 June Sarraj was arrested again because the security service had allegedly found hashish in his office. Because he had been accused of attacking a security officer, he was brought before the State Security Court three days later. The officer had a plastered hand and Sarraj identified him as the man who had beaten him. At the time, his whereabouts remained secret and neither his family nor his lawyers were allowed to visit him. In September 1996 he told me about his physical condition after being mistreated by his own people.

The repressive actions taken against Sarraj had the desired effects. After his release, the Authority did not make a public statement, and Sarraj himself exercised restraint in an interview with the author that appeared on 16 July 1997 in the *taz*.

The many unknown Palestinians that are behind Arafat's prison bars because they criticized the autonomy agreements should induce the international public to protest against the arbitrariness of the PA.

The killing of Palestinian land brokers in mid-1997 provoked a controversial discussion in Israel and the autonomous areas. Every Palestinian who sells or otherwise gives land to Jews is considered a collaborator. According to Islamic Law, land sales to 'the people of the book', [including Jews] is not principally prohibited but when it, as in the case of Palestine, disturbs the interests of the community, if it considered illegal or unlawful. The PA ordered the death sentence in the case of 'land sales to enemies'; after a few Israeli Palestinians had sold property to Israeli Jews, three land brokers were found murdered, presumably by Arafat's secret service. A fourth committed suicide in Jericho Prison and others were arrested. There are dozens currently in prison, including in the B and C zones, where Arafat has no governing power.

The killing of the land brokers Farid Al-Bashiti and Harbi Abu Sara came to the attention of the international public. The corpses were found on a street in Ramallah. Al-Bashiti's hands were bound together, his limbs broken and his mouth closed with tape. Abu Sara had been killed by four shots to the head. All indications pointed to members of the PSS being behind these murders, especially since the 'death sentence' had been talked

about by their own minister of justice. The Israeli police held PSS chief Rajoub responsible for the murders but did not mention his name.

The land sales follow the law of supply and demand. Why does the Palestinian leadership react so harshly in these cases, taking into consideration the fact that previous generations have sold Palestine? Perhaps the claim of the Israeli Government that three quarters of Har Homa is Jewish property is true.

Although according to Article 2 of the Palestinian Press Law there is freedom of press, newspapers are repeatedly closed down and journalists intimidated. That they are completely exposed to Arafat's secret services, which threaten them with torture and arrest, is to a certain extent due to the total closure imposed by Israel.

Al-Umma newspaper had to close down in May 1995 four months after being founded because its newsrooms were set alight and the editor received threatening phone calls after it published several critical articles and caricatures ridiculing Arafat. When the press organs of Hamas and the Islamic Jihad were closed after the bomb attacks in February and March 1996, Arafat donated US$31,000 to Hamas so that it could immediately found a new newspaper, *Al-Risalah*. A local newspaper in the city of Jenin had to stop appearing after the editor was temporarily arrested. *An-Nahar* was forbidden from being published from August to September 1994. The same August, even the biggest newspaper *Al-Quds*, which had published an ad of the Hamas movement and a statement made by PLO 'foreign minister' Farouk Qaddoumi calling Oslo a 'selling out' was temporarily closed.[40]

In the first two years of the autonomy, 25 journalists were arrested. On 24 December 1995, Maher Alameh, an editor with *Al-Quds*, received by telephone an order to run a front-page story on the meeting between Arafat and the Greek Orthodox Patriarch on the front page. His refusal earned him five days in prison, yet not a single Palestinian newspaper covered the story. The editor of Al-Bilad, Assad Al-Assad, was summoned by Rajoub because he had published an article that dealt with corruption. Because of an article about the acceptance of bribes, the Gaza correspondent of the newspaper had his ID revoked and was arrested for two days. At the beginning of 1997, the PA summoned several journalists for 'consultations'

[40] See Human Rights Watch/ Middle East, *Palestinian Self-Rule Areas. Human Rights under the Palestinian Authority*, 9 (1997) 10. A more differentiated version from a Palestinian perspective can be found in Samih Muhsen, *Freedom of Press and Opinion under the Palestinian Authority*. Jerusalem: LAW, June 1996.

during which they were ordered to adhere to certain rules pertaining to their behavior.

The arrest of Palestinian Daoud Kuttab who holds an American passport in July 1997 caused a stir. Kuttab was summoned to the police late at night - for a cup of coffee - after broadcasting sessions of the PLC on television. After four days in police custody, and three days in Ramallah Prison, Kuttab was released following protests by local human rights groups and the American Government. In order not to endanger any colleagues, Al-Quds Television no longer broadcasts via the educational channel parliamentary debates, in which PLC members sometimes criticize Arafat and his authority.

The PA succeeded in intimidating journalists and editors to such an extent that many of them now consider self-censorship a patriotic duty. They report primarily on the political activities of Fatah and barely touch the issue of human rights violations. PSS chief Rajoub decides daily with the editor-in-chief of *Al-Quds* newspaper, which articles are to appear on the front page. Arafat's office intervenes in other newspapers in the same manner, and of course, it also issues instructions concerning the publication of success stories. The abandoning of critical thinking prevents the media from revealing the deplorable state of affairs and giving the society new impetus, and the Palestinian media has become nothing but a propaganda instrument and the mouthpiece of the PA. The status of the media in Palestine resembles that of the semi-official press in Egypt. The Palestinian Human Rights Center in Gaza has accurately characterized the Press Law as follows: it "controls the information that the Palestinians receive through the written word."

Just like in a dictatorship, publications that originate from abroad are also subject to censorship. For example, two books of Edward Said were confiscated in the autonomous areas. The renowned Palestinian Professor of Literature who teaches in the United States has belonged for years to the sharpest critics of Arafat and the peace process. He sees in Arafat the "governor of the Israeli occupation with different means."

In the autonomous areas, arbitrary arrest waves do not only follow Palestinian terror attacks. Often the PA simply wants to demonstrate that it has the power to take action against 'extremists' and 'terrorists'. In spring 1996, approximately 900 Palestinians - including 85 in the Ramallah district alone - were arrested throughout the autonomous areas after the terror attacks took place and told that they would have to remain in prison for 100 days. A secret service officer divided them into three categories: "Group A are those Israel wants to see in prison. Group B includes those

the Palestinian Authority wants to see in prison. Group C consists of a certain quota in order to satisfy Israel." The political officer for the district of Ramallah, Said Abu Walid, declared to the prisoners' committee "We are one people and we must cooperate. The PA does not have a lot of money, therefore, they [the prisoners] have to bear the cost of their own catering. They are our guests here but at their own expense." One man who wanted to bring some food to some of the prisoners was also imprisoned for four weeks; the guard explained to him that he looks like a member of Hamas (he had a beard). The conditions in the prison of Ramallah were catastrophic, and it came to a hunger strike, which was not reported about in the press.

Ahmad Saadat, a PFLP member, was interned for years in Israeli prisons. After the PFLP killed a settler and her son near Ramallah in the summer of 1996, he was again arrested, although it was completely clear that he had nothing to do with the murder. After six months, he decided to go on hunger strike in order to secure his release. He was only released when on the verge of death and he subsequently collapsed, but after days-long treatment in an intensive care unit, he eventually recovered. His case however had stirred a wave of solidarity.

Many Palestinians give the impression that they had more freedom under the Israeli occupation than they have under the rule of Arafat. Certainly, human rights organizations could work more freely during the occupation. Iyad Sarraj put it this way in an interview with the author that appeared in the *taz* of July 1997: "In the field of freedom of opinion and the press, there was a larger spectrum of possibilities... in everyday life, there is a certain fear of expressing one's opinion freely. One is afraid of being denounced to the security forces. This does not mean that it happens in every case but the feeling is there."

Parallel to the creation of an internal repressive apparatus was the emergence of Mafia-like structures in the Gaza Strip. The control over the most important economic spheres makes ministers and other high-ranking government representatives millionaires while the large part of the population becomes poorer. As long as the PA does not establish democratic institutions and nobody bears the responsibility for violations of the law, the fertile soil for corruption and human rights violations will continue to bear fruits. In order to break the spiral of violence and terror, the security forces must respect human rights.

In an impressive article about the 'Arafat system' and the international donors that appeared in *The Guardian Weekly* on 27 April 1997, David Hirst wrote the following: "Rarely can a revolution have degenerated like

Arafat's and yet survive. It only survives because in robbing his people to bribes his bureaucrats, he has proved so great a commitment to the peace process that the parties on which he now completely depends – the Israelis, the Americans, the international community at large – are willing to ignore, even encourage, his manifest corruptions."

One could ask if the EU is not embarrassed when it discovers that Arafat and his Tunisians put more aside privately through corruption and monopolization than the Union could pledge in aid funds. For how much longer do they want to finance the horrendous salaries of foreign 'consultants' that hang around the Orient House in East Jerusalem?

How self-satisfied this new class behaves is illustrated in the immense rental debts of some high-ranking officials. One of the highest representatives of the PA owed the rent for a villa for more than one year. He advised the owner to bring his case before the court or to turn toward the Palestinian Ministry of Finance, which subsequently wrote that due to the difficult financial situation, it could not bear the cost of the rent. The house owners are helpless because their PA tenants threaten them with the Palestinian security services while the courts refuse to take on their cases.

The result is depressing. The Israelis continue unabated their arbitrary actions *vis-à-vis* the Palestinians and continue to violate their human rights. In Arafat's sphere of power, the democracy deficit is even larger: the PLC is destined to play only a symbolic role; the large scope of corruption and nepotism is constant; the PA tolerates the excesses of its security services; the judicial system mocks the law; and the media is being censored like in all other Arab states. Ultimately, the PA is only a façade for Arafat's one-man dictatorship. Arafat is president, the head of government, supreme judge, state attorney and defender rolled into one. He stands above the law, holds all power in his hands, and controls all the money, including the huge amounts of international donations.

The PA considers every deviating opinion as treason, and renowned critics such as Edward Said or Iyad Sarraj are being slandered and tortured. Arafat has lost the trust of the Palestinian Diaspora and his reputation in the autonomous areas is also deteriorating. Under the prevailing circumstances, there is little hope for democracy and the respect of human rights.