

## Position Paper

# **Crises in the PNA: Events and the Challenge of Reform**

## Palestinian Centre for Human Rights

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## **Introduction**

The oPt are witnessing a severe internal crises that effects all aspects of the life of Palestinians and threatens both their security and safety. As-well as this, it threatens the ongoing struggle for independence and for an the end to the belligerent Israeli occupation. While the roots of the crises may be traced back many years the crises reached a pinnacle in the middle of July 2004 in the shape of a series of attacks, kidnappings and other illegal activities perpetrated by individuals and/or militant groups. These actions reflect the total absence of the rule of law and the chaos which has resulted as a consequence of the proliferation of small arms and militarization of Palestinian society. The then PNA responded with a series of measures including new appointments, rotation of senior figures and merging of the security services.

It is regrettable that these attacks have been, in one way or another, directly or indirectly linked to demands for reforms to the PNA and its associated institutions. PCHR contends that this violence is just a mask for other demands and in fact undermines the long term goal of establishing genuine democratic reforms in Palestinian political society. It is also regrettable that the measures which have been taken by the PNA, in response to these activities, give the appearance of reform but were not genuine.

This position paper attempts to outline the position of PCHR with respect of the current developments in the oPt. The demands for reforms are of unquestionable legitimacy but to confuse them with the recent outbreak in violence and the subsequent response from the PNA is a grave mistake. This paper also tackles major issues of concern, outlining what PCHR believes are the fundamental principles, which must be implemented, to ensure institutional reform within the PNA.

The current crises was sparked on the afternoon of July the 16<sup>th</sup> when a militant group calling itself the “Jenin Brigades” kidnapped Major-General Ghazi Jabali, the Chief of the Palestinian Police and demanded his immediate resignation and that an investigation be launched into accusations of corruption made against him. A few hours later a second group calling itself “Abu al Rish Brigads” kidnapped Colonel Khalid Abu al Ula, a senior officer responsible for the Palestinian side of the Joint Security Coordination and Cooperation Committee in the Southern Area. The kidnappers accused him of corruption and collaboration with Israel. They also demanded that he integrate members of their group, through employment, into the security services. Shortly after this another group of the same name kidnapped four French Humanitarian workers in protest against statements made by Terje Rode Larson who stated in a report that the Palestinian authority had made no progress on "its core obligation to take immediate action on the ground to end violence and combat

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terror, and to reform (itself)". He referred to a lack of political will, to the government's "paralysis" and placed blame at the highest echelons of the Executive Authority for its "diminished credibility" abroad.<sup>1</sup> The gunmen also demanded that the PNA instigate reforms to stamp out corruption. Despite the safe release of the hostages, within the space of a few hours, the situation had not been stabilised and the crises continued. That same day the head of the Palestinian Intelligence Services Major-General Amin al Hindi and Head of the Preventative Security in the Gaza Strip Colonel Rashid Abu Shbak both tendered their resignations to President Arafat. They were protesting at the deterioration of the security situation. On July the 17<sup>th</sup> Prime Minister Ahmed Qurai announced his resignation to President Arafat.

In the middle of these events, on July the 17<sup>th</sup>, President Arafat took a number of steps which appeared to be a response to these developments and the supposed demands for reform made by militant groups. These measures caused a further escalation in the ongoing crises. The steps taken did not touch on the real and pressing areas where reform is required. President Arafat appointed Major-General Mousa Arafat, Head of Military Intelligence, to the position of General Commander of the National Security Services to replace Major-General Abdul Razzaq al Majaida. The President also appointed Major-General Sa'ib al Ajis, the head of the National Security Forces in Northern Gaza, as Chief of the Police, replacing Major-General Jabali. A Presidential decree was issued unifying the Palestinian Security Services into three distinctive apparati: National Security, Police and General Intelligence Services.

Protests erupted against these measures, particularly against the nepotistic appointments, and their implications for the absence of further reform in the PNA. Demonstrations took place across the oPt, particularly in the southern Gaza Strip area. Members of some of the Security Forces, and of the al-Aqsa Brigades (the military off-shoot of the Fatah movement), participated in these protests. On the evening of July the 17<sup>th</sup> to the 18<sup>th</sup> hundreds of armed young men from the Preventive Security Service and the al-Aqsa Brigades attacked the Military Intelligence HQ in Rafah. Clashes erupted leaving 14 people injured and, later, one of them, a 15 year old child, was pronounced dead.

Given the continued deterioration in security President Arafat took further steps Abdul Razet al Majida was promoted to Lieutenant-general and appointed as Commander of the National Security in the West Bank and Gaza Strip. Mousa Arafat had his new appointment as Head of National security restricted to control over only the Gaza Strip area. Simultaneously Ismail Jaber was also promoted to the rank of General and appointed as head of National Security in the West Bank. General Ribhi Arafat was appointed as Head of the Border

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<sup>1</sup>*For the First Time the Pressure is From Within*, Chris McGreal; The Guardian, Monday 19<sup>th</sup> July, [www.newsunlimited.co.uk](http://www.newsunlimited.co.uk)

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Security, to replace General Khalid Sultan. Ribhi Arafat also kept his current position as Chief of the Palestinian side of the Joint Security coordination and Cooperation Committee in the West Bank and Gaza.

The new appointments did not quell the protests, rather the events had ramifications in other areas across the West Bank and Gaza. The attacks reached an unprecedented level when unknown militants shot the former Minister and PLC member Nabil ‘Amru while in his home in Ramallah. His injuries were severe and resulted in the amputation of his leg. At the point of publication the security situation was still deteriorating and further attacks were reported reflecting the continuing state of chaos and the absence of the rule of law: in Nablus a militant group kidnapped three foreign nationals on July the 30<sup>th</sup> and took them to Balata refugee camp until Palestinian police negotiated their release. A few hours later militants, from al-Aqsa Brigades, set fire to the Govenornate HQ in Jenin as-well as the General Intelligence HQ.

It was reported that individuals and militant groups close to the Fatah movement were behind all of these attacks. The PNA has neglected, for a considerable amount of time, the demands for real reforms as raised by Palestinian civil society, political forces and even by the PLC. The delayed steps taken by the PNA, including the new appointments can not be considered as being genuine steps towards reform. Rather they are a reaction to the current internal crises. Consistent with this is the fact that the perpetrators of the attacks do not have a genuine interest in reform either. It is unacceptable that they exploit demands for reform to justify illegal and dangerous activities which undermine the rule of law and the calls for reform. The current events, under the pretext of reform, are the result of the chaos resulting from the proliferation of small arms and the lack of rule of law. These activities do not serve the process of reform, rather they undermine it. They do not catalyse the process of democratisation, rather, once again, they undermine it. Such attacks and violations contradict the demands for reform and for the primacy of the rule of law and contribute only to strengthen corruption and the poor state of security in the oPt.

Such events are a dangerous indicator of the continued deterioration in the internal situation. Unless confronted directly and immediately the situation may deteriorate further. The deterioration must be stopped by real and genuine steps towards reform, including prosecution of those responsible for the attacks in order to punish them and prevent reoccurrences. PCHR believes that the steps taken so far by the executive, including the appointments and the unification of security services do not contribute to the genuine reform process. Rather they have escalated the situation and deepened the crises.

For many years civil society, the PLC and political forces, demanded real and genuine reform on all levels and institutions. These calls were enhanced by the release of a report in 1996 by the State Comptroller’s office in which members

of the government and influential figures in the PNA were accused of corruption. No actions were taken against these people and they remained in their offices. Unquestionably, the neglectful approach taken by the Executive Authority to the demands for reform has contributed to the current crises. PCHR believes that the PNA Executive Authority is the key factor and the basic starting point for real and genuine reforms to counter corruption ensure the rule of law. It is worth mentioning that in the past the PNA has taken some steps towards reform, as a result of external and internal pressure, including some legal reforms through adoption and amendment of the Basic Law and the promulgation of Judicial Authority Law. Other financial reform steps were also taken and they proved to be necessary but inadequate but further vital steps are needed to enhance the reform process.

All reform is a process that relates to political decisions and political will that must be translated into a series of specified steps governed by a vision and approach. Reforms can never be attained through spontaneous reactions to the unpredictable events. Reform must be a comprehensive strategic goal rather instigated with a piecemeal approach. This position paper includes a section summarising the developments and the other section proposes some steps which must be taken for genuine reform.

## **Summary of Developments on the Ground**

This section of the report highlights internal developments and incidents in the oPt from Friday, 16 July 2004 up to the time publication. A series of attacks took place which resulted in this current crises. These attacks brought a sharp focus onto the ongoing internal deterioration of the situation in the PNA and illustrate the need for comprehensive internal reforms.

### **Friday, 16 July 2004**

- At approximately 14:30, a number of gunmen from "Jenin Martyrs Brigades," known for its links with the Fatah movement, intercepted a convoy carrying the Chief of Police, Major-General Ghazi al Jabalai, on the costal road near the entrance of Nusseirat refugee camp in the central Gaza Strip. They kidnapped him and took him to the near-by al-Boreij refugee camp. Al Jabali was released 3 hours later following commitments to consider the demands of the kidnappers, who accused al Jabali of corruption.
- At approximately 19:00, an armed group, linked with the Fatah movement, known as the "Martyr Ahmed Abu al Reesh Brigades" kidnapped the Commander of the Palestinian Liaison Force in the southern Gaza Strip area; Colonel Khalid Abu al Ula. The kidnappers released statements to the media stating that Abu al Ula was kidnapped to pressurize the PNA into meeting their demands to re-employ a number of members of security services who had been dismissed, and for his alleged corruption and collaboration with Israel. Abu al Ula was released the following morning.
- At approximately 21:30, another armed group, the "Martyr Ahmed Abu al-Reesh Brigades", kidnapped 4 French citizens, including 2 women, while they were sitting in a coffee shop in Khan Yunis. The kidnappers stated that they carried out this operation in protest against Terri-Rod Larsen's criticism of the Palestinian Authority, and to demand an end to corruption. Negotiations with the kidnappers concluded with the release of the French citizens as a result of further commitments to consider demands related to the local situation.
- The Chief of the Palestinian General Intelligence, Ameen al-Hindi, and the Chief of the Preventive Security Service submitted their resignations to President Yasser Arafat following the release of Ghazi al Jabali. The resignations were a protest against the deteriorating internal situation in the oPt.

### **Saturday, 17 July 2004**

- The Palestinian National Security Council declared a state of emergency in the oPt. Palestinian police were deployed in large numbers around ministries and public institutions, and all annual leave of members of the security services was suspended.

- In the morning, the Palestinian Prime Minister Ahmed Qurai submitted his resignation to President Yasser Arafat. He attributed this step to the inability of the cabinet to put an end to this state of internal chaos. Qurai called on President Arafat to declare the cabinet void. At an emergency cabinet meeting Qurai also informed them of his resignation.
- President Yasser Arafat appointed the Director of the Palestinian Military Intelligence, Major General Mousa Arafat, to the post of Chief of the Palestinian National Security Force, in addition to his current post.
- A special committee formed by the Palestinian Legislative Council (PLC), headed by the Speaker Rawhi Fattouh, met with the Prime Minister Ahmed Qurai to discuss the state of chaos in the Gaza Strip. Qurai submitted a report on the situation to the committee.
- The streets of the southern Gaza Strip and Gaza City witnessed demonstrations that rejected the appointment of Major-General Mousa Arafat to his new posting of Chief of the Palestinian National Security Force. A number of members of the security services and the al-Aqsa Martyrs Brigade participated in those demonstrations.
- In the evening, President Yasser Arafat issued a presidential decree ordering that all the Palestinian security services would be merged into three distinct bodies: the National Security Force; the Police; and the General Intelligence Service.

#### **Sunday, 18 July 2004**

- In the morning, a number of gunmen attacked a site belonging to the Palestinian Military Intelligence, in Gizan al-Najjar area in Khan Yunis. The attack was a protest against the appointment of Major-General Mousa Arafat to the post of Chief of the Palestinian National Security Force. The gunmen set fire to the site and 4 vehicles, and held a number of members of the security services inside the building. The gunmen also confiscated some weapons.
- Demonstrations were organized in Rafah, Khan Yunis, the central Gaza Strip and Gaza City in protest to the appointment of Major General Mousa Arafat to the post of Chief of the Palestinian National Security Force demanding the instigation of a reform process by the Palestinian leadership. A number of members of the security services and the al-Aqsa Martyrs Brigade participated in those demonstrations.
- Chief of the Palestinian Naval Force, Major General Joma'a Ghali, submitted his resignation to President Yasser Arafat in protest against the situation in the Gaza Strip and the general state of chaos there.
- At approximately 20.30, hundreds of armed young men, who were participating in a demonstration organized by al-Aqsa Martyrs Brigade in Rafah, surrounded the headquarters of the Palestinian Military Intelligence Service in the east of the town. They called on security members inside the headquarters to surrender. When the

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security members refused to surrender, the young men opened fire and threw hand-made grenades and Molotov cocktails at the headquarters. Immediately, an exchange of fire took place between the young men and the security men, and 18 Palestinians, mostly civilians, including a journalist from Reuters (Ahmed al-Baba), were injured. Three of those who were injured were in a serious condition. On Monday, 26 July 2004, medical sources declared that Hani Mansour al-Sha'er, 16, died from an injury he sustained in the head during these clashes. Al-Sha'er was passing by the area and was not participating in the clashes when he was injured.

### **Monday, 19 July 2004**

- President Yasser Arafat promoted Major General 'Abdul Razzaq al-Majaida to the rank of Brigadier-General and appointed him to the post of Chief of the Palestinian National Security Force in the West Bank and Gaza Strip. President Arafat also appointed Major-General Mousa Arafat to the post of Chief of the National Security Force in the Gaza Strip, and promoted Brigadier Isma'il Jaber to the rank of Major-General and appointed him as Chief of the National Security Force in the West Bank. These steps indicate that President Arafat did not surrender to the demands of the protesters, especially with regard to the appointment of Major-General Mousa Arafat.

### **Tuesday, 20 July 2004**

- UNRWA moved 20 members of its international staff from the Gaza Strip to Jerusalem to ensure their safety as a result of the state of chaos in the Gaza Strip.

### **Wednesday, 21 July 2004**

- A number of Palestinian gunmen kidnapped the head of the Coalition of Local Councils of the villages around Nablus, Fadel al-Shouli, and took him to Balata refugee camp. He was released 2 hours later.
- The Palestinian Legislative Council held an emergency session to discuss the state of chaos in the Gaza Strip and a report and recommendations which had been submitted by a special committee. The committee had been formed to discuss the political situation in the Gaza Strip. The PLC urged President Arafat to accept the resignation of Prime Minister Ahmed Qurai, which the council held responsible for the incidents that took place recently.
- In the morning, a number of Palestinian gunmen broke into the Headquarters of Deir al-Balah Municipality. They destroyed some properties of the municipality and demanded it to re-supply the refugee camp with water, which had been cut since Israeli occupying forces destroyed the water network of the camp. A number of gunmen seized the car of Mayor Sami Abu Salim.
- A number of unidentified gunmen shot a member of the Palestinian Legislative Council, Nabil 'Amru, while he was inside his house. He was wounded by 2 live bullets in the right foot. He was evacuated to Sheikh Zayed Hospital in Ramallah.

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Then, he was transferred to a Jordanian hospital, and later he was transferred to Germany, where his leg was amputated.

### **Saturday, 24 July 2004**

- At approximately 05:00, around 20 people, all armed and known for their affiliation to the Fatah movement, broke into the building of Khan Yunis Governorate. They prevented the governorate's staff from entering the building. Those persons demanded the re-employment of a number of security men who had been dismissed and the dismissal of Major-General Mousa Arafat. This crisis was ended at approximately 11:30 following contacts between President Yasser Arafat and the armed group and the negotiations between them, the political parties and security services.
- A number of unidentified persons set fire to a police station in al-Zawaida village in the central Gaza Strip. The station was totally burnt, and a neighbouring office of the local council of al-Zawaida village was damaged.
- President Yasser Arafat appointed Major-General Rebhi Arafat to the post of Chief of the Border Security Force in addition to his current post, Chief of the Palestinian Military Liaison in the West Bank and Gaza Strip. President Arafat also appointed Chief of the Border Security Force Major-General Khalid Sultan as an advisor to Maj.-Gen Arafat.
- A number of unidentified gunmen surrounded the building of the Ministry of Interior in Qalqilya. They opened fire at the building. Then, they broke into the building and searched it. The gunmen demanded the dismissal of the security official from the ministry, accusing him of corruption.

### **Friday, 30 July 2004**

- In the evening, 4 gunmen kidnapped 3 foreign nationals; citizens of Ireland, the U.K. and the U.S.A– they were taken from Nablus to Balata refugee camp, while they were returning to their home. The 3 foreigners were released after the Palestinian police surrounded house where they had been taken.

### **Saturday, 31 July 2004**

- In the morning, a number of gunmen, known for their affiliation to the al-Aqsa Martyrs Brigade (an off-shoot of the Fatah movement), set fire to the building of Jenin Governorate. The leader of the brigade stated that this act was an expression of their frustrations at the refusal of the new Governor of Jenin, Qaddoura Mousa, to fulfil demands to pay salaries for members of the brigade.
- A few hours later a number of gunmen from the al-Aqsa Martyrs Brigade set fire to the building of the Palestinian General Intelligence in Jenin. They prevented fire engines from reaching the building. The leader of the Brigade, Zakaria Zubaidi,

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stated that the act was a response to the alleged pursuit by the General Intelligence of members of the resistance.

### **Sunday, 1 August 2004**

- Around 50 gunmen, from al-Aqsa Martyrs Brigade, broke into a meeting of a number of members of the Palestinian Legislative Council and some leaders of the Fatah movement, who were discussing the issue of corruption and the deteriorating situation in Nablus. The gunmen opened fire to disperse the meeting, but no casualties were reported.
- Nearly 200 gunmen of al-Aqsa Martyrs Brigade, led by Zakria Zubaidi, organized a demonstration in Jenin refugee camp. Zubaidi stated that the demonstration was not against President Yasser Arafat contrary to what some members of Fatah movement claimed. Observers believe that the demonstration was an exhibition of the force that has begun to characterize the internal debate in the PNA.

### **Monday, 2 August 2004**

- In the early morning, a number of unidentified gunmen, travelling in a car, fired at the house of the Mayor of Nablus, Ghassan al-Shaka'a, who is known for his strong support for President Yasser Arafat. No casualties were reported.

## **Proposed Steps for Reform**

The process of reform basically requires the political will to make real changes that can be translated into a series of steps. The following is a number of demands relevant to the process of reform: related to elections, security services, the Attorney General, the judiciary, the performance of governmental institutions, the comptroller and the human rights situation.

### ***(1) General and Local Elections***

While elections provide a means for delegating authority from the people to an executive power they are also a mechanism which must include, and ensure, accountability. The periodic subjection of the political class to the test of public will is, in and of itself, a system of ensuring such accountability. Accordingly, in the context of a democratic system, it is not enough to simply have free and fair elections but also periodic elections.

Since the general election of January 1996 the Palestinian leadership has never been subjected to this democratic test through the holding of new elections. According to the Interim agreements (also known as the Oslo Accords) the jurisdiction of the current PLC expired in May 1999. With the completion of this interim stage it was anticipated that new elections would be held. This has not occurred until now. The PNA has never been serious in seeking electoral accountability to reinforce its mandate. This has been the case at both local and general level. The death of some members of the PLC, and the ensuing failure to hold by-elections, is an indication of

this.<sup>2</sup> The policy of the PNA has been to ignore the election issue in the hopes that it will simply disappear or a more appropriate time will be found to hold the elections. This policy has been accompanied by the stagnated political process between Israel and the Palestinians. The elections have also been obstructed by the continued failure of the Israeli occupation authorities to implement further redeployment of its forces in the West Bank and the continued accelerated expansion of the settlement programme across the oPt. The opportunity for holding Palestinian general elections has been further eroded as a result of the inception of the current *Intifada* in September 2000. The Israeli response throughout this *Intifada* has been to engage in systematic, coordinated and sanctioned policies of excessive use of force, collective punishment of Palestinian civilians, extra-judicial executions, wide-spread destruction of civilian property and infrastructure. Naturally this has impacted negatively on the possibility of holding elections. However it should not eliminate that possibility completely.

On the local level it is apparent that the Palestinian official efforts, since the inception of the PNA, have not been genuine. The PNA promulgated the local elections law in 1996 but it has never coordinated any serious or concerted effort order to hold such elections either before or after 1996. The promulgation of the law appears to have been entirely cosmetic in its formulation and intent. Over the past few years there have been repeated announcements regarding the holding of elections – on each occasion the elections have not been held. At times these announcements have even included the announcement of particular dates for the elections - but on each occasion the elections were not organised. All of the Palestinian Local Councils (Municipalities), without exception, are appointed. These Councils lack the democratic legitimacy which elections would provide. Their only legitimacy, and the only legitimacy of their sitting members, is derived from the Executive Authority. It is Executive Authority which underwrites their power base and has sanctioned the removal of their accountability. Confounding this problem of lack of legitimacy at a local level is the fact that the Executive itself lacks any democratic legitimacy.

Since 1997 the PNA has used the pretext of the belligerent Israeli occupation, the political stalemate on the peace process and the failure of the Israelis to redeploy their troops in the West Bank, to stop the holding of local elections. It was well known however that the General Elections of January 1996 were held under conditions which were not radically different to the current operational environment: there was still an occupation which limited the practices of the Election authority through restrictions on freedom of movement; the Israelis had not redeployed troops in the West Bank or the Gaza Strip. This begs the question - if general elections could be held under such circumstances, why is it not possible to hold *local elections* under the current circumstances? It was apparent that the failure to hold local elections was an attempt by the PNA to exclude the political opposition from the process of government, even at a local level. This reflects a deeply held fear that that opposition groups would take over the local councils at a time when support for the PNA was in decline. The fact that both secular and Islamist groupings had indicated their desire to participate in the election process compounds this theory that the PNA were delaying the elections out of fear of the erosion of their support. The PNA postponed the process

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<sup>2</sup> Currently there are four vacant seats in the PLC, out of eighty-eight seats: Dr. Haidar Abdul Sha'fi resigned in 1998, Wajee Yaaghi died in 2002, Ahmed Ershaid died in 2003 and Salum Kahin (representative of the Sumarian minority in Nablus) died in 2004.

continuously and maintained the appointed councils to suit its own agenda. Regrettably, those international actors who should have played a key role in pressurising the PNA to hold elections supported the position of the PNA. This reflected the fears of the international community regarding the ascendancy of the Islamist parties in any potential elections. The failure of the international community to place pressure on the PNA exonerated the actions of the Executive Authority, in a sense providing them with further authority to delay the elections.

PCHR is conscious of the obstacles that stand in the way of the election process, particularly the general elections, in the current political and military circumstances and the continued escalation of attacks by IOF in the oPt. The International Community must take real actions to intervene to stop these attacks, which may amount in some cases to grave breaches or even war crimes, and take effective steps to provide a safe space for the holding of free, fair and periodic elections. However this does not absolve the PNA of its responsibilities: the PNA must also take steps to hold local and general elections. These steps must include:

- (a) the amendment of the Palestinian Election Law of 1995 or the promulgation of a new law which guarantees the holding of free, fair and periodic elections. The new or amended law must ensure political pluralism and proportional representation of all, or most, of the political spectrum; at the same time it must neutralise parochial political tendencies by prioritizing issues of national significance. It is not acceptable that this process is permitted to languish in the corridors of power for an excessive amount of time, rather it must be a speedy and comprehensive process.
- (b) To speed up the process of amending the Local Council Law No. 5 of 1996 and to take genuine steps in the preparation process; a date for elections must be put in place immediately. Elections must be held either in a universal or partial format (municipality by municipality, depending on political circumstances at the time). The process must be tied to a strict, but reasonable, timetable. The imperative point is to begin the process immediately.
- (c) Emphasis must be placed on periodic elections, whether local or general, under all political conditions.

## **(2) Security Forces**

On July 17<sup>th</sup> 2004 a Presidential decree was issued which unified the previously existing twelve security forces into three distinctive apparatus: National Security, Police and General Intelligence Services. The results of this decree on the effectiveness, efficiency and function of the security services is unclear to this date. PCHR contends that the number of individual groupings is insignificant, rather there are other key issues which must be considered in light of reform:

- To stress on the integral role that the security and police services play as law enforcement agencies. The members of such agencies must abide by the law and work within the framework laid down within it. An authority must be established and operating under the principle of *nemo iudex in causa sua*, to

ensure that members of the security services are prosecuted when they break the very law they are supposed to be upholding.

- These forces can not be allowed to have a political role. They must remain within the confines of the law, serving and acting impartially in accordance with the law. Their operational authority must be politically sanctioned by the Executive. However their operations must not be politically motivated or effected nor should they operate independently or with autonomy from the democratically sanctioned executive authority.
- There is a need for clear regulation to demarcate between the competencies of each branch of the security services. Such demarcation must also facilitate cooperation between the security services in order to provide a high quality service to Palestinian people.
- Aspects of militarism prevail in Palestinian society which threaten the process of democratization and obstruct the rule of law. This militarization is characterised by: the security forces displaying weaponry both inside and outside of duty hours; public demonstrations with large numbers of small-arms being displayed and used; family disputes using arms (and the involvement of security forces in those disputes). This dangerous phenomenon, of militarization of society through the proliferation of arms, reflects extremely negatively on Palestinian society. It is imperative that the law is applied to its fullest extent in order to put an end to this. Criminal prosecutions must be combined with preventative measures, such as ensuring all weaponry belonging to the security services is returned at the end of each duty period and that failure to do so would constitute a serious disciplinary offence.

### **(3) *The Judicial System***

An independent Judiciary is an essential element for the upkeep of the rule of law. The Judiciary must be independent and free from political interference and corruption. The Judiciary acts as an arbitrator of disputes on clearly laid down principles. In civil law it makes neutral judgments between individuals and in criminal cases it must ensure that no individual accused of a crime is convicted when there is reasonable doubt of their innocence. The Judiciary must ensure that requisite weight is given to the rights of the accused. All cases, whether pertaining to family, corporate, tort or criminal law must be conducted in a fair and transparent fashion. As such the reform of the Judiciary must be guided by these principles:

- To strengthen the civil Judiciary and ensure its independence the Judiciary should not be subjected to any external intervention and the executive must respect the judgments and authority of the judiciary. Judges must apply the law as laid down on the statute books and such application must remain free from politically motivated adjudication.
- The State Security Courts must be abolished: their existence and their operation is in contravention to international standards, the Palestinian Basic Law and the Palestinian law on the Independence of the Judiciary. They directly contribute to miscarriages of justice. These courts were stopped under the Abu Mazen premiership but during this period of cessation many incidents were recorded when people were brought before the courts. This illustrates the

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necessity of abandoning, through Presidential decree, the entire state security system.

- According to Palestinian Law a constitutional court shall be established and this, along with the existing but broadly impotent Higher Judicial Council (HJC) – the PNA must ensure the establishment of the both the Constitutional Court and the HJC.
- The Judicial Authorities have jurisdiction to inspect prisons and detention centres to ensure that those people who are detained are being held in accordance with the law. The Judiciary must be actively involved in carrying out inspections of prisons and detention facilities and must use their powers to make substantial changes to conditions of detention where applicable.
- Both a forensic system and a state pathology system, for autopsy, are considered integral to the development of a fair trial system and must be established and must be subjected to control and monitoring by the Judiciary, under the auspices of the Ministry of Justice.

#### **(4) *Attorney General***

The office of Attorney General is a principal office in the realization of the rule of law and to protect citizens rights. According to the law the AG is the custodian of the public interest. PCHR has continuously requested information and assistance from the office of the Attorney General but has received little in the way of information or response. The conduct of the AG office has been criticized for many years because of the continued and sustained intervention in its work by the executive and the failure of the attorney general to fulfil its mandate in accordance with the law. PCHR believes there is an urgent need to reform this institution:

- To assert that the AG is the individual who is responsible for the prosecution on behalf of the people and is the custodian of the public interests and maintenance of the law;
- He should fulfil his mandate independently and without interference from the executive. Continued interference and negligence by the Executive were the main causes for weakening this institution, which has lost its status;
- The AG's office should fulfil its duties in prosecuting those who violate the criminal law and that no crime is committed with investigation and prosecution. This is the only way to bring an end to the state of lawlessness within the oPt. In this respect the AG must commit itself to legal due process, including arrest and detention, free and fair trials, implementation and respect for the rulings of the courts, in particular those of the High Court;
- To assert the principle of rule of law and to end all violations of the law especially those committed by influential individuals who consider themselves above the law and unaccountable. These people, who violate the law, and use their public office for their own self-interest must be brought to justice. The most recent events in the oPt illustrate the effects of corruption and insecurity where some groups have assigned themselves the power of the executive and the judiciary, by involving themselves in kidnapping, under the pretext of fighting corruption. PCHR, while absolutely condemning these activities, contends that the responsibility to investigate claims of corruption

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is the duty of the PNA through the offices of the Attorney General and other arms of the state, including the police and the Judicial system.

**(5) *Government Administrations (Public Service Employees)***

Ineffective administration and government bureaucracy, failure to provide appropriate services, overlapping mandates, excessive staffing numbers, unproductive and unqualified staff members characterize the current administration illustrating the severe need to comprehensively reform the public services. Reform should include:

- Implementation of the Civil Service Law Number 4, 1998, financially and administratively to ensure that opportunities are provided to all on the basis of competence and professionalism rather than a system of nepotism based on tribal or political affiliations. This will enhance the quality of services provided by the administration.
- Each government department shall have its own structure which is compatible with the Civil Service Law. This would involve clear demarcation and description of roles and boundaries of authority.
- Many government employees have been operating as parasites feeding off the state system of patronage and inefficiency. Such employees should be removed from their roles as part of a comprehensive review of the employment systems and practices. It should be the case that nobody is paid a salary because of their political affiliation but instead because of the quality of their work.
- To guarantee a total disengagement between the government and its administration and the ruling party on the other side. Members of the ruling party enjoy special privileges in the administration and this system must be brought to an immediate halt.

**(6) *General Public Monitoring Commission (Comptroller's office)***

The Commission was established by a presidential decree in 1994. In December 1995 the Law of the General Public Commission was promulgated by the President three months before the inauguration of the PLC. According to the law, the Commission functions under the responsibilities of the Presidents office. It aims to monitor and supervise the manner in which various government departments dispose of the public finances. The Commission also works on developing policies to improve the efficiency of the administration. PCHR believes that to achieve such goals there is a need to

- To re-establish the commission to guarantee full operational independence, to ensure that it carries out its duties removed from the monopoly of power held by the executive. According to Article 96 of the Basic Law the head of this commission is appointed by a decision by the head of the PNA (the President) with the approval of the PLC. The current holder of the position has not passed through this process. Accordingly, PCHR calls for a reappointment of the head of the Commission in order to guarantee complete independence. The head of the Commission, his deputy and all of the staff should be selected in accordance with professional criteria to guarantee their independence, honesty, reliability and willingness to expose corruption.

- To guarantee that the commission is mandated with real powers and has access to all information required to carry out its task. It must have real authority to conduct free investigations and to check the functioning of all government institutions. The reports and findings of the commission should be made public, to ensure the right to freedom of information and to underscore the democratic process of openness, transparency and accountability. Those who are accused of corruption or abuse of their position must be subjected to the full legal process.

### **(7) Human Rights**

Human rights are closely related to reform and democracy in any political society. PCHR emphasises, against this background, the following in order to ensure that the PNA respect human rights in the context of reform. These measures should include, *inter alia*:

- Recommitment of the PNA to the ICCPR and ICESCR, article 10 of the Palestinian Basic Law asserts that the PNA “endeavour, without delay, to sign up to the international and regional conventions on human rights.” PCHR insists that this article is implemented to the fullest possible extent.
- Merge HR into PNA laws...legal phrase!!, including UDHR (1948), ICCPR (1966), ICESCR, the Convention on the Rights of the Child (1989), the CEDAW (1979), CAT (1984)

Despite the decline in human rights violations by the PNA it is not clear, however, whether the decline is as a result of respect for human rights or whether it is related to the weakness of the PNA itself. This is especially the case when Palestinian militant groups, that are linked to the PNA, have increased the number of human rights violations they are committing. Such violations are not investigated properly by the executive or the Attorney General and the perpetrators are not brought to justice.

### **Conclusion**

The deteriorating situation in the oPt, on an internal (PNA related) level has increased the demands for real and comprehensive reform in the PNA and its institutions. The current situation, if allowed to deteriorate further, will serve as a threat to the whole Palestinian people and will undermine all attempts to realize an independent, democratic state. Consequently PCHR believes that the reform process is a comprehensive responsibility which must involve all aspects of society, including political factions, civil society as well as people on the ground. There is a need for aggregated efforts to be carried out by the PNA, particularly in the executive branch and legislature, as well as civil society and political forces. PCHR believes that the points included in this paper are driven by a deep belief that the reform process will strengthen Palestinian society. It is of the utmost necessity, in order to extricate Palestinian society from this unpredictable crises, that universal and cohesive action be taken. PCHR believes that a strong internal front is the basic necessity for enhancing the struggle of the Palestinian people towards self-determination and

ending the occupation to establish an independent Palestinian state founded on respect for the rule of law, human rights and democracy.