

# MICHIGAN STATE

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### JOURNAL OF INTERNATIONAL LAW

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PROBLEMS ENCOUNTERED BY MUSLIM CONVERTS TO CHRISTIANITY  
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MEMBER, NATIONAL CONFERENCE OF LAW REVIEWS

# HUMAN RIGHTS TRENDS IN THE EMERGING PALESTINIAN STATE: PROBLEMS ENCOUNTERED BY MUSLIM CONVERTS TO CHRISTIANITY

*Justus R. Weiner\**

## INTRODUCTION

Israeli-Palestinian negotiations under the framework of the Oslo Peace Process began in 1992.<sup>1</sup> Vexing questions such as Palestinian statehood, Jewish settlements, security, redeployment, terrorism, the future of Jerusalem, refugee claims and economic viability have dogged Mideast diplomacy. The media has largely ignored the fact that Israel no longer controls Palestinian civil life on a day-to-day basis. In its place, the Palestinian Authority ("PA"), the entity created and empowered by the interim peace agreements to manage the local affairs of the Palestinians, is now accountable for the local governance of approximately 98 percent of Palestinians in the West Bank and Gaza Strip.<sup>2</sup> Attention has been paid to some aspects of the PA's conduct (e.g., security), but not to human rights.

Yasser Arafat, PLO Chairman and *Rais* (President in Arabic) of the PA, claims to base his rule on Western democratic principles. Protection of human rights is considered one of the fundamentals for the effectiveness of this model. In a 1994 address to the UN Human Rights

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1. The first interim agreement, the Declaration of Principles ("DOP") was signed at the White House on September 13, 1993. The DOP stated that the two groups agreed to recognize each other and would settle their differences through peace negotiations.

2. As of the writing of this article, the territories officially handed over to the Palestinian Authority ("PA") total about 42 percent of the West Bank and Gaza Strip. These territories included all but one (Hebron) of the major cities which are the Palestinian population centers. While the debate on further redeployment carries on, the areas currently requested by the PA are not Palestinian population centers. The whole territory was divided into the categories of areas A, B and C. Area A is fully under the local jurisdiction of the PA, area B's civil government is controlled by the PA, while the security is handled by the Israel Defense Forces ("IDF"), and in area C (which has few Palestinian residents) both civilian matters and security are managed by Israel.

Commission in Geneva, Arafat spoke of the PLO's belief in the peace process and the need to improve the observance of human rights: "It is my pleasure to inform you from this solemn rostrum that out of our commitment to human rights, democratic freedoms, international laws and the UN Charter, and out of our concern for edifying a healthy, dynamic, open and active society . . . ."<sup>3</sup>

Yet, contrary to Arafat's professional commitment to democratic principles, which embody respect for the protection of human rights, corroborated reports have emerged from a variety of sources revealing widespread human rights violations perpetuated by the PA. Despite some PA efforts to suppress information, Palestinian, Israeli, international human rights workers and journalists report flagrant abuses<sup>4</sup> denying freedom of expression, movement, religion and assembly.<sup>5</sup> Journalists, professors and human rights workers have been arrested and newspapers have been closed down for publishing articles critical of the PA.<sup>6</sup> There are gross inconsistencies with due process of law, such as arbitrary arrests,<sup>7</sup> incommunicado and prolonged detentions (sometimes for years) without charges,<sup>8</sup> a paucity of legal representation and a court system that lacks political independence. In the absence of a Supreme Judicial Council the PA President and Minister of Justice have assumed its powers to, "appoint, promote, demote, transfer,

3. *Arafat's Address to UN Human Rights Commission in Geneva* (BBC Short Wave Broadcasts, Feb. 4, 1994, ME/1913 MED/12).

4. See THE PALESTINIAN HUMAN RIGHTS MONITOR, *Introduction: Death in Custody*, Issue No. 5, Dec. 1997 at 4; THE PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No.1, Jan. 1998 at 3; THE PALESTINIAN HUMAN RIGHTS MONITOR, *Public Statement on the Human Rights Situation in the PA*, V.2, No.4, June 1998 at 19.

5. See THE PALESTINIAN HUMAN RIGHTS MONITOR, *Repression of the Press in the Shadow of Freedom*, V.2, No.3, May 1998.

6. See *Id.*; THE JERUSALEM POST Magazine, *A Prisoner in Ramallah*, Jan. 23, 1998; Steve Rodan, *PA Arrests Journalist After Torture Report*, JERUSALEM POST, Oct. 28, 1997; THE PALESTINIAN HUMAN RIGHTS MONITOR, *Why Is Jenin Newspaper Closed?*, Issue no. 1, Jan. 1997; See also SAID ABURISH, ARAFAT: FROM DEFENDER TO DICTATOR 310-312 (1998).

7. Steve Rodan, *PA High Court Orders Explanation for Arrest of Hamas Activist*, JERUSALEM POST, Sept. 30, 1997, at B3; *Making a Farce Out of a Tragedy*, THE JERUSALEM TIMES, Feb. 20, 1998, at 5; LAW—the Palestinian Society for the Protection of Human Rights and the Environment, *LAW Protests Illegal, Arbitrary Arrests by PA*, Apr. 13, 1998, (visited Apr. 22, 1998) <<http://www.lawsociety.org>>.

8. See ABURISH, *supra* note 6.

dismiss and retire judges at all levels."<sup>9</sup> Moreover, when the Court does come into conflict with the PA its rulings are blatantly ignored. Adequate legal representation is often denied and hasty trials have been held in the middle of the night by the special 'security courts' which are only accountable to Arafat himself. There are also violations of basic human rights, such as the right to life and freedom from torture. This is evidenced by numerous reports of torture in jails resulting in at least 23 since 1994, as well as extrajudicial executions.<sup>10</sup>

Even if the peace negotiations successfully navigate the numerous obstacles ahead, the level of protection afforded human rights in the Palestinian autonomous areas during the interim period may be a harbinger of what will eventuate when, and if, a final settlement is achieved. One independent report stated that "[t]he risk is that if present structures and practices go unreformed, they will shape and even predetermine future ones in negative ways."<sup>11</sup> The above mentioned reports of flagrant human rights violations call into question the very nature of the emerging Palestinian state, making the slogans 'path to peace' and a 'two state solution' no longer the obvious answer to the human rights predicament inherent in the Israeli administration of the West Bank and Gaza Strip.

While reports and allegations of human rights violations within the PA raise a panoply of troubling issues, the principal focus of this article is the problem of religious freedom in the emerging state. Freedom to choose and practice one's religion is at the very core of any democratic system of government. Yet, while the traditional Palestinian Arab Christians are officially tolerated as recognized minorities by the PA, Muslims who choose to convert to Christianity ("MCCs") are treated very differently by the officials of the PA. While it is difficult to ascertain if the PA has a policy of persecution, the MCCs face not only a multiplicity of societal difficulties, but also endemic problems with PA institutions.

9. See REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS, at 57 (1999) [hereinafter REPORT].

10. See THE PALESTINIAN HUMAN RIGHTS MONITOR, *Torture: A State's Tyranny*, V.2, No.6, Oct. 1998; Letter from Rovla Haddad, assistant to Bassam Eid (head of the Palestinian Human Rights Monitoring Group), to David Binstock, research assistant to Justus R. Weiner, (July 17, 2000).

11. See REPORT, *supra* note 9, at 7.

This article examines and evaluates the reports of violations committed against MCCs without any illusions. It should be cautioned at the outset that in every democracy, fledgling or established, critics make unjustified allegations in order to defame their political opponents, routinely accusing them of destroying the nation's religious freedom, democratic fabric and the like. The author is especially sensitive to the problem of unsubstantiated, politically motivated allegations, which are legion in the Middle East. This article, therefore examines and cross-checks evidence from a variety of human rights groups and other relevant sources, such as diplomats, Swiss International Committee of the Red Cross ("ICRC") delegates, church officials, clergy, members of the Israeli Foreign Ministry, lawyers in private practice, PA officials and others. To obtain information it was frequently necessary to interview people on a confidential basis. The objective throughout has been to evaluate the situation in its entirety in order to present an objective legal and factual assessment.

This article is divided into five sections. Section I addresses the religious demographics of the West Bank and Gaza Strip and differentiates between the attitude of the PA toward traditional Christians, on the one hand, and toward MCCs, on the other. The second section considers the sources, nature and extent of human rights violations suffered by MCCs living in the areas under the control of the PA. Section III offers an overview of the underlying reasons why Palestinian Arabs born and raised in traditional Christian homes are recognized as 'Christians,' but MCCs are not categorized as belonging to the 'Christian' religion. They are a distinct group that is neither recognized by the Muslim community nor even by many Palestinians born into Christianity as 'Christians.' Their numbers are difficult to ascertain because the majority of the MCCs practice their new found faith in secrecy, attending clandestine prayer and worship meetings. Their fear of adverse consequences from their Muslim neighbors and the PA, has compelled them to adopt a surreptitious religious life. Section IV addresses the distinct character of the limited administrative sovereignty of the PA and debates who should be held accountable for human rights violations. This section raises the question of deciding which leadership should assume the task of protecting human rights during this period of transition. The last section offers an international legal study of the freedom of worship, providing a broader perspective of the issue. An examination of freedom of worship in international law

enables a better understanding of the international community's involvement, reactions, and expectations concerning the PA's behavior and attitude towards human rights.

#### I. PALESTINIAN AUTHORITY AND THE TRADITIONAL CHRISTIANS<sup>12</sup>

Although Arafat has continued to propagate to the world that amiable relations exist between Muslims and Christians in the territories under the PA, tension and even animosity is increasing between the two groups. Approximately 2.9 percent of the population under PA control is Christian, with the majority belonging to the Greek Orthodox and Greek Catholic traditions. In recent years, disputes between Muslims and Christians have led to violent clashes, which necessitated the intervention of the PA police. The Arab Christians have complained that the PA police force, which is overwhelmingly Muslim, has a proclivity to side with Muslims while ignoring the concerns of Christians. For example, in the summer of 1997 a violent clash erupted in the village of Bet Sahour, an 80 percent Christian town near Bethlehem.<sup>13</sup> During the ensuing fracas, the PA police opened fire on the crowd of Palestinian Christians, wounding six people.<sup>14</sup> In July 1999, in nearby Bet J'allah, 30,000 Christians began a protest which some referred to as an *intifada*. Their general strike protested against the PA's unjust policies toward Christians. A of major concern to the Christians was the firing of nine Christian members of the City Council.<sup>15</sup> Christians in Bet J'allah also expressed the fear that they would become a minority, "like what occurred in Bethlehem."<sup>16</sup> The decline of the Christian population can at least in part, explained by social and economic factors. Usually the Palestinian Christians are middle class and better educated, and move abroad to find better opportunities.<sup>17</sup>

12. The conditions of traditional Christians residing in PA controlled areas will be explored only for background purposes. An in-depth look into the relations between the PA and traditional Christians is beyond the scope of this article.

13. Carl Alpert, *Letter from Israel*, JEWISH TELEGRAPH, Nov. 21, 1997.

14. See Israeli government report, *The Palestinian Authority's Treatment of Christians in the Autonomous Areas*, <<http://www.tzemach.org/fyi/docs/chrstper.htm>>.

15. Chaeled Abu-Toamah, *Christian Intifada Against Arafat*, JERUSALEM PAPER, July 16, 1999 (Hebrew).

16. *Id.*

17. PALESTINIAN HUMAN RIGHTS MONITOR, *For the Record: The 'Persecution' of Christians under the Palestinian National Authority*, V.2 No. 2, Feb. 1998, at 12.

In the summer of 1997, the International Christian Embassy Jerusalem ("ICEJ") published a report on the PA's persecution of Christians. Subsequently, in October, a report from the Israeli Prime Minister's Office claimed that Christians under the PA were being systematically persecuted. The Palestinian Human Rights Monitoring Group ("PHRMG") issued its own report in February 1998, which concluded that there is no systematic religious persecution under the PA and that while human rights abuses abound,<sup>18</sup> Christians in general remain unmolested.<sup>19</sup>

The growing dominance of the Muslim population and the predominantly Muslim PA administration has intensified the tension between the two groups, leaving the Arab Christian minority in precarious circumstances. Social discrimination against Christians has become rampant in recent years, creating frictions between the two groups. The Beit Sahur incident was initiated when an Islamic militant in the village sought to enforce a strict Islamic dress code on a young Christian woman.<sup>20</sup> It is not uncommon to find mosques being utilized as forums for sermons which malign Christianity and its Arab adherents. Religious hatred such as "all the deeds that the Christians talk about are deeds of deception" resonate from loudspeakers of numerous mosques in the greater Bethlehem area.<sup>21</sup> Ramadan, a month-long dawn-to-dusk fast for Muslims, has also been a time of tension for Palestinian Christians. Chairman Arafat has instituted strict adherence to the observance of Ramadan, which forbids eating, drinking and smoking until sundown during the period of Ramadan.<sup>22</sup> It has also been reported

18. The widespread violence is evidenced by the recent beatings of high-ranking PA legislators and officials by other members of the PA and members of the Palestinian security services. For example, the Minister of the Environment was beaten in his office by the Director General of his ministry. Also, the head of the Palestinian Legislature Council committee on human rights was assaulted by members of Arafat's security forces. Gaza psychiatrist and human rights activist Iyad Al-Sarraj noted, "I do not disregard the depth of the rage that Israeli occupation inserted into our lives [as a cause for violence] but I don't want to hang everything on it, because one of the major reasons for this use of violence emanates from us and from our upbringing of our youth in our homes." Middle East Media Research Institute Internet Website, *The Logic of Force and Violence: Beatings of Legislators and Executives in the Palestinian Authority*, Washington, DC, May 18, 2000, (visited May 29, 2000) <<http://www.memri.org>>.

19. *Id.* at 14.

20. See Christopher Walker, *Tensions Darken Festive Mood in Bethlehem*, LONDON TIMES, Dec. 22, 1997, <<http://www.thetimes.co.uk/cgi-bin/backissue>>.

21. *Id.*

22. PA Says it Will Punish Ramadan Offenders, JERUSALEM POST, Jan. 12, 1997, at 1.

that, "Christian cemeteries have been destroyed, monasteries have had their telephone lines cut and break-ins [have been perpetrated] to convents."<sup>23</sup> In addition, there was also a seizure by some Muslims of an apartment belonging to a Greek Orthodox monk, located in the Christian Quarter of the Old City of Jerusalem. The intruders, who came from a nearby mosque, threw out the monk's belongings and annexed the space to the mosque.<sup>24</sup> Christians believe that the seizure was initiated with the full knowledge of the Muslim religious trust officials that the PA oversees.<sup>25</sup>

Christians have felt unprotected due to the failure of the PA police to intervene on their behalf in confrontations with Muslims.<sup>26</sup> Although subjected to harassment (and worse) by Muslim extremists, Palestinian Christians have usually opted not to report incidents to the PA police. Their insecurities were re-enforced during the clashes in the villages of Bijan and Beit Sahur, when the PA police refrained from adequately protecting the Christian community.<sup>27</sup> Also, the fear of adverse repercussions by Muslims keeps Palestinian Christians silent.<sup>28</sup>

The growing tension has led to a conclusion among many Palestinian Christians, that Muslims are trying to "kick [the] Christians out."<sup>29</sup> That perception is further augmented by the fact that Muslims are no longer selling land to non-Muslims, including the Palestinian Christians.<sup>30</sup> The Arafat-appointed *mufti* (religious leader) in Jerusalem—Sheikh Ekrima Sabri—has issued a *fatwa*, a decree punishable by death, that it is forbidden for Muslims to sell land to non-Muslims.<sup>31</sup> According to a Protestant clergyman in the territories, these circumstances have left the Palestinian Christians in fear of their future under the PA.<sup>32</sup> One feasible solution for Christians to be accepted into Palestinian Society is for

23. See Israeli government report, *supra* note 14.

24. Yossi Klein Halevi, *Squeezed Out*, JERUSALEM REPORT, July 10, 1997, at 14, 19.

25. *Id.*

26. Interviewee requested anonymity in this interview. All references to this source will thus be cited as follows: Confidential Interview with the a Protestant Clergyman in the PA, in Jerusalem (Sept. 24, 1998).

27. *Id.*

28. See Alpert, *supra* note 13.

29. Confidential Interview with a Protestant Clergyman in the PA, *supra* note 26.

30. *Id.*

31. Halevi, *supra* note 24.

32. Confidential Interview with a Protestant Clergyman, *supra* note 26.

Christians to abide by the rules of Islam according to Father Louis Hazboun, Head of the Latin Community in Zababdeh.<sup>33</sup>

Aside from a few voices of apprehension, many church leaders interviewed—Bishop Munib Yonan from the Lutheran Church of the Redeemer,<sup>34</sup> Bishara Awad,<sup>35</sup> President of the Bethlehem Bible College, Louis Hazboun,<sup>36</sup> Head of the Latin community in Zababdeh and Tom'i Dawod,<sup>37</sup> head of the Greek-Orthodox community in Zababdeh, as well as others who preferred not to be identified in this article—depicted an amicable picture. They portrayed their relationship with the PA and the Palestinian Muslims as being "good." They cited the fact that Arafat is married to a Christian woman<sup>38</sup> and that Christmas Day and Easter Sunday are official holidays in the territories under the PA local administration.<sup>39</sup> It was also indicated that Arafat encourages Muslim-Christian dialogue through his participation in annual Christmas Eve services at the Church of Nativity in Bethlehem and in a New Year's dinner with Christian church leaders.<sup>40</sup>

Bishara Awad claimed that Christians can now, under the PA rule, enjoy more freedom because the PA seeks to protect and assist the church leaders.<sup>41</sup> Labib Madanat, Executive Secretary of the Jerusalem Bible Society, an organization active in distribution and publication of Christian holy texts, insisted that he has not encountered any problems with the PA. He remarked that "the relationship with the PA [has been] very positive because the Bible Society has no political stand."<sup>42</sup>

Despite the putative religious freedom under the PA administration, the church leaders that were interviewed admitted that none of them would violate the unspoken boundary against engaging in evangelistic

33. Interview with Father Louis Hazboun, in Zababdeh, Jenin district (Nov. 14, 1998).

34. Interview with Bishop Munib Yonan from the Lutheran Church of the Redeemer, in Jerusalem (Oct. 13, 1998).

35. Interview with Dr. Bishara Awad, in Bethlehem (Oct. 23, 1998).

36. Interview with Father Louis Hazboun, in Zababdeh, *supra* note 33.

37. Interview with Father Tom'i Dawod, in Zababdeh, Jenin district (Nov. 14, 1998).

38. Yasser Arafat's wife, Suha Arafat, is a Greek Orthodox Christian from Ramallah. Interestingly, their daughter is being raised as a Muslim.

39. Interview with Bishop Munib Yonan, *supra* note 34.

40. Interview with Ibrahim Kandalaft, Deputy Minister for Christian Religious Affairs, in Eastern Jerusalem (Oct. 20, 1998).

41. Interview with Dr. Bishara Awad, *supra* note 35.

42. Interview with Labib Madanat, Executive Secretary of the Jerusalem Bible Society, in Jerusalem (Sept. 14, 1998).

activities. Bishop Munib Yonan maintained that his community would abstain from doing evangelical work, such as distributing Bibles to Muslims or converting Muslims to Christianity.<sup>43</sup> Father Louis Hazboun remarked, that he refused to convert a family to Christianity in order to protect them from the social and institutional difficulties they would suffer as a consequence.<sup>44</sup> He told them to perform their Christian belief in secrecy, to read the Bible and to lead a Christian life, but to refrain from baptism or going to church.<sup>45</sup> It is accepted by most Palestinian Christians, living as a minority, that the local concept of freedom of religion does not extend to activities that may endanger the *status quo* between Muslims and Christians.

Although the Palestinian Christians are a recognized minority under the PA, maintaining religious autonomy must be within the constraints of an Islamic society that is increasingly intolerant of its Christian members. Although cursory attempts have been made to adhere to democratic principles, Bishop Munib Yonan from the Lutheran Church of the Redeemer pointed out that, "Western standards cannot be applied [to] Palestinian society."<sup>46</sup> Thus it appears to this author that toleration of religions minorities, which today is the accepted ideal in the Western democracy, which is the accepted ideal in the world, is an important tool for the PA. According to a Protestant clergyman in the territories, Arafat's ostensible friendliness toward Christians can be attributed to two things. First, Arafat is interested in maintaining good relations with the Western world, in which most of the population happens to be Christian. Second, in a prospective Palestinian state, the economy could draw major benefits from Christian pilgrims and tourists.<sup>47</sup> Moreover, Arafat's diplomatic efforts in pursuit of statehood on advantageous terms involves seeking support from Christians around the world. Palestinian Christians understand this dynamic and can, in certain circumstances, use it to gain leverage, as they did when they threatened to spoil millennium celebrations in the PA territories.<sup>48</sup>

43. Interview with Bishop Munib Yonan, *supra* note 34.

44. Interview with Father Louis Hazboun, in Zababdeh, *supra* note 33.

45. *Id.*

46. Interview with Bishop Munib Yonan, *supra* note 34.

47. Confidential Interview with a Protestant Clergyman in the PA, *supra* note 26.

48. See Chaeled Abu-Toamah, *supra*, note 15.

While the Palestinian Christians, who are born into traditional Christian families and raised as Christians, have preserved their religious and cultural autonomy in the PA controlled areas, the MCCs have been subjected to threats. In various venues, a small percentage of Muslims have embraced Christianity, abandoning their Islamic beliefs and tradition. Converts from Islam to Christianity have not been accepted by most Muslims nor, for the most part, by traditional Christians, due to fears of upsetting the *status quo*.<sup>49</sup> These fears compel MCCs to attend clandestine Christian gatherings and to live their faith in a covert manner, fearful of their fate if their conversions are disclosed.

## II. HUMAN RIGHTS VIOLATIONS AGAINST MUSLIM CONVERTS TO CHRISTIANITY

MCCs have been subjected to persecution at two levels: first from private individuals and secondarily by the Palestinian police and security forces.<sup>50</sup> Research by the author has provided some clarification of the violations to which a number of these MCCs are actually being subjected to. A few trends can be discerned.

### A. Societal Persecution

In an Islamic environment where conformity is the norm, the MCCs are frequently viewed as 'betrayers of the faith.' As such, the converts

49. Interview with Jonathan Miles, Coordinator of the "Light to the Nations" Organization in Gaza, in Jerusalem (Oct. 22, 1998).

50. The Palestinian Human Rights Monitoring Group ("PHRMG") found in their February 1998 report that of the six cases of MCCs being persecuted as described in an Israeli Prime Ministers Office report, only two of the cases were definitely attributable to the MCCs conversion. This is why the PHRMG does not believe that there is officially sanctioned and systematic persecution of MCCs. PALESTINIAN HUMAN RIGHTS MONITOR, *supra* note 17. However, it was suggested by David Parsons, on the staff of the International Christian Embassy Jerusalem ("ICEJ"), that the PA allows the police unfettered freedom of action. If they want to harass people due to their faith, whether based on a personal dispute, the PA will give them free range without punishment. This is viewed by Parsons as part of the PA's policy to persecute MCCs. What the PHRMG calls disproportionate harassment of the MCCs, ICEJ calls the *de facto* policy of the PA, because all these human rights violations are ignored and go unpunished. Interview with David Parsons, —the International Christian Embassy in Jerusalem ("ICEJ"), in Jerusalem June 9, 1998.

have been harassed, beaten and threatened by various elements<sup>51</sup> in their community. As a rule the MCCs are afraid to disclose their new found faith to friends, family and neighbors due to their legitimate concerns of adverse consequences. An electrician from a village near Ariel (a Jewish town in the West Bank) known by the pseudonym "Mustafa," was subjected to frequent verbal abuse and threats from Muslims in his community.<sup>52</sup> Another MCC from the Nablus area, "Ali," claims that his tire shop was burned down on two occasions and that his car was vandalized by persons residing in his village in reaction to his conversion to Christianity. According to Ali, his seven-year old daughter was intentionally struck by a car. While she was walking on the sidewalk, a car swerved from the road, hit her and drove off. Immediately thereafter Ali received an anonymous phone call about the hit-and-run. The caller threatened that this was a warning—a "first sign."<sup>53</sup> A MCC from Tulkarem, "Nasser," was forced to flee his village and seek refuge in the Israeli city of Ramle for fear of being physically attacked by Islamic extremists in his village or by persons working for the PA.<sup>54</sup> Nasser claims that threatening leaflets were distributed by persons in his village, warning people to stay away from him because he had converted to Christianity. In spite of threats and admonitions to return to Islam by his wife's family, who are active in the PLO, Nasser distributed Bibles. Apparently as a consequence, his house was vandalized.<sup>55</sup>

An MCC, referred to herein as "Abdullah," lost his restaurant, as the landlord refused to continue renting it to him upon learning about Abdullah's baptism.<sup>56</sup> In addition, Abdullah was attacked by masked men on his way home from work. According to Abdullah, the men surrounded him and beat him, accusing him of being a *Moltad*—the

51. The attacks come from various sources including Hamas, Muslim religious council leaders, sheikhs, PA officials, friends and even family members.

52. Confidential interview with Mustafa an electrician from Ariel, in Jerusalem (Aug. 18, 1998).

53. Confidential interview with Ali, in Ariel (July 27, 1998); Confidential interview with Ali, in Jerusalem (Aug. 26, 1998).

54. Confidential interview with a Muslim believer from Tulkarem, in Jerusalem (Sept. 16, 1998).

55. Confidential interview with Nasser, an electrician from the Ramallah area, in Jerusalem (Sept. 16, 1998).

56. Confidential interview with Abdullah, a cook from Jenin, in Jerusalem (Oct. 19, 1998).

Arabic term for "betrayer of the faith." They threatened to shoot him and his children. He believes that the attackers were members of the Hamas.<sup>57</sup> Afraid for his life, he limits his travel to going to work and returning home.<sup>58</sup> Similar threatening situations have been reported among those born Christian.

Another MCC, "Youssef" from the Nablus area, lives in fear for his life because of his Christian practices. Although he attempts to keep his Christian observance covert, they have aroused suspicions among his neighbors. His residence is located in a Hamas-dominated village, and many of his family members belong to the Hamas organization. He also has two brothers who work in the PA's Preventive Security Services, which is responsible for internal security. His father has threatened Youssef with death if the rumors about Youssef's conversion are proven to be true.<sup>59</sup>

Significantly, none of the above victims of harassment, abuse and persecution received any protection from the PA police or numerous other security services.<sup>60</sup> In some cases, this was due to a failure to report the incidents. Abdullah never reported the attack to the PA because, he said "they are all the same."<sup>61</sup> Many of the interviewees evinced that the PA chooses not to intervene to protect MCCs. When some individuals do seek help, they are discouraged from involving the

57. "Hamas" is an Arabic acronym meaning "zeal" or "fervor." The movement's full Arabic name is *Harakat al-Muqawama al-Islamiyya*, which means "the Islamic Resistance Movement."

58. Confidential interview Abdullah, in Nablus (Apr. 17, 1999). A Christian woman from a village near Bethlehem was attacked for teaching the Bible. She was accused of being a "Zionist agent" and was frequently cursed and spat on in the market place. According to her, an attempt was made to burn down her house while she and her family were sleeping and she was also stabbed in the market place. Afraid for the lives of her children, she sent them to North America to study. These events occurred in a Muslim surrounding during the Intifada. Confidential interview with a Christian woman from Bet Sahur, in Jerusalem (Aug. 17, 1998).

59. Confidential interview with Youssef from the Nablus area, in Jerusalem (Sept. 23, 1998); Confidential interview with Youssef from the Nablus area, in Ariel (Apr. 16, 1999).

60. The extent of this disinterest appears to have recently reached a new level with the case of Nabil Abu Ramaddan. According to information that as gathered from Ramallah by David Ortiz, an MCC named Nabil Abu Ramaddan died in mid-April 2000 from a bullet wound to the head, sustained in his home in Ramallah. He had converted six months prior to his death and was known as an outspoken believer in Jesus. Prior to his conversion, Ramaddan was a religious Muslim. Ortiz's sources claimed that it is common knowledge who shot Ramaddan and that the killing was approved by the PA due to his conversion. Thus far, no effort has been made to capture the perpetrators. Interview with David Ortiz, in Jerusalem (June 5, 2000).

61. Confidential interview with Abdullah, *supra* note 58.

police. When Ali went to the PA police to report that his daughter had been intentionally run over by a car, the policemen conveyed to him that it was in Ali's interest not to open a file by registering a complaint.<sup>62</sup> Some MCCs believe that their situation is so precarious that they resort to living in hiding or seeking refuge in Israel or the Israeli administered parts of the West Bank.

As a foundation of any democratic system, a police force is established to protect its citizens and to promote their safety. By choosing to ignore these incidents, the PA police force is abdicating its quintessential responsibility—that of protecting the members of the public. It is an act of omission that endangers the public and portends the breakdown of public order. Moreover, it permits the spread of religious intolerance with dangerous societal consequences. As serious is the problem of the PA police or security service's unwillingness to prosecute complaints against people who attack MCCs, far more serious is the active involvement of these uniformed forces in egregious violations of the rights of MCCs.

#### B. Direct PA Persecution

The MCCs are perceived as threats by many members of the PA police and security forces. Their conversion is regarded as an act of collaboration with Israel, rather than as a personal act of faith. Their contacts, often with foreign and Christian organizations, are viewed with suspicion. Any evangelical efforts that lead to the conversion of Muslims are seen as acts that undermine the legitimacy and security of the PA. An American evangelical pastor who oversees the Church of Samaria and who has been based in Israel for the last thirty years, was hence told to his face by Ziad Abu Ziad, a Minister of State in Arafat's Cabinet and a prominent member of the Palestinian Legislative Council ("PLC"), that his evangelical work was a threat to the security of the Palestinian State.<sup>63</sup> Persecutions of MCCs are induced by the same perception that converted Muslims have not only betrayed the faith but have also betrayed the 'nation' as well.

62. Confidential interview with Ali, in Ariel (July 27, 1998); Confidential interview with Ali, in Jerusalem (Aug. 26, 1998).

63. Interview with Dr. Ray Register, Baptist pastor, in Jerusalem (Sept. 7, 1998).

Mounting evidence from various independent sources illustrates how the PA police and security forces utilize inhumane and even brutal means of interrogation to extract information regarding the MCCs' conversion to Christianity and false confessions to various criminal charges. Abdullah received an anonymous threatening letter shortly after he was baptized in 1996. The letter inquired into his conversion to Christianity and offered an enticement for his return to Islam: a promising job with the PA. The letter also specified that if he did not comply, Abdullah and his children would be killed. Abdullah believes that the letter came from Jihad Musseimi's PA Secret Service.<sup>64</sup> According to Abdullah, when he did not acquiesce to their demand and return to Islam, he was arrested in October 1996. Abdullah was interrogated for twenty days in the Nablus prison. He was tortured regularly during the interrogation, beaten with electric pipes and with fists. Cigarettes were extinguished all over his body and he was burned with a piece of hot metal on his Achilles tendon. After the interrogation, he was placed in a small 1 x 1 meter cell without food and medical treatment for days.<sup>65</sup>

Youssef was also arrested by the PA and was interrogated for twenty days in 1997. During the interrogation he was shackled to a wall and beaten. The interrogators placed his head in the toilet while the security forces took turns urinating on him. They also burned his chest by pouring boiling margarine on him. He was then immediately placed in a small isolation cell for two months without receiving proper medical treatment.<sup>66</sup>

Another MCC, Salim, was interrogated by the Preventive Security Service ("PSS")<sup>67</sup> at the Salfit police station. He was also beaten with fists, rifle butts and clubs. He suffered from gashes all over the face as well as a broken shoulder.<sup>68</sup>

"Razi," a construction laborer from a village near Nablus, was interrogated by the PSS at Salfit in 1997. During his interrogation, his

64. Confidential interview with Abdullah, *supra* note 58.

65. *Id.*

66. Confidential interview with Youssef from the Nablus area, *supra* note 59.

67. The PSS is headed by Jibril Rajoub. A number of MCCs interviewed for this article expressed particular fear of this force. See Confidential Interview with Muhammed in Jerusalem January 5, 2000.

68. Confidential interview with Salim, in Jerusalem (Nov. 18, 1998).

hands were tied behind his back and he was, using the same rope, hung from the ceiling with his feet in the air for thirteen days and nights.<sup>69</sup>

Mustafa was beaten for two or three days during interrogation in 1995 by the PSS and frequently rearrested until 1997. Mustafa claims that he fled the PA administered areas after an attempt was made to stab him in his village and, thereafter, despite his relocation, an attempt was made to run him down with a car near Jerusalem. In both cases, he recognized the perpetrators as the PSS agents who had interrogated him.<sup>70</sup>

### 1. Fabricated Criminal Charges

The interviewed MCCs claim that their arrests and subsequent interrogations were in response to their conversion. They indicate that during interrogation the security forces inquired about their conversion and their activities with other Christians. Yet, the criminal charges brought against the MCCs are different altogether—they are fabrications having nothing to do their conversion.

The interrogators from the PSS continually asked Razi if he was a Christian. According to Razi, when he denied his conversion for fear of repercussions, the security men confronted him with evidence that he had distributed Bibles to people in his village.<sup>71</sup> Yet, when it came to lodging legal charges against him, Razi was accused of 'land dealing' (selling land to Jews). He was imprisoned for eight months, despite offering proof that he owns no land and lives in a tiny, very rudimentary

69. Confidential interview with Razi, in Jerusalem (Aug. 26, 1998). He prefers a pseudonym due to ongoing persecution against him and members of his family by the PA. The ICEJ claims that the PA police are conducting a violent campaign against MCCs, intensifying in the spring of 1998. They cited the first clear instance of this PA policy, coming two years before when Shak'r Saleh, was imprisoned in Jericho on false charges. He was beaten on the soles of his feet with rubber rods which, as a result tore the muscles in his feet so badly he required hospitalization at Meir hospital. On his documentation for release he had to sign a paper saying he had never converted to Christianity. *Tortured for Their Faith*, MIDDLE EAST DIGEST, Aug. 1997, (visited Mar. 30 1998), <<http://cdn-friends-icej.ca/medigest/jan98/threat.html>>.

According to the ICEJ, the PA often denies work certificates and travel permits to MCCs. In one case, David Parsons said, one MCC tried for a year to get a travel permit, and got so tired of the intimidation that he gave up on the Christian faith. The PHRMG detailed six cases registered as victims, but the ICEJ say that those are not the only cases, just the only ones who were jailed.

70. Interview with Mustafa, *supra* note 52.

71. Interview with Razi the building worker from the Nablus area, *supra* note 69.

residence with his large family.<sup>72</sup> In Razi's case other members of his family have been interrogated, beaten, and either jailed or detained in connection with Razi's faith. Although not a MCC himself, Razi's father, Fawzi<sup>73</sup> was arrested on May 26, 1997 and subsequently kept in detention for thirty-one months. A sixty-five-year-old man, Fawzi claims he was tortured twenty-four hours a day for eighteen days at Qalqilya interrogation center by agents of Jabril Rijoub, the head of PSS. After his first trial, Fawzi was urged to confess to the crime of land-dealing and when he did not, he was tortured for another ten days in order to force him to confess, despite the fact that two of the three judges at the trial ruled that he should be released. During interrogations Fawzi was repeatedly asked about his faith and was told that his treatment was due to the fact that his son is a Christian and, as his father, he is responsible for his son's conversion.<sup>74</sup> Fawzi was never formally charged or convicted of any crime. Presently Razi's seventeen-year-old son is in detention. The family has not been allowed to visit him and the authorities have not released details of his alleged crime. He was arrested on the day that he was to be inducted into the police force and has been under arrest now for two months. Razi said that his son had been arrested because "they said his family was Christian."<sup>75</sup> Despite being the victim of an attack by his classmates, Razi's thirteen-year-old son was taken to the police station where he was kept for two weeks. He was beaten and interrogated over allegations his father was a land-dealer, a collaborator and a Christian. Essentially Razi's family has been blacklisted. As an additional impediment imposed upon those who convert to Christianity, they are unable to obtain identity cards from the PA. Razi cannot even register the birth of his newborn child.<sup>76</sup> During his time in prison Razi stated that there were "six or seven other converts there."<sup>77</sup>

Abdullah was also questioned about his conversion to Christianity during interrogation, but was later charged with illegal gold dealing. According to Abdullah, the security officers used his daughter's gold

72. *Id.*

73. Confidential interview with Fawzi, a night-watchman from Nablus, in Jerusalem (Jan. 13, 2000).

74. *Id.*

75. *Id.*

76. *Id.*

77. Confidential interview with Razi, in Jerusalem (Jan. 13, 2000).

necklace as 'evidence' of his illegal gold dealing. When Abdullah provided evidence to prove that the necklace was purchased legally and that it was a present from his daughter's grandfather, his house was searched by the police. They didn't find any additional gold but instead confiscated all of his Christian books and his Bible.<sup>78</sup> Abdullah remembers his interrogators, Assam Ijbara, Fouad Yunis, Jamal Abu Miriam and Muhammed Taoufik, specifically declaring that they did not want anything from him except for him to return to Islam.<sup>79</sup>

Youssef also asserted that during his interrogation the security police repeatedly called him a "bad man" because he had converted to Christianity. Out of fear and desperation, Youssef signed a document denying that he was a Christian. When he was being released, the security police officer told him that he would be watched to see if he associated with any Christians. However, according to Youssef, in court records he was accused of having collaborated with Israel and causing problems for the PA.<sup>80</sup> As an additional punishment, Youssef's family, working with the police, had him thrown out of the village, telling him that he could only come back if he agreed to enroll in an Islamic school and forsake his "foolish ways." This he refused to do. Eventually Youssef was only able to return to the village when he agreed to sign a document at the police station promising not to meet with Christians.<sup>81</sup>

When Mustafa was summoned by the PSS for questioning, he was continually asked about his conversion and about David Ortiz, with whom he has regular Bible studies. When their attempts to coerce him to return to Islam failed, he was beaten by the interrogators for two to three days. The trumped-up accusation brought against him was "collaboration with Israel."<sup>82</sup>

In Salim's case the charge brought against him arose out of a previous conviction during the Israeli administration of the West Bank, before the

78. Confidential interview with Abdullah, *supra* note 56.

79. *Id.*

80. Confidential interview with Youssef (Sept. 23, 1998), *supra* note 59.

81. Interview with Leah Ortiz, the wife of a Christian lay Pastor living in the city of Ariel, in Jerusalem, (Jan. 18, 2000). David Ortiz, who is a Christian lay pastor from the United States, lives in the city of Ariel and teaches the Bible.

82. Confidential interview with Mustafa, *supra* note 52. The PHRMG reported that some of these 'collaborators' are Christian Zionists. Zionist evangelical beliefs are seen as undermining the appeal of Palestinian nationalism. Since Christian Zionists interpret the Bible literally, they often take political positions similar to the Israeli right-wing. This may explain why three of the six evangelical converts discussed above were accused of collaboration.

creation of the PA. It involved a feud between Salim and another person residing in the same village whom Salim injured, allegedly in self-defense. Despite the fact that he was tried, convicted and served his sentence in an Israeli jail and paid the sum agreed in a *sulha* (see *infra* section II.E.), Salim was rearrested based upon the earlier incident and charged with being a collaborator.<sup>83</sup> Salim's brother, Ghassan, was also taken in for questioning in September 1999, in relation to the same feud. The interrogators, however, only asked him about the feud on the first day of his forty days in detention. They then proceeded to question him about his brother's Christian beliefs and the whereabouts and activities of David Ortiz. They asked how his brother had met David Ortiz and what kind of relationship they have.<sup>84</sup>

Nasser was rearrested and questioned in 1995 about his conversion and relations with Christians. When he was summoned for the second time, the interrogators accused him of land dealing. Nasser claims that he denied the allegations and he was beaten and detained for two days. Before his release, one of the interrogators named Mohammed, conveyed to Nasser that the cause of his troubles was due to his conversion to Christianity and because he was friends with suspicious people—namely Christians.<sup>85</sup>

Since the release of these men from prison, they have been frequently summoned back to the offices of various PA security services for questioning. The interrogations continue to revolve around their Christian faith and various religious activities. Abdullah reports to the PSS approximately three times a month. They ask him to name other MCCs, and routinely ask questions about the activities of the MCCs. After each interrogation session, they place him in an isolation cell for three to four days. Abdullah claims that they are trying to force him back to Islam by "driving me crazy."<sup>86</sup> Salim is also summoned back to the security services frequently. According to Salim, they continually ask for the names of other converts and the leaders in the church that he attends. Recently, the security service men have admitted to him that they are aware that Salim is not a collaborator because they have been

83. Confidential interview with Salim, *supra* note 68; Confidential interview with Salim, in the West Bank (Apr. 17, 1999).

84. Interview with Leah Ortiz, *supra* note 81.

85. Confidential interview with Nasser, *supra* note 55.

86. Confidential interview with Abdullah, *supra* note 56.

watching him everyday, however, they are suspicious about his meetings with foreign Christians.<sup>87</sup> Youssef also receives frequent orders to report to the local police station. He claims that during each visit, the interrogators ask him to name other MCCs.<sup>88</sup> Youssef is convinced that the PA has him blacklisted as a convert to Christianity. When he tried to cross the border into Jordan to visit a sister who resides there, the Jordanian border patrol did not permit him to cross the bridge. After checking their computer, the guards mocked him for being a "traitor"—a convert to Christianity.<sup>89</sup> Nasser was also summoned back to the Salfit office by the PSS in 1997 and questioned for two hours. According to Nasser, the only thing the interrogators wanted was for him to inform on the other MCCs in his village.<sup>90</sup>

## 2. Bribes and Court Proceedings

In order to secure release from prison, some of the MCCs have been compelled to pay exorbitant sums of money to the police and security services. Salim paid 3000 Jordanian Dinars, the equivalent of approximately \$526, for bail.<sup>91</sup> Razi was released after he paid 10,000 Dinars, equivalent of approximately \$1,755.<sup>92</sup> Razi's father, Fawzi, was required to pay 30,000 Israeli (new) Shekels, about \$7,400.<sup>93</sup> Razi's son was forced to pay 3,000 Israeli (new) Shekels, about \$740 to be released after being taken by the Palestinian police.<sup>94</sup> Nasser was also forced to pay 3,000 Israeli (new) Shekels in order to be released.<sup>95</sup> Unfortunately, corruption is not limited to the police or security services. Both Razi and Fawzi claim that their lawyer required them to furnish additional large sums to pay off not only the police and the security services, but also judges, government officials and even members of the court clerical staff.<sup>96</sup>

87. Confidential interview with Salim, *supra* note 68.

88. Confidential interview with Youssef, *supra* note 59.

89. *Id.*

90. Confidential interview with Nasser, *supra* note 55.

91. Confidential interview with Salim, *supra* note 68.

92. Confidential interview with Razi, *supra* note 69.

93. Confidential interview with Fawzi, *supra* note 73.

94. *Id.*

95. Confidential interview with Nasser, *supra* note 55.

96. Confidential interview with Fawzi, *supra* note 73.

Frequently the trials of MCCs on trumped-up charges never actually take place. Salim's original court date was January 31, 1999. When he showed up, it was postponed. His next scheduled court date was May 11, 1999.<sup>97</sup> Abdullah is in the same predicament; each court date is postponed and then rescheduled when he arrives for trial.<sup>98</sup> No reason is ever given for the delays. Fawzi, as a condition of his release, had to obtain guarantees from prominent local merchants promising that he would not abscond before his trial date, which according to Fawzi, will never eventuate.<sup>99</sup> The practice of obtaining a guarantee involves paying a merchant for their signature, which the MCC presents to the police. If the individual MCC absconds the merchant must pay the guarantee to the authorities.<sup>100</sup> This arrangement is illustrative of the types of inappropriate relationships that the PA police and security services have with businessmen in the private sector. An independent task force sponsored by the Council on Foreign Relations highlighted the scope for abuse by police officers, stating that, "Police force facilities have also on occasion been constructed with donations from local merchants . . . [this could] . . . lead to corrupt practices and a culture in which members of the public come to expect preferential treatment."<sup>101</sup> In the interim the MCCs continue to incur legal fees and fear that they will never be exonerated from false charges.

Despite many other similar cases, a report was published by the PHRMG concluding, "it is doubtful that there is a PA policy to harass this fraction of the small evangelical community."<sup>102</sup> A PHRMG report indicated that the arrests of MCCs belong to a category of arrest that exists, "for a reason unknown to anyone except their persecutors."<sup>103</sup> The small number of MCC victims is not sufficient to establish that an official policy of persecution against them exists and is practiced by the PA. According to the PHRMG, the alleged MCCs who have suffered must be in a pool of a "society in which rule of law is continually

97. Confidential interview with Salim, *supra* note 68.

98. Confidential interview with Abdullah, *supra* note 58.

99. Confidential interview with Fawzi, *supra* note 73.

100. Interview with Leah Ortiz, *supra* note 81.

101. REPORT, *supra* note 9, at 116.

102. THE PALESTINIAN HUMAN RIGHTS MONITOR; *supra* note 17.

103. *Id.*

flouted, in which thousands of people have had their human rights violated."<sup>104</sup>

Terry McIntosh—founder of the Jesus House of Prayer in Jericho—does not think that there is an official policy against MCCs or Christians. According to him, his evangelical ministry has "enjoyed unprecedented favor from the PA." He does however claim that there are "radical individuals," and "criminal types" in government uniform that have abused their power. The MCCs that attend have encountered threats and have been warned not to attend the meetings at the House of Prayer by these vigilantes. According to McIntosh they are the exception and not the norm. It is not the "government," (the PA) but individuals in police and security uniforms.<sup>105</sup>

### III. UNDERSTANDING THE SOURCES OF THE PROBLEM

The PA is a state in the making, emerging from decades as an underground movement to take on the attributes and responsibilities of a legitimate state. It is useful to understand the inner workings of the PA to gain insight into the problem of persecution against the MCCs. Virtually every PA institution answers to Chairman Arafat himself. Arafat's Palestinian biographer noted:

Not only did the chairman of the PLO [Arafat] become the president of the PNA [Palestinian National Authority],<sup>106</sup> he was also its Prime Minister, the commander of the armed forces and president of the legislative council and had the power to appoint, promote and fire members of the judiciary. The executive, legislative and judicial powers of the PNA were thus vested in the person of Yasser Arafat.<sup>107</sup>

In addition, Arafat also appointed himself head of the Palestinian Economic Council for Development and Reconstruction, which oversees much of the donor funds intended to assist the emerging

104. *Id.*

105. Email from Terry McIntosh, Oct. 11, 1998 (USAJOURNEY@aol.com).

106. Palestinians generally refer to the PA as the PNA, there by likening their non-state entity to a sovereign entity, despite the absence of the word "national" or the initial "n" from the texts of the interim peace agreements.

107. ABURISH, *supra* note 6, at 276.

Palestinian entity.<sup>108</sup> This centralization of authority in one person is indicative of the power structure within the PA and its institutions.<sup>109</sup>

#### A. The Multiplicity of Palestinian Authority Security Forces

As part of the Oslo Accords of 1993, security and police forces were established by the PA. The exact number of security organizations within the PA is not certain, although human rights groups and foreign journalists have attempted to unravel this enigma. Dr. Sami Musallam, Director General of Yasser Arafat's office in Jericho, claimed that five PA security services exist. Eric Marclay, head of the ICRC Delegation in Jerusalem, stated that there are at least eight security services. The author of Arafat's biography, Said Aburish, identified nine security organizations which all report directly to Arafat. In Aburish's opinion, Arafat effectively holds the position of "chief of chiefs of police."<sup>110</sup> Bassem Eid, head of the Palestinian Human Rights Monitoring Group acknowledged, "nobody really knows."<sup>111</sup> He is cognizant of ten security services: the Civil Police, the Presidential Security Service (a.k.a. Force 17), the General Intelligence Service, Military Intelligence, the National Security Service, the Naval Police, the PSS, the University Police, the Border Crossings Security Service, and the Public Security Service.

The number of PA security and police personnel has been one of the issues of contention in the stalemated negotiations in the peace process. The PA was empowered by the Oslo accords, and reaffirmed with the Wye Memorandum, to have a police force comprised of six operational branches.<sup>112</sup> Arafat claims that the large size of the police and security forces are necessary, not only to maintain order and fight against terrorism, but also to reduce the problem of unemployment in the West Bank and Gaza. In a recent report by an independent task force, which analyzed challenges facing the public institutions of the emerging Palestinian state, it was argued that the Oslo framework provided no guidance as to the rights of or limits to the powers of the police forces.

108. *Id.*

109. See REPORT, *supra* note 9, for a detailed list of the extensive range of agencies directly attached to Arafat's executive office by executive decree.

110. ABURISH, *supra* note 6, at 308-309 (1998).

111. Interview with Bassem Eid, Head of the Palestinian Human Rights Monitoring Group, in Jerusalem (Nov. 30, 1998).

112. REPORT, *supra* note 9, at 111 (1999).

The centralization of power over the police and security forces by Arafat has led to the "perception among the Palestinian public and international community that there is an uncontrolled and *ad hoc* proliferation of security forces. This leaves the door open for intra branch rivalry, human rights abuses and poor procedural practice."<sup>113</sup>

In the hierarchical structure of the PA, the responsibilities and tasks of each security service are unclear. According to Bassem Eid, "the security services hold a position of excessive power within the PA and are involved in everything that happens under PA rule, even in ministerial work."<sup>114</sup> Decisions within the PA cannot be made without the consent of the security services, of which the PSS and the General Intelligence Service are the most influential. According to Bassem Eid, the security services' tasks are not legally specified and their power is unrestrained. He defines their work as "arresting and torturing." Almost all the human rights violations have been committed by the PSS and the General Intelligence Service.<sup>115</sup>

Part of the problem is that the PA security officers are not fully cognizant of the law and proper procedures for arrests, detention, interrogation and even basic human rights standards.<sup>116</sup> The 1998 report by the U.S. Department of State's Bureau of Democracy, Human Rights and Labor indicated that the PA security officials often do not follow existing laws in the West Bank or in Gaza regarding arrest and detention procedures.<sup>117</sup> According to the law, only the PA civil police force is vested with the authority to make arrests, however, all the ten or more security forces have been known to make arrests.<sup>118</sup> Staffed arbitrarily, based upon personal connections and Fatah membership,<sup>119</sup> abuse of power has been flagrant. Additionally, there are no clear regulations for

113. *Id.*

114. Interview with Bassem Eid, *supra* note 111.

115. *Id.* Bassem Eid gave the example of the Supreme Court ordering releases of prisoners, but the security services refused to implement the Supreme Court's ruling.

116. U.S. Department of State, *Occupied Territories Report on Human Rights Practices for 1997*, Released by the Bureau of Democracy, Human Rights and Labor (Jan. 30, 1998).

117. *Id.*

118. *Id.*

119. *Fatah* is the largest faction of the PLO. The literal meaning of the Arabic word *fatah* is "opening" although its popular meaning is "the Muslim conquest of non-Muslim lands." Arafat is the head of the *Fatah*. Harris Schoenberg, *A MANDATE FOR TERROR: THE UNITED NATIONS AND THE PLO* 11 (1989).

the training of officers. The average officer may be trained by his service or not at all.<sup>120</sup>

According to the PHRMG, most arrests conducted by the PA are illegal and do not conform to any body of law.<sup>121</sup> An Amnesty International delegation was told by an official at the Palestinian Authority's Ministry of Justice that, "those concerned with justice knew that 80 percent of those we arrested had committed no offence either under Palestinian or under Israeli law."<sup>122</sup> In a 1997 report examining 42 representative cases of illegal arrest, detention and torture, none of their interviewees were brought to court within the legally mandated 48 hours time limit for an extension of their arrest, nor were they ever brought to court to be charged during their period of detention and interrogation.<sup>123</sup> The PHRMG has also documented cases of suspects held for over a year without any legal proceedings being instituted against them. In a few cases of mass arrest or crackdown which occurred after suicide bombings, according to the PHRMG, at least 125 Palestinians were held in prison for months without being officially charged or brought to trial.<sup>124</sup>

An American columnist writing for the *New York Times*, Neil MacFarquhar, alluded to the original Palestinian hope for—and subsequent despair over—judicial fairness and proper policing, following the Israeli withdrawal and transfer of control to the PA. "They [the Gazans] were ecstatic to get Israeli troops off their streets, but dismayed to find the Palestinian troops who moved into the same barracks are eager to throw people in jail for even perceived slights

120. Interview with Bassem Eid, *supra* note 111.

121. Bassem Eid, *The State of Human Rights in Palestine*, PALESTINIAN HUMAN RIGHTS MONITOR, Issue No. 3, May 1997 at 3. Generally speaking, there are four categories of prisoners in Palestinian jails: suspected collaborators, suspected Muslim militants, suspects in non-political crimes and finally individuals who have been arrested for a reason unknown to anyone except their persecutors. Because there is little rule of law in the PA, the individuals in the last category are often arrested due to a personal disagreement with a member of the security forces or a senior PA official. See also PALESTINIAN HUMAN RIGHTS MONITOR, *supra* note 17, at 6-7.

122. *Palestinian Authority Defying the Rule of Law: Political Detainees*, AMNESTY INTERNATIONAL REPORT, at 7 (1999) [hereinafter AMNESTY INTERNATIONAL].

123. Bassem Eid, *The State of Human Rights in Palestine*, THE PALESTINIAN HUMAN RIGHTS MONITOR, Issue No. 3, May 1997 at 6.

124. *Id.* at 3.

against the PA."<sup>125</sup> In fact the PA has abused its powers by detaining outside the judicial process, "anyone thought to have criticized the Palestinian Authority, including journalists and human rights defenders."<sup>126</sup>

Numerous articles have been published in Israeli and Palestinian newspapers detailing illegal arrests and detentions for months on end. Human rights activists, such as Bassam Eid, have been abducted by PA security agents.<sup>127</sup> Another human rights activist and the current director of the Gaza Community Mental Health Program, Dr. Sarraj, was arrested for the fourth time on August 5, 1999 for his association with an article critical of the PA.<sup>128</sup> During his previous three arrests in 1995-96, he was "unlawfully" detained, beaten during interrogation and indicted on trumped-up charges alleging that he possessed illegal drugs and had struck a police officer.<sup>129</sup>

Two of the better-publicized cases of arbitrary arrest and detention by the PA concern Professor Fateh Subuh and journalist Daoud Kuttab. Professor Subuh was arrested in July 1997, shortly after he posed exam questions to his university students regarding PA corruption. Subuh was not brought to court within the legally mandated 48 hours time limit. He was ultimately released on bail after five months, probably due to his deteriorating health, which resulted from a five-week hunger strike, and his being tortured. No charges were ever brought against Professor Subuh.<sup>130</sup> Daoud Kuttab, the head of the Communications Department at Al-Quds University, was arrested on May 20, 1997 for broadcasting PLC debates on television. This educational program was seen as embarrassing to the PA. Kuttab was only released after the personal intervention of U.S. Consul-General Edward Abington with Arafat.<sup>131</sup>

In a recent well-publicized controversy, signatories of a petition which accused the PA executive of "opening the door wide for the

125. Neil MacFarquhar, *Gaza: The Sullen Zone*, N.Y. TIMES Aug. 16, 1997 at 1.

126. AMNESTY INTERNATIONAL, *supra* note 122, at 7.

127. See Steve Rodan, *New Christians Fear Oppression Under PA*, JERUSALEM POST, Jan. 5, 1996, at 10.

128. Hebcom Middle East Bureau (hebcom@actcom.co.il).

129. *Id.*

130. Suzanne Ruggi, *Illegally Detained Teacher Released*, THE JERUSALEM TIMES, Nov. 28, 1997 at 3.

131. Palestine Human Rights Monitoring Group, *THE STATE OF HUMAN RIGHTS IN PALESTINE IV 1997 ANNUAL REPORT*, V. 2, Jan. 1998, at 18.

opportunists to spread corruption," were jailed, and in two cases, assaulted. The *Jerusalem Post* reported that, "within two days of the petition becoming public knowledge, 10 out of 11 personalities who signed it were either in prison or under house arrest."<sup>132</sup> A member of the PLC who signed the petition, Mouawayah Masri, was wounded by a gunman only hours after refusing to denounce the petition,<sup>133</sup> and on December 16, 1999 Abdel Jawwad Saleh, another signatory who was also a member of the PLC, was assaulted by General Intelligence officers.<sup>134</sup>

In the PA legal system, both security and political detainees are seldom convicted. Indeed, most of the inmates are held without charge and without a court hearing.<sup>135</sup> They are confined in the 152 prisons, detention and interrogation centers that are operated by the security services on the territory administered by the PA. The largest prisons are situated in Ramallah, Nablus, Jenin, Tulkarem, Shneid and Bethlehem. Bassem Eid estimated the number of prisoners and detainees currently held at 1500, of which 500 are security prisoners (held for land dealing and collaboration), 500 are criminal prisoners, and about 500 are held for political reasons ( Hamas, Islamic Jihad members).

#### B. The Palestinian Authority's Security Courts

The State Security Courts were established by Yasser Arafat in February 1995 to try cases involving security issues.<sup>136</sup> The judges and prosecutors are all military officers of the PLO directly appointed by Arafat.<sup>137</sup> Prior to trial the defendant is typically held incommunicado for an extended period of time. The trials are usually convened in secrecy at about midnight. If a defense counsel is appointed (some claim that the defendant must appear *pro se*),<sup>138</sup> the lawyer is assigned to the

132. Ben Lynfield, *Qurei Blocks PLC Bid to Discuss Fate of Jailed PA Critics*, THE JERUSALEM POST, Dec. 15, 1999, at 5.

133. *Id.* at 1.

134. TJT Staff, *Signatories of "Manifesto 20" Released; Two Still in Custody*, THE JERUSALEM TIMES, Dec. 24, 1999, at 2.

135. Interview with Bassem Eid, *supra* note 111.

136. AMNESTY INTERNATIONAL, *HUMAN RIGHTS: A YEAR OF SHATTERED HOPES*, at 22-23 (1995); see also Hilary Appleman, *Palestinians See "No Logic, No Law,"* JERUSALEM POST, May 17, 1995, at 5.

137. AMNESTY INTERNATIONAL, *supra* note 136, at 5.

138. *PCHR Election Update*, No. 2, Jan. 12, 1996, at 9.

case only immediately before the hearing. Trials are conducted so quickly as to preclude reasonable procedural guarantees for the defendants.<sup>139</sup> No right of appeal exists and the verdict can only be ratified or overturned by Arafat. The PA has also used the State Security Courts to circumvent orders from the High Court to release detainees.<sup>140</sup> The argument is that, since the case is before the State Security Court, the detainee has not been prosecuted before the High Court, and therefore, the case is outside their jurisdiction. Problematically the case is not usually prosecuted before the State Security Courts either, which results in the individual being detained indefinitely.<sup>141</sup>

According to the 1997 report of the Bureau of Democracy, Human Rights and Labor, "The PA usually ignores the legal limits on the length of prearrestment detention of detainees suspected of security offenses. Defendants are often brought to court without knowledge of the charges against them, nor are they allotted a sufficient time to prepare a defense."<sup>142</sup> Amnesty International asserted that "in the first cases held by the court, pre-trial and trial procedures fell far short of international standards for a fair trial."<sup>143</sup>

#### C. The Palestinian Authority's Judicial System

The judicial system under the PA is very complicated. Additionally, it is entangled in a web of bureaucracy and the ebb and flow of a power struggle. A June 1999 UN report indicated that the Palestinian legal system is underdeveloped and that the judicial system is weak. In spite of legislation to empower the judicial system as a separate body, discrete from the executive branch, Arafat is still the primary source of power.<sup>144</sup>

139. *Id.*

140. According to Torge Larson, a political officer at the Norway Representative Office, security centers are a major area of concern for Norway and the Norwegians have raised this repeatedly with Arafat. Interview with Torge Larson, in Tel Aviv (Jan. 16, 2000).

141. AMNESTY INTERNATIONAL, *supra* note 122, at 9.

142. Bureau of Democracy, Human Rights and Labor, *U.S. Department of State: The Occupied Territories Report on Human Rights Practices for 1997* (visited Dec. 15, 1997). <[http://www.state.gov/www/global/human\\_rights/1997\\_hrp\\_report/occterr.html](http://www.state.gov/www/global/human_rights/1997_hrp_report/occterr.html)> [hereinafter Bureau of Democracy].

143. AMNESTY INTERNATIONAL, *supra* note 122, at 2.

144. *Judicial System in Palestine Weak*, THE JERUSALEM TIMES, June 11, 1999, at 2.

The lack of independence of the judicial system has often resulted in an ongoing conflict between the PA security forces and the High Court. An Amnesty International report in May/June 1999 indicated that "[t]he PA has defied the orders of its own High Court to release prisoners and has ignored calls from the Palestinian Legislative Council to free those being held without due process." Thus, the rulings of the judiciary are virtually ignored by the PA security forces.<sup>145</sup>

PA prisoners' access to legal representation is, at best, limited and sporadic. At its worst, no legal assistance is available to aid them in their difficult and typically unjust predicament.

The U.S. State Department, in its 1997 Country Report on Human Rights Practices, states that the PA has denied detainees access to lawyers.<sup>146</sup> The Palestinian Human rights group LAW, which provides legal counsel for detainees, asserts that it has been denied access to clients for months at a time with no explanation from PA officials. According to LAW, this is an outright violation of existing Palestinian law. In addition, the director of LAW, Khaled Shkirat has been threatened by the PA General Intelligence Service's chief, after Shkirat attempted to visit a client.<sup>147</sup> The PHRMG reports that Palestinian law stipulates that prisoners are entitled to legal access and representation, although the proper procedure to guarantee prisoners such access is not clear. The PHRMG suggests that the procedural confusion is intentional—in order to keep prisoners from gaining legal assistance.<sup>148</sup>

Another obstacle to detainees receiving proper legal assistance in jail is that it is difficult for lawyers to aid detainees who have yet to be charged with a crime. The lawyers typically claim that there is little they can do until charges are brought, and are reluctant to take action on the behalf of such illegally detained prisoners,<sup>149</sup> likely from fear of being perceived as challenging the authority of the PA.

145. AMNESTY INTERNATIONAL, *supra* note 122, at 9.

146. Bureau of Democracy, *supra* note 142.

147. *Id.*

148. Bassem Eid, *The State of Human Rights in Palestine II: The Judicial System*, THE PALESTINE HUMAN RIGHTS MONITOR, No. 4, Aug. 1997, at 7.

149. *Id.* at 7.

#### D. Islamic Law and Apostasy

Aside from the judicial system, Palestinian society is still heavily influenced by traditional Islamic law and, in particular, a traditional method of judicial reconciliation. Islamic law, *Sha'aria*, and the conflict resolution known as *sulha* (see *infra* section III.E.) operate in parallel with the PA legal and judicial system. Much of the societal discrimination and persecution suffered by MCCs can be attributed to Islamic law and the *sulha* procedure.

The Islamic law, *Sha'aria*, is the code of religious law that governs the lives of Muslims. It has been utilized for centuries by Muslims as the basis for the rules of individual and group behavior. The *Sha'aria* law is based on the *Qu'ran*, the Muslim equivalent of the Bible and on the teachings of the Prophet Muhammed. At the very core of the *Qu'ran* and the teachings of Muhammed is the commandment that Muslims are not to worship anyone but *Allah* (God). This view stems from the perception that Islam is the one true religion, enjoying a higher status than either Judaism or Christianity. Although Jews and Christians are revered as the "Peoples of the Book," and as adherents of religions that predate Islam, the youngest of the three monotheistic religions, Islam insists that it alone is the highest divinity.

To leave Islam for another religion, after having received the divine truth, is regarded as *riddah*, or turning away from God. *Allah's* punishment for apostasy is severe. The *Qu'ran* says that apostates' punishment will be in this world and in the hereafter, where they will dwell in hell.<sup>150</sup> Thus, "[a]nd who so be-cometh a renegade and dieth in his disbelief: Such are they whose works have fallen both in the world and the Hereafter. Such are rightful owners of The Fire: they will abide therein." In *Surah III*, the divine right to punish apostates is given, "*Allah* guideth not wrongdoing folk. As for such, on them rests the curse of *Allah* and of the angels and of men combined."<sup>151</sup>

While the *Qu'ran* does not prescribe any worldly punishment for apostates, but rather describes their suffering in hell in the hereafter, the Prophet Muhammed is quoted to have said that apostates should be killed, "whoever changed his Islamic religion, then kill him."<sup>152</sup>

150. OU'RAN, *Surah II*, 217.

151. QU'RAN, *Surah III*, 86-87.

152. *Id.* at 43.

Following this prescription, the *Sha'aria* law stipulates the death penalty for apostates, as they have rejected the divine truth of Islam. Apostasy is one of the *Hudud*<sup>153</sup> offenses, for which God has posed absolute prohibitions and absolute punishments. According to Islamic Criminal Law a male who commits one of these offenses will be beheaded, while females will be imprisoned until they repent.<sup>154</sup>

According to Dr. Sami Musallam, the Director of Yasse Arafat's office in Jericho, the PA has not enacted Islamic law, and no official document proves that it has incorporated *Sha'aria* law within its legal system. However, as in other Arab countries, the religious laws are recognized by the PA. Dr. Musallam adds that it would be a disadvantage for the PA's bilateral relations with Arab states to emphasize the secular civil character of its legal system and ignore the *Sha'aria* law.<sup>155</sup> Thus, the two systems of law, Islamic religious and secular "democratic" are implemented in the Palestinian territories.<sup>156</sup> The PA's unofficial acceptance of *Sha'aria* law is loosely based on the balance of power between Islam and Christianity, in light of the fact that Muslims comprise more than 95 percent of the population.<sup>157</sup>

The religious courts which deal with inheritance, marriage and death base their rulings upon the *Sha'aria* law. While Palestinians can petition the civil PA courts in these matters, many choose to turn to the *Sha'aria* courts. Although the decisions from the *Sha'aria* courts possess no legal power, because Palestinian society is deeply traditional, the *Sha'aria* courts' decisions are highly respected.<sup>158</sup>

There are no provisions in either the *Sha'aria* or in the PA civil law which regulate the relationship between Muslims and Christians or

153. Al-Hudud is the plural of Hadd. Al-Hudud are the limits which Allah has set. If somebody violates them, s/he is to be punished according to certain penalties prescribed by Allah. These penalties are also called Hudud. XIII DR. MUHAMMAD MUHSIN KHAN, *The Translation of the Meanings of Sahih Al-Bukhari*, 503 (n.d.).

154. See LIPPMAN, MCCOVILLE & YERUSHALMI, ISLAMIC CRIMINAL LAW AND PROCEDURE 42 (1988).

155. Interview with Dr. Sami Musallam, Director General of Yasser Arafat's Office, in Jericho (Oct. 13, 1998).

156. In the author's opinion, another factor which may influence the unofficial recognition of traditional law is the role it provides in nation-building, in fostering a common and identifiable set of rules and morals which engender a sense of unity.

157. Interview with Labib Madanat, *supra* note 42.

158. Interview with Dr. Bishara Awad, *supra* note 35; Interview with Sami Musallam, *supra* note 156.

concern Christians in particular. However, *Sha'aria* specifically forbids conversion from Islam to another religion,<sup>159</sup> and cases of this nature fall under the jurisdiction of the religious courts. According to *Sha'aria* law, apostasy and conversion, or *riddah*,<sup>160</sup> are capital crimes. Thus proper punishment is described as follows:

When a Muslim turns his back to Islam, the authorities should ask him to accept Islam. If he has some doubts, they must be removed and he should be sent to prison for three days. If during this period he accepts Islam, it is well, but if not, he must be slain . . . . If he does not repent it is an obligation of the Muslim to slay him."<sup>161</sup>

The religious courts can publish a decree of *riddah* concerning a convert from Islam to Christianity.<sup>162</sup> This decree will condemn the conversion and publicly declare the convert to be an outcast of society. The convert will lose all social and religious protection. Extrajudicial killing exercised on the stigmatized individual, while not explicitly promoted, will not be prosecuted by the *Sha'aria* courts. According to Mr. Musallam, in the eyes of the public, someone who kills an apostate from Islam will be regarded as a hero.<sup>163</sup>

#### E. *Sulha* as a Means of Conflict Resolution in the Palestinian Authority

Aside from the civil courts administered by the PA in the territories, there exists a traditional form of conflict resolution called *sulha* that is common in Muslim societies. The *sulha* procedure has no foundation in PA law but is conducted according to traditional and ancient rules. *Sulha* even antedates Islam and is based upon tribal traditions.<sup>164</sup> It was, however, adopted throughout the Arab Muslim world, incorporated and elaborated upon in the *Sha'aria*.<sup>165</sup> *Sulha* can be applied to any criminal

159. Interview with Ibrahim Kandalaft, *supra* note 40.

160. See MUHAMMAD ASLAM, MUSLIM CONDUCT OF STATE BASED UPON THE SULUK—UL-MULUK 492 (1974) (In the religious sense, "riddah" means "to cut off from Islam" and according to Dr. Sami Musallam, "riddah" means "the one who turns away from Islam").

161. *Id.* at 495.

162. Interview with Sami Musallam, *supra* note 156.

163. *Id.*

164. Darwish Musa Darwish, Mukhtar of Isawiya in Eastern Jerusalem, "Sulha Conflict Resolution," Address at the Yakar Center for Social Concern, Jerusalem (Dec. 16, 1998).

165. *Id.*

matter or civil dispute, including conflicts between neighbors and even capital offenses such as murder. Dr Musallam stated that *sulha* is "the principal means of conflict resolution in Palestinian society. It is not only used for minor offenses but also for crimes such as murder."<sup>166</sup> In Palestinian society, *sulha* settlements are more respected by society than legal proceedings which can be a protracted process.<sup>167</sup> While a *sulha* can be concluded within three months, the civil courts typically process cases much more slowly. In many respects *sulha* is a desirable method of dealing with disputes within the context of a traditional community.

Torge Larson, political officer at the Norway Representative Office, has three years experience in Gaza and the West Bank working on democracy, human rights and rule of law issues. He argues that in a society where the judiciary is often ineffective, a society that while under Israeli jurisdiction distrusted the Israeli court system, it is natural to turn to traditional systems, like *sulha*.<sup>168</sup> Most importantly for the purposes of this article, *sulha* can be employed to resolve conflicts between Muslims and Christians. Problematically, however, MCCs are automatically disadvantaged since they would be unable to have their dispute resolved by a *sulha* settlement. David Ortiz argues that this is so because, under Islamic law, "they basically have a *fatwa* on all the MCCs."<sup>169</sup> Larson suggests that MCCs would not be able to take part in a *sulha* due to the degree of hostility directed towards them in their communities. "[T]he situation is so inflamed within the community that it makes it difficult for MCCs."<sup>170</sup>

*Sulha* is aimed at reconciling the parties in conflict. A mediator, or *Jaha*, who is usually a revered elder in the community or village acquainted with *sulha* rules, proposes to the injured party conflict settlement using the *sulha* method.<sup>171</sup> However, often the parties do not agree to pursue the *sulha* procedure immediately, and "generally the *Jaha* must return to the household several times before obtaining

166. Interview with Dr. Sami Musallam, *supra* note 156.

167. Interview with Ibrahim Kandalaft, *supra* note 40.

168. Interview with Torge Larson, political officer at the Norway Representative Office, in Dahil Bared (Jan. 26, 2000).

169. Interview with David Ortiz, *supra* note 81.

170. Interview with Torge Larson, *supra* note 169.

171. Ryad Salhab, a family elder from Eastern Jerusalem, "Sulha—Conflict Resolution," Address at Yakar Center for Social Concern, in Jerusalem (Dec. 6, 1998); interview with Bassem Eid, *supra* note 111; interview with Sami Musallam, *supra* note 156.

consent. Despite the initial rejection of mediation, this persistence is necessary in order to demonstrate proper respect for the honor of the injured family."<sup>172</sup>

According to Bassem Eid, the PA has the power to determine if a *sulha* can be implemented in a given conflict. If the injured party is a *Fatah* member, the PA will acquiesce to his wishes, but if the aggrieved is not a *Fatah* member, it will deny him a *sulha* settlement.<sup>173</sup> As soon as both parties have agreed to entrust the case to the *Jaha* and accept his ruling, the *sulha* procedure begins with a *Hodna*, a truce intended to prevent revenge attacks. The *Hodna* usually lasts three to six months, as specified by the *Jaha*. During this period, the assessment of damages takes place, injured victims can recover, and both parties agree not to attack each other.

During the *Hodna*, something akin to bail is paid to the victim's family by the offender, called '*Atwa*. This is a gesture to show the offender's readiness to settle the conflict and to re-establish peace. '*Atwa* can also be given in the form of a pledge, a commitment to *sulha* and the truce, but a monetary payment is the norm. Subsequently there is a period of investigation. The *Jaha* ascertains the damages, how the conflict came about, and who was responsible. After the completion of these procedures, the actual *sulha* ritual takes place. The conflicting families and leading members of the community come to a meeting at which the parties confirm their readiness for a peaceful agreement, make pledges and reach an agreement as to how the damages should be paid. According to Darwish Musa Darwish, the Mukhtar of Isawiya in East Jerusalem, intentional murder, for example, according to traditional rules, requires the payment of 100 camels. Today this is the equivalent of 100,000 Jordanian Dinars, approximately \$135,000 (US). Furthermore, the murderer must leave the country.<sup>174</sup> It is up to the victim's family to request money or to accept only a verbal pledge. The *sulha* ritual is normally concluded by a common meal at the offender's house.

Under the PA, a *sulha* agreement can replace a civil legal judgement (or out of court settlement). If both parties inform the court that an

172. See THE ROLE OF THE JAHA, Information Sheet (Wi'am Palestinian Conflict Resolution Center) (March 19, 1998).

173. Interview with Bassem Eid, *supra* note 111.

174. Interview with Darwish Musa Darwish, *supra* note 165.

agreement has been reached, no legal procedure will be undertaken in that matter. Sami Musallam indicated however, that in regard to serious crimes such as murder, the courts will take the *sulha* judgement into consideration dealing primarily with those aspects of a crime which were unresolved by *sulha*.<sup>175</sup>

Ibrahim Kandalaft, the PA's Deputy Minister for Christian Religious Affairs, stated that the *sulha* is mainly applied to serious crimes such as murder. In the case of a murder, the murderer would pay a sum of money to the victim's family in order to re-establish peace. The subsequent criminal trial would take the *sulha* judgement into account and probably issue only a light sentence.<sup>176</sup> Mr. Musallam and Mr. Kandalaft concurred that in many ways, *sulha* procedures are preferred by the Palestinians, and its rulings are "more respected" than PA legal procedures.<sup>177</sup> Therefore, it is quite common to employ a *sulha* rather than a conventional legal process for conflict resolution in the PA territories. Certainly it is a procedure that is deeply embedded in society, having been practiced for hundreds of years. It is also a more expeditious mechanism than the PA civil courts.<sup>178</sup> With the PA court system "in a state of disrepair," part of the burden at the local level, "has been taken up by traditional social institutions and practices."<sup>179</sup>

It is suggested that the *sulha* mechanism discriminates against MCCs in two respects. In the first instance, *sulha*, in conjunction with *Sha'aria* law, serves to foster (among Muslims) a sense that the convert is "outside" of the wider community. They are therefore an easy target to blame for any perceived shortcomings in society. Secondly, MCCs are denied the opportunity to resolve their disputes by a mechanism common to the rest of the community, even if they should so desire. While traditional courts may in some cases provide a system of alternative dispute resolution, "excessive virtue should not be made of necessity."<sup>180</sup> Without a competent judicial system, MCCs are left with few options when seeking justice under a regime which often singles them out for adverse treatment.

175. Interview with Dr. Sami Musallam, *supra* note 156.

176. Interview with Ibrahim Kandalaft, *supra* note 40.

177. Interview with Dr. Sami Musallam, *supra* note 156; Interview with Ibrahim Kandalaft, *supra* note 40.

178. Interview with Father Tom'i Dawod, *supra* note 37.

179. REPORT, *supra* note 9, at 14.

180. *Id.*

#### IV. ULTIMATE RESPONSIBILITY FOR ADDRESSING HUMAN RIGHTS VIOLATIONS: THE PALESTINIAN AUTHORITY OR ISRAEL?

It is important to remember that the PA is a pre-state entity, which derives its existence and authority from the interim peace agreements. While the PA has assumed administrative responsibilities in designated areas of the West Bank and Gaza, it is not a sovereign state and the Israeli military rule over the territories is still in effect.<sup>181</sup> This has been recognized by the senior Palestinian peace negotiator and senior deputy to Arafat, Mahmoud Abbas, who referred to the DOP by stating that, "[w]e do not claim that we signed an agreement that created an independent Palestinian State; none of the provisions of the Declaration of Principles make such a claim."<sup>182</sup> Similarly, in response to the PA's declaration that it would adhere to the Geneva Conventions of 1949 and the subsequent two Protocols, the Swiss Federal Council stated that "it was not in a position to decide whether the letter constituted an instrument of accession," and deferred from making a decision "due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine."<sup>183</sup>

As a non-sovereign entity, commitments to International Conventions, (i.e., on human rights) are not strictly binding on the PA.<sup>184</sup> The PA has a responsibility to demand from its population (and especially its security forces, police officers and other officials) to respect the rights of MCCs. There should be no tolerance for expressions of societal hostility towards minority populations. In the opinion of this author, although this matter is (or rather, should be) dealt with by the PA on a daily basis, the ultimate legal responsibility falls on Israel, which empowered the PA to act on its behalf during the interim

181. See Justus Weiner, *An Analysis of the Oslo II Agreement in Light of the Expectations of Shimon Peres and Mahmoud Abbas*, 17 MICH. J. INT'L L. 667, 671 (1996).

182. MAHMOUD ABBAS, THROUGH SECRET CHANNELS 218 (1995).

183. Geneva Conventions, Aug. 12 1949 and Additional Protocols of June 8 1977: *Ratifications, Accessions and Successions*, DD/JUR 98/820—CPS 32 (Dec. 31, 1998).

184. The PA resurrected a British Mandate-era law which bans missionizing, under this law, missionizing to Muslims will be considered a crime. A member of the Palestinian Legislative Council and advisor to Arafat told the ICEJ that missionizing to Muslims was considered threatening to the PA. PALESTINIAN HUMAN RIGHTS MONITOR, *supra* note 17. No one has ever been specially charged with violating this law.

period. All human rights violations should, if necessary, as a last resort, be addressed in the Israeli Supreme Court sitting as the High Court of Justice until, at the end of the permanent status negotiations, the legal vacuum is filled by a recognized Palestinian state.<sup>185</sup>

## V. FREEDOM OF WORSHIP IN INTERNATIONAL LAW

### A. United Nations Conventions

The main sources of international law protecting the freedom of religion are referenced in the following declarations of human rights: the 1945 UN Charter,<sup>186</sup> the 1948 UN Universal Declaration of Human Rights,<sup>187</sup> the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>188</sup> the 1965 International Convention on the Elimination of All Forms of Racial Discrimination,<sup>189</sup> the 1966 International Covenant on Civil and Political Rights,<sup>190</sup> the 1969 American Convention on Human Rights,<sup>191</sup> the 1975 Final Act of the Helsinki Conference on Security and Co-operation in Europe,<sup>192</sup> the 1981 African Charter on Human and Peoples' Rights<sup>193</sup> and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion.<sup>194</sup>

It is important to note that freedom of religion specified in the international human rights conventions, covenants and declarations has a special standing and a permanent status. Pursuant to Article 4(2) of the

185. See Justus Weiner, *Human Rights in Limbo During the Interim Period of the Israeli-Palestinian Peace Process*, 27 N.Y.U.J. INT'L L. & POL. 761 (1995).

186. U.N. Charter art. 1, ¶ 3, art. 55, ¶ c. art. 13, ¶ B.

187. Article 18 in G.A. Res. 217 A(III), U.N. GAOR, 3rd Sess., pt. 1, 183rd mtg., at 71, U.N. Doc. A/180 (1948), reprinted in 43 AM. J. INT'L L., supp. at 127 (1949).

188. See Yoram Dinstein, *Freedom of Religion and the Protection of Religious Minorities*, THE PROTECTION OF RELIGIOUS MINORITIES & HUMAN RIGHTS, at 145-69 (1992).

189. See Nathan Lerner, *The UN Convention on the Elimination of All Forms of Racial Discrimination*, THE LONDON INSTITUTE OF JEWISH AFFAIRS (1970).

190. G.A. Res. 2200A (XXI), Annex, U.N. GAOR, 21st Sess., Supp. No. 16, 1496th plen. mtg. at 49, U.N. Doc. A/6316 (1967); entered into force on Mar. 23, 1976, reprinted in 993 U.N.T.S. 3; 6 I.L.M. 360 (1967).

191. Dinstein, *supra* note 189.

192. *Id.*

193. *Id.* at 146.

194. G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, 73d plen. mtg. at 171, U.N. Doc. A/36/51 (1982), reprinted in 21 I.L.M. 205 (1982).

International Covenant on Civil and Political Rights and Article 27(2) of the American Convention, the guarantee of religious freedom is non-dirigible (it cannot be suspended at any time) under any circumstances, including times of war.<sup>195</sup>

Among the above mentioned international human rights instruments, the relevant articles pertaining to the MCCs will be highlighted in this section: freedom of religious adherence, freedom of religious choice, freedom of religious observance, freedom of religious propagation and the obligation of the state to prevent discrimination based upon religious beliefs.

### B. Freedom of Religious Adherence and Choice

The Universal Declaration of Human Rights ("UDHR") and the International Covenant on Civil and Political Rights ("ICCPR") include articles that specifically address freedom of religion. Article 18 in the UDHR specifies the following: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to *change* his religion or belief and freedom, either alone or in a community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."<sup>196</sup>

The UDHR's reference to freedom of religion encompasses not only the freedom to adhere to any existing religious faith of choice, but furthermore, everyone is at liberty to choose and to "change" a religion or belief.<sup>197</sup> No one shall be forced to adhere to a religion. Professor Yoram Dinstein has underscored the freedom to "challenge received beliefs and to have a completely different theological outlook."<sup>198</sup>

The ICCPR extends the UDHR's right to "change" one's religion to specifically include the right to "adopt" a religion. It states that freedom of religion "include[s] freedom to *adopt a religion* or belief of his choice and [specifies that] *No one shall be subject to coercion which would impair his freedom* to have or to adopt a religion or belief of his

195. See Dinstein, *supra* note 189, at 146; Bahiyyih G. Tahzib, FREEDOM OF RELIGION OR BELIEF, at 87-88 (1996).

196. See *id.*, at 71-72 (1996) (emphasis added).

197. *Id.*, at 75. The phrase "freedom to change his religion" was objected to by Islamic states but passed during a vote by roll call.

198. Dinstein, *supra* note 189, at 147.

choice."<sup>199</sup> The Human Rights Committee further clarified its position in the General Comment of Article 18, that the "freedom to have or to adopt a religion or belief" entails "the freedom to choose a religion or belief, including, *inter alia*, the right to *replace* one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief."<sup>200</sup>

### 1. Freedom of Religious Observance

Beyond the right to choose a faith, one has the right to manifest that faith through prayer and worship meetings, dietary laws, days of rest, celebrations, festivities and fasting.<sup>201</sup> Article 18 of the ICCPR entitles everyone to "manifest his religion or belief in worship, observance, [and] practice either individually or in community, in public or in private."<sup>202</sup> Practicing religious observance is subject to limitations, prescribed by law, only if it infringes upon "public safety, order, health, or morals or the fundamental rights and freedoms of others."<sup>203</sup> These limitations only apply to religious observance and not to the right to convert non-believers.<sup>204</sup>

### 2. Freedom of Religious Propagation

The UDHR allows for teaching, practice, worship and observance of one's religious belief. The UDHR protects the right to teach one's belief to others who may or may not be members of the same religion. Teaching includes passing on the ideology and ideas of a religion or belief to others who may be attracted to a new belief system and consequently change their religion. Thus, Article 18 also allows for missionizing activities, "the teaching of religion can be done in public or in private, either individually or in community."<sup>205</sup> According to Dinstein, "the right to teach . . . embraces the right to propagate the

199. TAHZIB, *supra* note 196, at 84 (emphasis added).

200. *Id.* at 87 (emphasis added).

201. Dinstein, *supra* note 189, at 150.

202. *Id.*

203. *Id.* at 151.

204. *Id.*

205. *Id.* at 153.

faith among the uninitiated."<sup>206</sup> In other words, the UDHR permits efforts to gain converts.

### 3. Obligation of the State

According to Article 20(2) of ICCPR, "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."<sup>207</sup> Not only are direct attacks (e.g., physical violence, discriminatory laws, psychological pressure) on members of a religious community prohibited, but also such actions that aim to promote discrimination against or persecution of a religious community or individuals of a different faith. Propaganda against certain individuals or a religious group by the government, the press, other religious communities or political parties which results in persecution, antagonism or discrimination, would all fall within the purview of this prohibition. Article 27 deals with minority rights, in those States in which "ethnic, religious . . . minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."<sup>208</sup> Article 27 grants autonomy to religious groups and guarantees their right to assemble and practice their religion, even though it differs from the religion of the majority. No individual or group shall be subject to a forced assimilation to the dominant religion.

The Declaration on the Elimination of Religious Intolerance and Discrimination<sup>209</sup> ("DERID") represents the most recent attempt to advance international legal protection of the freedom of religion or belief. Comprising the general statements made in the previous instruments on freedom of religion (or belief) and freedom from discrimination based on religion (or belief), it is more specific in its provisions than earlier international instruments and declarations. Article 4 states that, "all states shall take effective measures to prevent

206. *Id.* at 154.

207. International Covenant on Civil and Political Rights, adopted Dec. 19, 1996, effective March 23, 1976, G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966).

208. *Id.*

209. G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, 73d plen. mtg. at 171, U.N. Doc. A/36/51 (1982), reprinted in 21 I.L.M. 205 (1982).

and eliminate discrimination on the grounds of religion or belief . . . and all states shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter." The declaration has a binding effect on those states which voted for it.<sup>210</sup> This is also confirmed by Article 7 which states, "[t]he rights and freedoms set forth in the present Declaration shall be accorded in national legislation." Article 3, in strong language, provides that, "[d]iscrimination between human beings on the grounds of religion or belief constitutes . . . a disavowal of the principles of the Charter of the United Nations and shall be condemned as a violation of the human rights and the fundamental freedoms proclaimed in the Universal Declaration of Human Rights." Article 1, paragraph 2, "clearly forbids the use or threat of physical force to compel believers to recant or convert."<sup>211</sup> Donna J. Sullivan, however, interprets the term coercion as including "mental or psychological means of compulsion."<sup>212</sup>

#### C. United States Statute Protecting the Freedom of Religion Abroad: The International Religious Freedom Act

Representative Frank R. Wolf (R-VA) took the first step toward drafting U.S. legislation for protecting the freedom of religion abroad in August 1996, with a resolution addressing the problem of Christian persecution abroad, introduced in the House of Representatives.<sup>213</sup> The initiative of August 1996 led to the introduction of a bill entitled the Freedom from Religious Persecution Act, in the House on May 20,

210. See Brice Dickson, *The United Nations and Freedom of Religion*, INT'L. COMP. LAW QUART., 345 (1995). See also TAHZIB, *supra* note 196, at 186.

211. Article 18 in G.A. Res. 217 A (III), U.N. GAOR, 3rd Sess., pt. 1, 183d plen. mtg. at 71, U.N. Doc. A/810 (1948), reprinted in 43 AM.J. INT'L L., supp. at 127 (1949).

212. Donna J. Sullivan, *Advancing the Freedom of Religion or Belief Through the UN Declaration on the Elimination of Religious Intolerance and Discrimination*, 82 AM. J. INT. L. 494 (1998).

213. The resolution called the President to expand U.S. efforts to combat the growing problem of Christian persecution and initiate an examination of U.S. policies that affect persecuted Christians. The President was also urged to appoint a special advisor on religious persecution.

1997<sup>214</sup> and the Senate on May 21, 1997,<sup>215</sup> sponsored by Representative Wolf and Senator Arlen Specter (R-PA) respectively.

An amended version of the bill, H.R. 2431,<sup>216</sup> passed the House of Representatives on May 14, 1998 but was not acted upon in the Senate. The Clinton administration strongly opposed the bill which provided for the imposition of severe and automatic economic and political sanctions as soon as a government is identified as allowing religious persecution, saying that "it would make it impossible for the US to put national security and trade concerns ahead of fighting religious persecution,"<sup>217</sup> and threatened that the President would veto the bill if it reached Clinton's desk.<sup>218</sup>

Due to the Administration's pressure and doubt about the effectiveness of the bill,<sup>219</sup> Senator Don Nickles (R-OK) introduced an

214. See H. Res. 1685, 105th Cong., 1st Sess. (1997).

215. See S. Res. 772, 105th Cong., 1st Sess. (1997).

216. See H. Res. 2431, 105th Cong., 2d Sess. (1998). The bill calls for the establishment of an Office on Religious Persecution Monitoring ("ORPM") at the State Department, which shall submit annual reports on religious persecution about those countries listed in the State Department's Country Reports on Human Rights Practices. The Director of the ORPM, who is appointed by the President, shall make recommendations, in consultation with the Secretary of State, to the President. Two categories of persecution will be considered. Category 1 Persecution is religious persecution in which the government is involved whereas Category 2 Persecution addresses governments who do not take measures against religious persecution. If the ORPM can determine religious persecution of Category 1 or 2 in any one country, the following sanctions shall be applied on this country automatically: ban on non-humanitarian foreign aid, ban on visas to known persecutors, ban on U.S. support for loans by international financial institutions, ban on the export of torture and crime control goods to those countries and a ban on the export of goods to governmental units that directly carry out persecution. Sanctions will be lifted 45 days after a country is no longer considered a violator in the ORPM's report. The President may waive the imposition of the sanctions only in extraordinary circumstances, e.g., if the national security interests of the U.S. require it or the waiver serves the purpose of this act.

217. See Tony Carnes, *Religious Persecution Bill Drops Trade Sanction Clause*, CHRISTIANITY TODAY, Apr. 27 1998 (visited Dec. 14, 1998) <<http://www.christianity.net/ct/8T5/8T5025.html>>.

218. See Tony Carnes, *Religious Persecution Bill Encounters Stiff Resistance*, Christianity Today, Oct. 5, 1998 (visited July 23, 2000) <<http://www.christianityonline.com/at/8tb/8tb026.html>>. See *Religious Persecution Bill Could Die in Senate* (visited on Dec. 10, 1998) <<http://www.naaa.net/voice/jul98/bill.html>>.

219. Some churches in the U.S. and abroad have raised doubts about the effectiveness of the Wolf-Specter bill. They made clear their "concerns that this . . . approach was not sensitive to the particular situations in which religious minorities find themselves, noting especially the fears of some overseas partners that such legislation might cause a backlash against them for having caused the sanctions." See *Open Statement by U.S. Churches on*

alternative and less stringent bill, the International Religious Freedom Act,<sup>220</sup> on March 26, 1998 to the Senate. Representative Frank R. Wolf introduced the bill to the House on September 8, 1997 with the support of 131 co-sponsors.<sup>221</sup> The bill was passed by the House and the Senate on October 10, 1998<sup>222</sup> and signed into law by the President on Oct. 27, 1998.<sup>223</sup>

In contrast to the Freedom of Religious Persecution Act, the International Religious Freedom Act creates a presidential monopoly on determining and applying appropriate sanctions to countries violating freedom of religion. Economic sanctions are not to be implemented automatically, but a broad range of diplomatic, political and economic means are placed at the disposal of the President, who is ultimately empowered to tailor them to the specific situation of the country practicing religious persecution. This satisfied not only the Clinton Administration's concern about protecting U.S. national interests and security policy, but also the fear of evangelical groups abroad; that severe economic sanctions could trigger a backlash and result in an increase in the persecution of religious minorities.

This enactment commits the U.S. to "condemn violations of religious freedom and to promote and to assist other governments in the promotion of the fundamental right to freedom of religion, . . . and to [stand] for liberty and [to stand] with the persecuted, to use and implement appropriate tools in the United States foreign policy apparatus, including diplomatic, political, commercial, charitable, educational and cultural channels, to promote respect for religious freedom by all governments and peoples."<sup>224</sup> The law makes a distinction between two levels of persecution that would initiate sanctions: first, "severe violations of religious freedom" including "torture or cruel, inhuman, or degrading treatment or punishment,

*Passage of International Religious Freedom Legislation*, Lutheran Office for Governmental Affairs, Oct. 16, 1998, (visited Dec. 7, 1998) <<http://www.loga.org/relperstat.htm>>.

220. See S. Res. 1868, 105th Cong., 2d Sess. (1998).

221. H.R. 2431 (Major Legislation) Public Law: 105-292 (visited July 23, 2000) <[http://thomas.loc.gov/cgi-bin/bdquery/D?d105:3.10/~bdMIPs::\[/bss/d105query.html](http://thomas.loc.gov/cgi-bin/bdquery/D?d105:3.10/~bdMIPs::[/bss/d105query.html)>. See *Bill Summary & Status for the 105th Congress* (visited Dec. 14, 1998) <<http://thomas.loc.gov/cgi-bin/bdquery/z?d105:HR02431:P>>.

222. See International Religious Freedom Act of 1998, Pub. L. 105-292.

223. H.R. 2431 (Major Legislation), *supra* note 222. See (visited Dec. 14, 1998) <<http://www.naaa.net/voice/may98/persecution.html>>.

224. International Religious Freedom Act of 1998, *supra* note 223.

prolonged detention without charges . . . or other flagrant denial of the right to life, liberty, or security of persons."<sup>225</sup> Secondly, "violations of religious freedom" including "arbitrary prohibitions on, restrictions of, or punishment for assembling for peaceful religious activities such as worship, preaching and prayer; speaking freely about one's beliefs; changing one's religious beliefs and affiliation; and possession of religious literature, including Bibles."<sup>226</sup>

According to the aforementioned stipulations, if a government or its officials persecute religious minorities or if the government allows persecution as defined above by individuals or groups of individuals,<sup>227</sup> the U.S. will take measures within the scope of the International Religious Freedom Act. Along with arrest, torture and murder on grounds of one's religious belief, the denial of the right to publicly manifest one's religion, evangelical work, or the right to change one's belief are also considered as "persecution."<sup>228</sup>

The President is entitled to order the application of sanctions, depending on the nature of the violations and the particular circumstances of the particular foreign country. He can choose between the following tools: "(1) a private demarche, (2) an official demarche, (3) a public condemnation, (4) a public condemnation within one or more multilateral fora, (5) the delay or cancellation of one or more scientific exchanges, (6) the delay or cancellation of one or more cultural exchanges, (7) the denial of one or more working, official, or state visits, (8) the delay or cancellation of one or more working, official or state visits, (9) the withdrawal, limitation, or suspension of United States development assistance in accordance with section 116 of the Foreign Assistance Act of 1961, (10) directing the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or Trade and Development Agency not to approve the issuance of any (or a specified number of) guarantees, insurance, extensions of credit, or participation in the extension of credit with respect to the specific government, agency, instrumentality, or official found or determined by the President to be responsible for violations . . . , (11) the withdrawal, limitation, or suspension of United States security assistance, . . . (13)

225. *Id.* § 3.

226. *Id.* § 3.

227. *Id.* § 102(b)1.

228. *Id.* § 2(5).

ordering heads of the appropriate United States agencies not to issue any (or a specified number of) specific licenses and not to grant any other specific authority (or a specified number of authorities), to export any goods or technology to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations, . . . (14) prohibiting any United States financial institution from taking loans or providing credits totaling more than \$ 10,000,000 in any 12-month period to the specific foreign government . . . , (15) prohibiting the United States Government from procuring or entering into any contract for the procurement of any goods or services from the foreign government . . . .<sup>229</sup> However, the "President shall not be required to apply or maintain any . . . action . . . in the case of procurement of defense articles or defense services, under existing contracts or subcontracts, . . . to satisfy requirements essential to the national security of the United States; if . . . the person or other entity to which the Presidential action would otherwise be applied is a sole source supplier of the defense articles or services; if such articles or services are essential to the national security."<sup>230</sup> The President may also waive the application of sanctions if "the important national interest of the United States requires the exercise of such waiver authority."<sup>231</sup>

The President may choose largely symbolic diplomatic steps to fight religious persecution abroad, if he deems it necessary to prefer other national interests to the protection of freedom of religion. The U.S. wants to maintain friendly relations with countries that are crucial to its national security and policy interests. The United States will also support initiatives for the promotion of religious freedom abroad through the allocations of funds<sup>232</sup> or international educational and cultural exchanges.<sup>233</sup>

U.S. asylum policy will be reformed to become more sensitive towards refugees from religious persecution.<sup>234</sup> It was reported in 1998 that, for the first time, two Palestinian MCCs were granted political asylum in the U.S. In one instance in Chicago and another in North

229. *Id.* § 405(a).

230. *Id.* § 406.

231. *Id.* § 407(a)3.

232. *See Id.* § 501(b).

233. *See Id.* § 503.

234. *See Id.* §§ 602, 603.

Carolina, the Immigration and Naturalization Service ruled in favor of the claims of two Palestinian residents from the West Bank. It was determined that, if they were to return to the West Bank, they would be endangered as a result of their conversion to Christianity.<sup>235</sup> According to the lawyer who represented one of the MCCs, the Immigration and Naturalization Service contacted the State Department to verify her client's claim of religious persecution.<sup>236</sup>

According to a senior official of the United States Agency For International Development ("USAID"), the avenue that looks most promising for influencing the PA is not through direct funding of democracy projects, but rather through an indirect approach. This approach would employ Palestinian Non-Governmental Organizations ("NGOs") which advocate the structural reform of the PA and a greater level of accountability.<sup>237</sup> Implicit in this preference is an admission that Chairman Arafat and the ruling elite are not disposed to democratic reforms which could weaken their control over public and private life.

The current U.S. Administration's long standing commitment to the peace process is well illustrated by USAID's six-year mission in the West Bank and Gaza. USAID has contributed \$75,000,000 per annum to projects assisting in economic reform, water management, governance and democracy.<sup>238</sup> There is certainly a recognition that the PA has some way to go in order to achieve the hallmarks of a fully functioning modern state. To this end, USAID has as its objectives, the encouragement of an accountable system of democratic governance, the development of proper procedures for the drafting and reviewing of legislation and the establishment of better methods of court administration.

The third objective is highlighted by the launching of the Rule of Law Program on December 5, 1999 in Ramallah. This three year, \$30,000,000 program includes the development of a judicial training program (i.e., a training institute for judges, prosecutors and court staff)

235. Yossi Klein Halevi, *Palestinian Christian Wins U.S. Political Asylum*, JERUSALEM REPORT, Apr. 2, 1998.

236. Interview with Esther Obiora, in New York (Aug. 4, 1997).

237. Confidential interview with a senior USAID official, in Jerusalem (Jan. 23, 2000).

238. USAID's FY2000 Congressional Presentation for West Bank/Gaza, Building Democracy in West Bank/Gaza, Feb. 1999 (visited July 23, 2000) <<http://www.usaid.gov/democracy/ane/wbankgaza.html>>. United States Agency For International Development, <<http://www.usaid-wgb/overview.html>>.

and the creation of two model courts which would pioneer improved methods of court administration. In addition, the program will promote the use of alternative dispute resolution to complement judicial reform.<sup>239</sup> In addressing human rights concerns, USAID has established a citizens-rights center that serves as a clearing-house for citizens' problems with the local authorities. As another component of the Rule of Law Program, USAID is helping Palestinian law schools update their course catalogs by adding human rights to their curricula.<sup>240</sup>

While the United States places a high priority upon the promotion of human rights, as shown by the activities of USAID, there are two factors which limit the ability of government affiliated aid organizations to place direct pressure on the PA to improve its human rights record. A senior official at USAID commented that in a political climate with competing incentives, "the peace process is extremely high on the agenda. If the people that are negotiating the peace process tell the people working on the assistance program to lay off this topic for the moment—probably they will."<sup>241</sup> In addition is the need to integrate the activities of the aid organization with current foreign policy, even where conflicts exist. As mentioned, one of the goals of USAID is to promote the rule of law. It has been argued that the development of a constitutional framework would strengthen the rule of law by setting limits on legislative and executive power. "Constitutionality is a *sine qua non* of democracy and citizens' rights, and a fundamental element for the promotion of good governance."<sup>242</sup> In the author's opinion it is not a given that a constitution can only be created in circumstances where there is a sovereign nation in existence. Any organization is capable of developing a means to determine the powers of its various parts and where the limits to those powers may lie, from companies, to NGOs, to states (such as the fifty American states) existing within nations. With respect to the considerable responsibilities and powers which the PA has, there is a clear need for the development of a constitutional structure.

239. *Id.*

240. *Id.*

241. Confidential interview with a senior USAID official, *supra* note 238.

242. REPORT, *supra* note 9, at 33.

Current U.S. policy, however, does not recognize Palestine as a sovereign state.<sup>243</sup> A senior USAID official commented that constitutionality is an issue for a fully autonomous government to consider. As aid organizations must not interact with the PA as if were a sovereign nation, the question of pressuring the PA to adopt a constitution, or even suggesting that one be developed, is presently out of the question.<sup>244</sup>

Senator Connie Mack delivered a poignant speech to the Senate on March 3, 1999 upon his return from a trip to Israel. He challenged President Clinton to reassess the peace process and US funding to the PA due to the numerous reported violations. One of the areas of non-compliance which Senator Mack mentioned specifically was the religious freedom of the MCCs.<sup>245</sup> In the author's opinion, however, given the Clinton Administration's commitment to and involvement in the peace process, it is unlikely that the PA will be sanctioned for the level of violations that have occurred. To do so would put in jeopardy the larger foreign policy agenda of the United States.

#### D. Other Donor Responses

Many members of the international community other than the United States and Israel make significant contributions to the development of the emerging Palestinian state. Coordinated by the Department for International Development ("DFID"), Britain contributes a current sum of £20,000,000 annually, through both multi-lateral schemes with the European Union and United Nations Relief Works Agency, and through bilateral programs with the Palestinians directly. DFID's goal is to halve the number of people living in extreme poverty by the year 2015. The bi-lateral program is focused on five sectors: education, health, water, private sector development, and most importantly for the purposes of this article, good government.<sup>246</sup> With respect to good government, DFID has three primary goals: 1) a unified, modernized legal system, featuring improved legal status for women, 2) an efficient and effective

243. Confidential interview with a senior USAID official, *supra* note 238.

244. *Id.*

245. Senator Connie Mack, speech, "Israeli and Palestinian Peace Based Upon Security, Freedom and a Change of Heart" (Mar. 3, 1999).

246. Interview with Chris Metcalf, Consul (Development) at DFID, in Jerusalem (Jan. 17, 2000).

public administration, and 3) a democratic, professional, accountable and responsible parliament.<sup>247</sup> A senior member of DFID stated that a major problem within the PA is the lack of defined roles, not only for each staff member in a ministry, but also between different ministries. In order to alleviate this situation, DFID is trying to help the Palestinians to further define the roles in different sectors of government to ensure that there is as little overlap as possible and to guarantee that the needs and interests of each department are taken into account. DFID is also helping ministries to develop proper procedures for devising internal policies on the promotion and recruitment of personnel.<sup>248</sup> A major problem for the legal system in Gaza and the West Bank is the fact that different parts of the areas under PA control are under different legal systems. Both the West Bank and Gaza have a history of first being under Ottoman and then British law and vestiges of both still remain. Problematically however, the West Bank was for a period under Jordanian law while Gaza was under Egyptian military occupation. In addition, both areas still retain some elements of Israeli military law.<sup>249</sup> This has resulted in confusion, and even conflict between laws. To address this problem, DFID in conjunction with the Lord Chancellor's Department, is assisting in the modernization and unification of Palestinian legislation.<sup>250</sup>

A specific focus on human rights has been taken by the UK, with the establishment of the Human Rights Project Fund in Gaza and the West Bank. Through the financing of Palestinian human rights NGOs, the fund focuses on four issues: the rights of the child, promoting civil rights through the media, the rule of law, and action in civil society.<sup>251</sup> Mr. Robin Kealy, the British Consul-General to Jerusalem stated, "[w]e want the Palestinian future to be that of a peaceful and democratic society where civil rights are fully respected."<sup>252</sup> In addition, with other members of the donor community, the UK supports the Palestinian

247. Department for International Development (Britain), DFID Factsheet: Good Government (1999).

248. Interview with Chris Metcalf, *supra* note 247.

249. See, Justus Reid Weiner, *Human Rights in the Israeli Administered Areas During the Intifada: 1987-1990*, 10 WISC. J. INT'L L. 195, 197-198 (1994).

250. Interview with Chris Metcalf, *supra* note 247.

251. Robin Kealy, British Consul General Jerusalem, Palestinian Rights Programme, <<http://www.palestinian-rights.org/news/intro.htm>>.

252. *Id.*

Independent Commission for Citizens' Rights ("PICCR"), which acts as the ombudsman of the PA. The impetus behind the PICCR's development "came out of the perceived need to build human and citizens' rights into the formal institutions of the Palestinian state."<sup>253</sup>

Multi-laterally funded programs, such as the PICCR, indicate an increased awareness within the donor community that human rights must not be ignored while leading up to a final status agreement. Torge Larson, Political Officer for the Norwegian Representative Office, stated that there should not be any inherent contradiction between the peace process and a respect for human rights.<sup>254</sup> Until recently, however, security has been the major concern of the international donor community. This means that those who are guilty of most human rights abuses, namely the PA security services, have the support of the international community owing to its concerns about terrorism. "The international community has learned a big lesson here. Now human rights are being focused on and there is international co-operation and a realization that things have to change."<sup>255</sup> The judiciary is such an example. From the Norwegian point of view, the development of an independent and functioning judiciary is of the highest priority, from both a human rights and institutional perspective. Larson argues that "The judiciary is in deep crisis."<sup>256</sup> This problem has arisen as a result of weaknesses within the judicial institutions themselves, for example, the lack of courts and well trained judges and lawyers. There is also, however, the political element—the executive infringing on the courts' jurisdiction and the neglect of decisions. The former problem has received attention, but "[u]ntil now donors have been reluctant to support the political process."<sup>257</sup>

Regarding human rights violations against MCCs, Larson says that in studying the situation he does not believe that there has been official systematic persecution from within the PA, but rather it is a case of a very new group entering the community. With no support in traditional society and a great deal of hostility against them, coupled with poorly

253. The British Council, *To Assist Palestinians in Achieving Their Human Rights*, at 2 (2000).

254. Interview with Torge Larson, *supra* note 169.

255. *Id.*

256. *Id.*

257. *Id.*

trained security forces and a lack of respect for the rule of law, MCCs are in a difficult position. "You must remember that the security forces are members of society too."<sup>258</sup> Norway does make strong and repeated appeals directly to the PA executive on human rights issues; and according to Larson, their protests are receiving the attention of the authorities due to Norway's long-standing and close relationship with many of the main actors. While the Norwegians do not often directly threaten the suspension of a particular program due to abuses, there were some occasions when, as a result of continued violations, it was stated rather clearly that, "there [would] be consequences, that it [would] be impossible to continue support in certain sectors."<sup>259</sup>

#### E. U.S. Department of State Annual Report on International Religious Freedom for 1999

The International Religious Freedom Act mandates an annual report of international religious freedom, of which the 1999 report is the first. The report outlines the PA's proclaimed position concerning human rights in the region. Though the PA does not yet have a constitution, and no single law in force specifically protects religious freedom, the PA claims to respect religious freedom in practice. In spite of this claim, the draft of the Palestinian Basic Law proposed that Islam be recognized as the official religion.<sup>260</sup>

The report mentions that "there are periodic allegations that a small number of Muslim converts to Christianity sometimes are subject to societal discrimination and harassment by PA officials."<sup>261</sup> It is interesting to note how the report attempts to minimize this claim by using words such as, "periodic allegations," and "sometimes." In the author's opinion, this reflects an ambiguous stance on the enforcement of human rights concerning this particular issue. The report does state that the PA asserts that it investigates such complaints, but has not shared or publicized the results of these investigations with any outside

258. *Id.*

259. *Id.*

260. U.S. DEPARTMENT OF STATE ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM FOR 1999, SECTION I (1999).

261. *Id.*

party. Perhaps the State Department fears taking a strong position before the allegations are substantively proven.

The allegations against the PA that are cited in the report address the arrest of several MCCs by PA security officials because they "proselytized too openly."<sup>262</sup> The report continues, "it appears that their religious activities were in fact only one of many factors leading to their detention."<sup>263</sup> Again this demonstrates the report's hesitancy to take an admonishing tone against these offenses. It appears that the State Department also prefers a cautious stance on this issue. However, the question remains: will this report be in protecting human rights?

The report states that to date, no disciplinary actions have been taken against the PA security officials suspected of involvement in the persecution of MCCs. PA officials "say that they understand their responsibility to protect even Muslims who convert to . . . Christian denominations that espouse the view that Palestine was promised by God to . . . the Jews."<sup>264</sup> During the period covered by the report, at least seven MCCs were detained without warrant or trial by PA security forces. They were interrogated about their faith and other activities. On top of this, there were allegations that while in custody several were tortured. The report affirms that the U.S. Consulate in Jerusalem is aware of these concerns and maintains an ongoing high level dialog with PA officials. The report, however, does not offer a course of action other than asserting that "the Consulate continues to make inquiries to try to ascertain the facts . . ."<sup>265</sup> In the author's opinion, these inquiries are unlikely to resolve the problems of the MCCs.

#### CONCLUSIONS AND OUTLOOK

It would be difficult to over-emphasize the importance of monitoring the PA's record, even during the interim stage of the peace process. Some human rights groups don't believe, or do not want to acknowledge, that there is a problem concerning MCCs. These human rights groups have defaulted on their central roles of bringing violations

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

to light and, as a consequence, failed to provide information to journalists and researchers.

One Palestinian human rights group, LAW, has minimized and sought to explain away assertions that the PA is persecuting MCCs by blaming these claims on supposed political motives.<sup>266</sup> Another Palestinian human rights group, PHRMG, advances the argument that any violation of the rights of individual MCCs should be understood as minutia<sup>267</sup> given the tiny section of the population that they represent, in light of the overall grim human rights situation in the areas controlled by the PA. The PHRMG reasons that the MCCs predicament cannot be distinguished from that of ordinary Muslims who have no interest in converting to Christianity. They assert that everyone in the PA is at risk of having his/her rights trampled upon, and that it is impossible to identify whether the status of MCC puts one at greater risk than a general cross section of the population.<sup>268</sup>

This author respectfully dissents. This dissent is based not merely on having personally interviewed and considered documentary evidence presented by a number of individuals, almost none of whom have any discernable ulterior motive for making false allegations, but also on the general reluctance they exhibited in lodging their complaints, even to this author and his research assistants. Most of the witnesses had to be persuaded, often via trusted intermediaries, to give their testimony. They would cooperate only on the condition that the article *not* mention their name or other identifying details, and were reassured when they were told that the article would be published on the other side of the world. The church officials and clergy who were interviewed, exhibited similar signs of intimidation by the PA. They were generally not keen to answer the author's (or his researchers') questions, and most insisted on having their remarks referred to under a pseudonym.

Clearly the PA's leadership has the capability of substantially improving human rights for the MCCs and the Palestinian population as

266. See *The Myth of Christian Persecution By the Palestinian Authority*, LAW—THE PALESTINIAN SOCIETY FOR THE PROTECTION OF HUMAN RIGHTS AND THE ENVIRONMENT, May 1998, at 39-40.

267. PALESTINIAN HUMAN RIGHTS MONITOR, *supra* note 17.

268. This position is shared by Victoria Wagner, one of the four researchers who ably assisted in collecting testimony for this article.

a whole. This author recommends three concrete steps be taken to ameliorate the situation.

First, the PA must close most of its prisons and jails. In the PA controlled areas there are currently 152 prisons and jails, for a total population of two million. Most of these facilities are not directly regulated or overseen by members of the PA. Often the untrained and unprofessional security officers have nobody to monitor their conduct. What goes on behind closed doors in their isolated custodial facilities is unlikely to affect their status in their security force, unless, of course, they uncover a plot against the PA leadership. Since there are no repercussions to be had and only benefits to gain, the security officers are left largely to their own discretion when dealing with prisoners. By closing down most of these institutions especially the smaller ones, the fledgling PA bureaucracy could better regulate the remaining institutions, and therefore protect the human rights of the detainees and prisoners being held.

Second, as was stated earlier in this article, many members of the PA security forces are untrained in the law and procedure for arresting and holding suspects. Flagrant human rights abuses would be less likely to occur if the PA properly trained its security forces, imposed penalties for violating the rule of law and reduce the number of distinct security forces. Many security personnel, lacking much to do, are prone to target the non-conforming members of society (such as MCCs) in the hope of gaining recognition.

Third and finally, it has been argued in this article that the Palestinian judiciary lacks the independence to enforce its decisions, and thereby, to adequately protect human rights. There are two interrelated problems here. The first is the centralization of power in the executive. The latter is the absence of any safeguards which delineate the separation of powers between the courts and the administration in a constitutional sense. With these problems in mind, it is proposed that a detailed constitution be adopted, that specifies the independence of the judiciary from the legislative process, and especially from arbitrary executive decree.<sup>269</sup> A constitutional court should be developed to ensure the constitutionality of any laws passed. It is especially important that proper procedures be put in place to govern the appointment and

269. See REPORT, *supra* note 9, at 39, for a more detailed discussion on the constitutional framework in the PA.

removal of judges. A Supreme Judicial Council needs to be reestablished with this in view.<sup>270</sup>

For various reasons, the PA has enjoyed a virtual honeymoon period since it came into existence more than six years ago. Moreover, as the date of PA sovereignty approaches, there is a high possibility that current violations will be perpetuated within the legal framework of the new state.

The U.S. and Israeli governments each have their own mixed motives that limit their respective willingness to pressure the PA to reduce human rights abuses. The International Religious Freedom Act gave the President the authority to sanction nations who infringe upon the religious freedoms of their citizens. A wide range of options from a private demarche to complete economic boycott. Recently, the U.S. has committed to give \$100,000,000 worth of security equipment to the PA as part of the five year plan of \$900,000,000 in contributions.<sup>271</sup> Clearly the U.S. has considerable economic leverage in the region, and could use that influence to demand human rights improvements. However, the President would be reluctant to impose serious sanctions against the Palestinian entity, which is not at this time a sovereign state, or even push human rights as an issue in the peace talks. The primary objective of the U.S. in the region is peace, and the secondary objective is the fight against terrorism. To rebuke the PA or to make human rights an issue in the peace negotiations would cause the U.S. to lose influence with the PA when dealing with other 'more important' issues.

Israel has not devoted much effort to pressing Arafat's PA on the issue of the MCCs, due to its overriding concern for security and, secondarily, because of its focus on the political survival of the peace process. Israel depends on Arafat staying in control of the PA for these objectives to be met. If Israel publicly rebukes the PA for its offenses against the MCCs this could strain the relationship, and possibly compromise Israel's two paramount goals. There is also a risk that by publicly taking an interest in the MCCs, Israel might be seen by some Palestinians as the MCCs' patron, making the allegations that MCCs are collaborators more believable.

270. *Id.* at 57 (1999).

271. Lamia Lahoud, *U.S. to Give PA \$100m. in Security Aid*, JERUSALEM POST, Jan. 31, 2000, at 4.

In the opinion of this author, the U.S. and Israel should make human rights a major issue in the final status peace process negotiations. By using financial incentives during this pre-state stage, the U.S., Israel, and international donor communities can prevent these 'bad habits' from accompanying Arafat into the emerging Palestinian state. Financial incentives can be ear-marked to train PA security personnel in human rights practices, to construct modern penal institutions and to reform the legal justice system.

If the internal reforms do not work, and pressure from the U.S., Israel and the donor communities does not materialize, there is a last resort for the MCCs. Since the PA is not a sovereign state, even though it has administrative responsibilities in designated areas of the West Bank and Gaza, Israeli military rule is still in effect in the territories. This means, legally speaking, that human rights are the responsibility of the PA on a day-to-day basis, but the ultimate legal responsibility rests with Israel.<sup>272</sup>

Therefore the Israeli Supreme Court is the last resort for Palestinians living under the jurisdiction of the PA. The Supreme Court, long a liberal voice, has in recent years become increasingly activist and focused on human rights and the rule of law. It has frequently demonstrated its commitment to ensuring human rights in the West Bank and Gaza. Of course, the MCCs living in the PA would be reluctant to utilize Israeli legal institutions, but as victims they clearly have a need for an institution of last resort, as demonstrated by the actions of the MCCs who have sought asylum in Israel.

It seems logical that instead of turning to Israeli courts, the MCCs should turn to the PA's justice system, at least in the first instance. This, however, would be largely unproductive at the present time. The PA's justice system has no practical autonomy from the executive branch, even though in theory it is independent. The PA president and justice minister can hire, fire, retire, or otherwise control all judicial employees, including judges at all levels. Two previous chief justices were 'retired' by the executive branch, one possibly for an unsympathetic comment made against the PA in an interview, and the second for a decision that called for the release of ten Birzeit University students who were being

272. Justus Weiner, *Human Rights in Limbo During the Interim Period of the Israeli-Palestinian Peace Process: Review, Analysis and Implications*, 27 N.Y.U. J. INT'L L. & POL. 761, 855 (1995).

detained unlawfully.<sup>273</sup> In addition, in 1997 the then attorney general resigned, in protest, because of encroachment into the affairs of the judicial branch, by both the executive branch and by the heads of the various police and security forces.<sup>274</sup>

The PA's adoption of sound human rights policies and practices would contribute immeasurably to the success of the peace process. Although Chairman Arafat's commitment to these values in the agreements is vague at best, and international law offers no readily applicable standard, the Palestinians' expectations regarding an improvement in their personal liberty<sup>275</sup> deserves to be met, and should not be limited to issues of pride or prestige.

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273. AMNESTY INTERNATIONAL, *supra* note 122, at 9-10.

274. Cf. YEZID SAYIGH & KHALIL SHIKAKI, THE COUNCIL ON FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS 57-58 (1999).

275. AL-HAQ, A HUMAN RIGHTS ASSESSMENT OF THE DECLARATION OF PRINCIPLES ON INTERIM SELF-GOVERNMENT ARRANGEMENTS FOR PALESTINIANS, at 9-10 (1993).



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