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United Nations 1999

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. Vexing questions such as Palestinian statehood, Jewish settlements, security, redeployment, terrorism, the future of Jerusalem, refugee claims and economic viability have dogged Middle East 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. 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, while B’s civil government is controlled by the PA, while the security is handled by the Israeli 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 dynamic, open and active society...”

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—denying freedom of expression, movement, religion and assembly,—journalists, professors and human rights workers have been arrested and newspapers have been closed down for publishing articles critical of the PA. There are gross inconsistencies with due process of law, such as arbitrary arrests, and for 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.

3. Arafat’s Address to UN Human Rights Commission in Geneva (BBC Short Wave Broadcasts, Feb. 4, 1994, ME/1913 MED/12).
8. See ABURISH, supra note 6.
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, routinely accusing them of destroying the nation’s religious freedom, and the like. The author is especially sensitive to the democratic fabric and the like. The author is especially sensitive to the democratic fabric and the like.

This article, therefore examines and cross-legit in the Middle East. This article, therefore examines and cross-legit in the Middle East. This article, therefore examines and cross-legit in the Middle East. This article, therefore examines and cross-legit in the Middle East. This article, therefore examines and cross-legit in the Middle East. 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 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[12]

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. [13] During the ensuing fracas, the PA police opened fire on the crowd of Palestinian Christians, wounding six people. [14] In July 1999, in nearby Bet J’al‘ah, 30,000 Christians began a protest which some referred to as an intifada. Their general strike protesting against the PA’s unjust policies toward Christians. A major concern to the Christians was the firing of nine Christian members of the City Council. [15] Christians in Bet J’al‘ah also expressed the fear that they would become a minority, “like what occurred in Bethlehem.” The decline of the Christian population can be 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. [17]

[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.


[16] Id.

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, Christians in general remain unmolested.

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 friction 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. 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. 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.

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 Legislative Council committee on human rights was assaulted by members of Arafat's security forces. Gaza psychiatrist and human rights activist Yjad 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.memsri.org>.

19. Id. at 14.
21. Id.


that, "Christian cemeteries have been destroyed, monasteries have had their telephone lines cut and break-ins [have been perpetrated] to convents." 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. Christians believe that the seizure was initiated with the full knowledge of the Muslim religious trust officials that the PA oversees.

Christians have felt unprotected due to the failure of the PA police to intervene on their behalf in confrontations with Muslims. 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. Also, the fear of adverse repercussions by Muslims keeps Palestinian Christians silent.

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

25. Id.
26. Interview with Arafat, supra note 13.
27. Confidential Interview with a Protestant Clergyman in the PA, supra note 26.
28. Id.
30. Confidential Interview with a Protestant Clergyman, supra note 26.
Christians to abide by the rules of Islam according to Father Louis Hazzboun, Head of the Latin Community in Zababdeh. 33
Aside from a few voices of apprehension, many church leaders interviewed—Bishop Munib Yonan from the Lutheran Church of the Redeemer, 34 Bishara Awad, 35 President of the Bethlehem Bible College, Louis Hazzboun, 36 Head of the Latin community in Zababdeh and Tom’i Dawod, 37 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 38 and that Christmas Day and Easter Sunday are official holidays in the territories under the PA local administration. 39 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. 40
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. 41 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. 42
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

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. 43 Father Louis Hazzboun 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. 44 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. 45 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.” 46 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. 47 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. 48

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 Hazzboun, 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.
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).
43. Interview with Bishop Munib Yonan, supra note 34.
44. Interview with Father Louis Hazzboun, 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.
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. 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. 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 have been harassed, beaten and threatened by various elements 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. 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." 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. 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.

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. 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
Arabic term for "betrayal of the faith." They threatened to shoot him and his children. He believes that the attackers were members of the Hamas.  

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.

Significantly, none of the above victims of harassment, abuse and persecution received any protection from the PA police or numerous other security services. 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." 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

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57. "Hamas" is an Arabic acronym meaning "zeal" or "zealot." 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.


60. Confidential interview with Youssef from the Nablus area, in Jerusalem (Sep. 23, 1998); Confidential interview with Youssef from the Nablus area, in Aurl (Aug. 16, 1999).

61. Confidential interview with Abdullah, supra note 58.


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 inhuman 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. 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.

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.

Another MCC, Salim, was interrogated by the Preventive Security Service (“PSS”) 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.

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

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. 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

66. 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 ICIJ claims that the PA police are conducting a violent campaign against MCCs, intensifying in the spring of 1998. They cited the first clear evidence of PA security forces, two years before when Shaker 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 DISSENT, Aug. 1997, visited Mar. 30 1998, <http://cot-idfriends.icij.org/medigest/Jun98/threat.html>.

According to the ICIJ, the PA often denies work permits to MCCs. In one case, David Parsons said, one MCC tried to travel for a month’s job and travel permit, and got to travel from the intimidation that he gave up on the Christian faith. The PHRMG detailed six cases registered as victims, but the ICIJ says that these are not the only cases, just the only ones who were jailed.

69. Interview with Mustafa, supra note 52.

70. Interview with Razi the building worker from the Nablus area, supra note 69.
residence with his large family. 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, 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 Rajoub, 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. 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." 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. During his time in prison Razi stated that there were "six or seven other converts there.

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 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. Abdullah remembers his interrogators, Assam Jbara, 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.

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. 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.

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."

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

72. Confidential interview with Abdullah, supra note 56.
73. Id.
74. 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.
75. Confidential interview with Mustafa, supra note 52. The PHRMG reported that one 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 the 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 defense. 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 with the interrogators named Mohammed, Before his release, one of the interrogators named Nasser that the cause of his troubles was due to his conversion to Christianity and because he was friends with suspicious people—namely Christians.

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 activities. Abdullah reports to the Christian faith and various religious activities. Abdullah claims that they are trying to force him back to Islam by “driving me crazy.”  
84 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 watching him everyday, however, they are suspicious about his meetings with foreign Christians.  
87 Yousef 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.  
88 Yousef 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.  
89 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 other collaborators in his village.

2. Bribery 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.  
89 Razi was released after he paid 10,000 Dinars, equivalent of approximately $1,755.  
90 Razi’s father, Fawzi, was required to pay 50,000 Israeli (new) Shekels, about $7,400.  
91 Razi’s son was forced to pay 3,000 Israeli (new) Shekels, about $740 to be released after being taken by the Palestinian police.  
92 Nasser was also forced to pay 3,000 Israeli (new) Shekels in order to be released. 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.

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.
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. Abdullah is in the same predicament; each court date is postponed and then rescheduled when he arrives for trial. 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. 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. 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.” 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.” 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.” 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 flouted, in which thousands of people have had their human rights violated.”

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.

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], 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.

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

97. Confidential interview with Salim, supra note 68.
98. Confidential interview with Abdullah, supra note 38.
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.
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. ABURIEH, supra note 6, at 276.
Palestinian entity. The centralization of authority in one person is indicative of the power structure within the PA and its institutions.\textsuperscript{109} 

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.”\textsuperscript{110} Bassem Eid, head of the Palestinian Human Rights Monitoring Group acknowledged, “nobody really knows.”\textsuperscript{111} 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.\textsuperscript{112} 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.

\textsuperscript{108} Id.
\textsuperscript{109} See \textit{REPORT}, supra note 9, for a detailed list of the extensive range of agencies directly attached to Arafat’s executive office by executive decree.
\textsuperscript{110} \textit{ABURISH}, supra note 6, at 308-309 (1998).
\textsuperscript{111} Interview with Bassem Eid, Head of the Palestinian Human Rights Monitoring Group, in Jerusalem (Nov. 30, 1998).
\textsuperscript{112} \textit{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 \textit{ad hoc} proliferation of security forces. This leaves the door open for intra branch rivalry, human rights abuses and poor procedural practice.”\textsuperscript{113} 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.”\textsuperscript{114} 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.\textsuperscript{115}

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.\textsuperscript{116} 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.\textsuperscript{117} 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.\textsuperscript{118} Staffed arbitrarily, based upon personal connections and Fatah membership,\textsuperscript{119} abuse of power has been flagrant. Additionally, there are no clear regulations for

\textsuperscript{113} Id.
\textsuperscript{114} Interview with Bassem Eid, supra note 111.
\textsuperscript{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.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Fatah is the largest faction of the PLO. The literal meaning of the Arabic word is “opening” although its popular meaning is “the Muslim conquest of non-Muslim lands.” It is the head of the Fatah. Harris Schoenberg, \textit{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.120

According to the PHRMG, most arrests conducted by the PA are illegal and do not conform to any body of law.121 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.”122 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.123 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.124

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 against the PA.”125 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.”126

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.127 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.128 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.129

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 ex 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.128 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 Abbington with Arafat.131

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

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.
124. Id. at 3.
126. AMNESTY INTERNATIONAL, supra note 122, at 7.
128. Hebcom Middle East Bureau (hebcom@actcom.co.il).
129. Id.
opportunist 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." A member of the PLC who signed the petition, Mouawayh Masri, was wounded by a gunman only hours after refusing to denounce the petition, and on December 16, 1999 Abdel Jawawd Saleh, another signatory who was also a member of the PLC, was assaulted by General Intelligence officers.

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. 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. The judges and prosecutors are all military officers of the PLO directly appointed by Arafat. 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), the lawyer is assigned to the

- 133. Id. at 1.
- 135. Interview with Bassem Eid, supra note 111.
- 137. AMNESTY INTERNATIONAL, supra note 136, at 5.
- 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.
- 143. AMNESTY INTERNATIONAL, supra note 122, 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. 145

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. 146 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. 147 The PHRG 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 PHRG suggests that the procedural confusion is intentional—in order to keep prisoners from gaining legal assistance. 148

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, 149 likely from fear of being perceived as challenging the authority of the PA.

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. 150 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.” 151

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.” 152

145. AMNESTY INTERNATIONAL, supra note 122, at 9.
146. Bureau of Democracy, supra note 142.
147. Id.
149. Id. at 7.
150. Qu’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 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.\(^\text{154}\)

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.\(^\text{155}\) Thus, the two systems of law, Islamic religious and secular "democratic" are implemented in the Palestinian territories.\(^\text{156}\) 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.\(^\text{157}\)

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.\(^\text{158}\)

There are no provisions in either the Sha'aria or in the PA civil law which regulate the relationship between Muslims and Christians or concern Christians in particular. However, Sha'aria specifically forbids conversion from Islam to another religion,\(^\text{159}\) and cases of this nature fall under the jurisdiction of the religious courts. According to Sha'aria law, apostasy and conversion, or riddah,\(^\text{160}\) 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.\(^\text{161}\)

The religious courts can publish a decree of riddah concerning a convert from Islam to Christianity.\(^\text{162}\) 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. Extraditorial 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.\(^\text{163}\)

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.\(^\text{164}\) It was, however, adopted throughout the Arab Muslim world, incorporated and elaborated upon in the Sha'aria.\(^\text{165}\) Sulha can be applied to any criminal

\(^{153}\) 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. Muhammed Mursim Khan, The Translation of the Meanings of Sahih Al-Bukhari, 503 (n.d.).

\(^{154}\) See LIFMAN, MCCOVILLE & YERUSHALMI, ISLAMIC CRIMINAL LAW AND PROCEDURE 42 (1985).

\(^{155}\) 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 Labish Mamat, supra note 42.

\(^{158}\) Interview with Dr. Bishara Awad, supra note 35; Interview with Sami Musallam, supra note 156.

\(^{159}\) See MUHAMMAD ASLAM, MUSLIM CONDUCT OF STATE BASED UPON THE SUNNA—UL-MAULUK 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").

\(^{160}\) Id. at 495.

\(^{161}\) Interview with Sami Musallam, supra note 156.

\(^{162}\) Id.

\(^{163}\) Id.


\(^{165}\) Id.
matter or civil dispute, including conflicts between neighbors and even capital offenses such as murder. Dr. Musallam stated that *suha* 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." In Palestinian society, *suha* settlements are more respected by society than legal proceedings which can be protracted.167 While a *suha* can be concluded within three months, the civil courts typically take much longer. Many people believe *suha* 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 democracy, people need to resolve conflicts in a more traditional way, like *suha*. Most importantly for the purposes of this article, *suha* can be employed to resolve conflicts. Typically, *suha* is seen as a means of settling disputes and ensuring a peaceful resolution. David Ortiz argues that *suha* is a means of settling disputes and ensuring a peaceful resolution. Ortiz suggests that MCCs would be willing to take part in a *suha* due to the degree of hostility directed towards them in their communities. The issue is so fraught with community that it makes it difficult for MCCs.170

*Suha* is aimed at reconciliation among parties in conflict. A mediator, or *Jaha*, who is usually a revered elder in the community or village acquainted with *suha* rules, proposes to the injured party conflict settlement using the *suha* method.171 However, often the parties do not agree to pursue the *suha* procedure immediately, and "generally the *Jaha* must return to the household several times before obtaining consent. Despite the initial rejection of mediation, this persistence is necessary in order to demonstrate proper respect for the honor of the injured family."172

According to Bassem Eid, the PA has the power to determine if a *suha* can be implemented in a given conflict. If the injured party is a *Fatwa* member, the PA will acquiesce to his wishes, but if the aggrieved is not a *Fatwa* member, it will deny him a *suha* settlement. As soon as both parties agree to entrust the case to the *Jaha* and accept his ruling, the *suha* 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 to deny each other.

During the *Hodna*, something akin to bail is paid to the victim's family by the offender, called *Arwa*. This is a gesture to show the offender's readiness to settle the conflict and to re-establish peace. *Arwa* can also be given in the form of a pledge, a commitment to *suha* 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 occurred, about, and who was responsible. After the completion of these procedures, the actual *suha* 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. It is up to the victim's family to request money or to accept only a verbal pledge. The *suha* ritual is normally concluded by a common meal at the offender's house.

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

165. Interview with Dr. Sami Musallam, supra note 156.
166. Interview with Ibrahim Kandallaf, supra note 40.
167. Interview with Torge Larson, political officer at the Norway Representative Office, in Dahab Bared (Jan. 26, 2000).
168. Interview with David Ortiz, supra note 81.
169. Interview with Torge Larson, supra note 169.
170. Ryad Salhab, a family elder from Eastern Jerusalem, "Suha—Conflict Resolution," Address at Yukar Center for Social Concern, in Jerusalem (Dec. 6, 1998); interview with Bassem Eid, supra note 111; interview with Sami Musallam, supra note 156.
172. 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.\footnote{175}

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.\footnote{176} 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.\footnote{177} 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.\footnote{179} 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.”\footnote{179}

It is suggested that the sulha mechanism discriminates against MCC’s
in two respects. In the first instance, sulha, in conjunction with Shari’ah
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.”\footnote{180} 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.

\footnote{175} Interview with Dr. Sami Musallam, supra note 156.
\footnote{176} Interview with Ibrahim Kandalaft, supra note 40.
\footnote{177} Interview with Dr. Sami Musallam, supra note 156; Interview with Ibrahim
Kandalaft, supra note 40.
\footnote{178} Interview with Father Tom’ti Dawod, supra note 37.
\footnote{179} REPORT, supra note 9, at 14.
\footnote{180} Id.

\footnote{181} See Justus Weiner, An Analysis of the Oslo II Agreement in Light of the
\footnote{182} MAHMOUD ABBAS, THROUGH SECRET CHANNELS 218 (1995).
\footnote{183} Geneva Conventions, Aug. 12 1949 and Additional Protocols of June 8 1977:
\footnote{184} The PA resurrected a British Mandate-era law which bans missionary work,
under this law missionary work is considered a crime. A member of the Palestinian
Legislative Council and advisor to Arafat told the ICEI that missionary work was
considered threatening to the PA. PALESTINIAN HUMAN RIGHTS MONITOR, supra note 17.
No one has ever been specially charged with violating this law.

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.\footnote{181} 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,
“we 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.”\footnote{182} 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.”\footnote{183}

As a non-sovereign entity, commitments to International
Conventions, (i.e., on human rights) are not strictly binding on the PA.\footnote{184} 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
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.\textsuperscript{185}

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,\textsuperscript{186} the 1948 UN Universal Declaration of Human Rights,\textsuperscript{187} the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms,\textsuperscript{188} the 1965 International Convention on the Elimination of All Forms of Racial Discrimination,\textsuperscript{189} the 1966 International Covenant on Civil and Political Rights,\textsuperscript{190} the 1969 American Convention on Human Rights,\textsuperscript{191} the 1975 Final Act of the Helsinki Conference on Security and Co-operation in Europe,\textsuperscript{192} the 1981 African Charter on Human and Peoples' Rights,\textsuperscript{193} and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion.\textsuperscript{194}

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

\textsuperscript{186} U.N. Charter art. 1(3), art. 55, ¶ c. art. 13, ¶ B.
\textsuperscript{191} Dinstein, supra note 189.
\textsuperscript{192} Id.
\textsuperscript{193} Id. at 146.


International Covenant on Civil and Political Rights and Article 27(2) of the American Convention, the guarantee of religious freedom is non-\textsuperscript{195} dirigible (it cannot be suspended at any time) under any circumstances, including times of war.\textsuperscript{196}

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, in public or private, to manifest his religion or belief in teaching, practice, worship and observance."\textsuperscript{197}

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.\textsuperscript{198} 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."\textsuperscript{199}

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

\textsuperscript{195} See Dinstein, supra note 189, at 146; Babiyya G. Tahzin, FREEDOM OF RELIGION GAZETTE, at 87-88 (1996).
\textsuperscript{196} See id. at 71-72 (1996) (emphasis added).
\textsuperscript{197} Id., at 75. The phrase "freedom to change his religion" was objected to by Islamic groups but passed during a vote by roll call.
\textsuperscript{198} Dinstein, supra note 189, at 147.
choice.”199 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.”200

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.201 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.”202 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.”203 These limitations only apply to religious observance and not to the right to convert non-believers.204

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.”205 According to Dinstein, “the right to teach . . . embraces the right to propagate the

199. TANZIB, 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.”206 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.”207 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.”208 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 Discrimination209 (“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.
208. Id.
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.\textsuperscript{210} 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."\textsuperscript{211} Donna J. Sullivan, however, interprets the term coercion as including "mental or psychological means of compulsion."\textsuperscript{212}

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.\textsuperscript{213} 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, 1997\textsuperscript{214} and the Senate on May 21, 1997\textsuperscript{215} sponsored by Representative Wolf and Senator Arlen Specter (R-PA) respectively.

An amended version of the bill, H.R. 2431,\textsuperscript{216} 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,"\textsuperscript{217} and threatened that the President would veto the bill if it reached Clinton's desk.\textsuperscript{218}

Due to the Administration's pressure and doubt about the effectiveness of the bill,\textsuperscript{219} Senator Don Nickles (R-OK) introduced an


\textsuperscript{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. INT'L L. 494 (1995).

\textsuperscript{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.
alternative and less stringent bill, the International Religious Freedom Act, 220 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. 221 The bill was passed by the House and the Senate on October 10, 1998 222 and signed into law by the President on Oct. 27, 1998. 223

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.” 224 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,”


1999] Human Rights Trends in the Emerging Palestinian State 581 prolonged detention without charges... or other flagrant denial of the right to life, liberty, or security of persons.” 225 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.” 226

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, 227 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.” 228

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)
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 . . . .”229 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.”230 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.”231

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 funds232 or international educational and cultural exchanges.233

U.S. asylum policy will be reformed to become more sensitive towards refugees from religious persecution.234 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 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.235 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.236

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.237 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.238 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)

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.
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. 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.

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." 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." 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. 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.

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. 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. With respect to 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.
246. Interview with Chris Mencalf, Consul (Development) at DFID, in Jerusalem (Jan. 7, 2000).
public administration, and 3) a democratic, professional, accountable and responsible parliament. 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.

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.

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.

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. Mr. Robin Kealy, the British Consul-General to Jerusalem stated, “We want the Palestinian future to be that of a peaceful and democratic society where civil rights are fully respected.” In addition, with other members of the donor community, the UK supports the Palestinian

248. Interview with Chris Metcalf, supra note 247.
250. Interview with Chris Metcalf, supra note 247.
252. 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." 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."  


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.

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." 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 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." The report continues, "it appears that their religious activities were in fact only one of many factors leading to their detention." 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." 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 . . . ." 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
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.266 Another Palestinian human rights group, PHRMG, advances the argument that any violation of the rights of individual MCCs should be understood as minimal267 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.268

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 discernible 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 clergymen 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 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 the 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 constitutional be adopted, that specifies the independence of the judiciary from the legislative process, and especially from arbitrary executive decree.269 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


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.

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. 270

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 press 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 religious freedom bill to complete economic boycott. Recently, the U.S. has committed to provide $100,000,000 worth of security equipment to the PA as part of the five year plan of $900,000,000 in contributions. 271 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).

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. 272

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

detained unlawfully. 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.

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 deserves to be met, and should not be limited to issues of pride or prestige.

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