

24 November 2004

Al Mezan Center for Human Rights
Memorandum regarding the Current Security Situation and the Rule of Law in
the OPT

To: His Excellency Mr. Mahmoud Abbas, President of the PLO Executive Committee,

Dear Sir,

With much sorrow and grief for the passing of the leader of the Palestinian people and President of the Palestinian National Authority (PNA), Mr. Yasser Arafat but with pride for the successful and peaceful transfer of authority, Al Mezan Center for Human Rights (Al Mezan) submits this memorandum on the state of security and the rule of law in the Occupied Palestinian Territories (OPT). We commend the correct and democratic transfer of responsibilities so far, the election of President of the Palestinian Liberation Organization Executive Committee and the announcement of Presidential elections. We congratulate you on your election as President of the PLO Executive Committee and hope that the Palestinian people will achieve their legitimate rights with internal peace and proper governance under your leadership.

Al Mezan respectfully brings to your attention important issues concerning security and the rule of law in Palestinian society in with the hope that it will receive your consideration. We hope, through our support for a Palestinian national reform program, to see an end to the state of insecurity faced by the Palestinian community. We hope this document will contribute to reinforcing the rule of law and respect for our legitimate institutions.

1. General Elections:

Al Mezan commends the announcement of Presidential elections on 9 January 2005 in accordance with the Palestinian Basic Law. Elections are important at this particular time, and will form the basis for the solution of the Palestinian political crisis, three years after the current PLC should have been re-elected. Elections are an essential foundation for comprehensive reform in the PNA, with legitimate representatives of the Palestinian people and bringing effective public participation and accountability.

For elections to be as effective as we all hope, they should be *general*, that is, for PLC members and local government institutions, as well as Presidency. They should be *competitive*, under a modern electoral law that permits comprehensive participation of the public, with political and social groups and contains a fair distribution of constituencies. Elections should be *open* and *transparent*: allowing for effective monitoring by official and independent observers. Al Mezan supports reform of the electoral law to avoid the weaknesses of the current law, especially to reduce the number of constituencies, improving the opportunities for broader representation of political groups and keeping the political unity of the OPT by simultaneous elections in the Gaza Strip and West Bank, including East Jerusalem. This will help found a stronger legislative authority with more effective separation of powers within the political system.

2. Deterioration of Security Situation:

With regret we see a serious deterioration of internal security in the OPT. Al Mezan reports over 600 individuals killed or wounded by internal violent acts involving small arms in The Gaza Strip during the past three years. These acts include disputes between security forces, between extended families, abductions of Palestinians and international citizens, assassinations, attacks against political and community leaders, and murder of women of 'honor' grounds. This 2004 year alone there were 14 attacks against public facilities and 11 abductions.

Conflict, rather than cooperation among security forces and misuse of public positions has marked the internal violence. Many security officers were involved in these disputes, and in some cases, the official weapons of the PNA and certain security forces were used. Moreover, official weapons were used to protect from lawful trial individuals who had committed criminal acts. Al Mezan believes that breaking up illegal armed groups who represent security forces or political groups and bringing the individuals who were responsible before the criminal court will ensure respect for the law. Failure to carry this out will encourage similar acts and contribute to further deterioration of security, with its destructive impact on the Palestinian community, our unity and on national programs.

3. Reform:

Two years after the initiation of the Palestinian National Program for the public financial system, which included the creation of a single account at the Treasury to bring together all public revenues under the Ministry of Finance, we still see major infringements of the Program. Since the establishment of the PNA, Ministries have lacked formal organizational structures, job descriptions and defined limits of responsibilities. This has created chaos in their departments and difficulties in recruitment for the public sector, which should be based on equal opportunity for all. In spite of frequent promises to implement the Civil Service Law, an essential tool to organize the public sector, the Law is still not enforced. Opportunities for enhancing transparency and integrity are being wasted and the general Budget is being exhausted by mismanagement of public resources.

The PNA has not yet passed a law to organize the retirement of law enforcement officers, which brings it's own problems, but also brings worries for their families. These officers are apparently supposed to continue their service until they die which is unfair to them, exhausts the state budget and the next generation of opportunities.

The Palestinian economy is also marked by mismanagement and has evolved an atmosphere that allows, if not prompts, monopolies, some personally controlled by public officials. This is a clear breach of the Basic Law, which asserts freedom to carry out economic and commercial activity for all Palestinians. The PLC has passed several acts to organize economic activity in a lawful manner, but they have not been enforced.

The PNA established a Palestinian Investment Fund to manage all PNA investments, but there are indications that this Fund has not included all the existing investments. For example, the revenues of the Palestinian Petroleum Agency and the Palestinian

Tobacco Agency have not been included in the PNA's general budget before the initiation of the Fund. The fact that most of the investments of this Fund are made outside Palestine raises serious suspicions in the current economic crisis. The target rate of income that was announced by the Fund, 5% for last year, is not credible compared with the performance of the Palestinian private sector, or with the monopolies inside the OPT.

More seriously, the statistics published by the government and NGO regarding the quality and availability of public services, education, health care, housing and labor, are alarming. These sectors are in a continuing serious state of decline and we have seen no steps to reform them in spite of many references to them over the past years.

4. Rule of Law:

We believe that establishing a stable society can only be achieved within the rule of law. However, recent Palestinian life has been marked by a serious disrespect for the law. Indicators that support this include non-compliance with the law in the appointment of the judiciary and prosecution officers, which frequently has taken place on the basis of *wasta* rather than a due process. The Judiciary has suffered from a serious lack of material resources to carry out its essential role, including, *inter alia*, inadequate buildings, insufficient funds and communications equipment.

The phenomenon of charged or convicted persons failure to attend courts and report to prosecution officers has also increased. The tools of law enforcement, such as investigation and trial, are in a worrying state in Palestinian society. We believe that there is a lack of will in the PNA either to enforce the relevant law or to equip the law enforcement bodies with authority, the power or with the necessary material resources, such as modern laboratories.

The Judiciary face refusal to comply with its decisions and rulings, which undermines its authority and respect. There are numerous cases where public servants refused to obey courts' rulings, such as unauthorized releasing prisoners, promotion of a public servant contrary to the law, refusal to terminate unlawful contracts of public servants, not to mention the many real estate or commercial disputes, which involve public officials. This disrespect for law and the courts encourages citizens and families to take the law into their hands and commit criminal acts to gain their rights.

Moreover, in a serious violation of law, public and security officials illegally possess government land. This implies that the PNA cannot be an honest guardian of the public resources and endangers the development of Palestine and undermines the opportunities of future generations.

Another aspect of the absence of the rule of law is evidenced by the illegal refusal to ratify a series of laws which have been passed in the PLC. These included significant laws that would promote accountability, integrity and transparency in the PNA. There is no doubt that the obstruction of these laws after completing the legislative process empties the legislative process of its purpose and creates a serious gap in the political system.

The absence of effective accountability worsens all this. Several public officials were proved to have committed criminal conduct, but are still head of their departments. These situations need attention and action to be resolved. A true reform of the PNA should be based on the Palestinian law and accompanied by ensuring independency of the judiciary and equipping it with the authority and the tools to create justice and guarantee the enforcement of the law.

At this time Al Mezan Center for Human Rights extends its good wishes to your Excellency in discharging the heavy responsibilities you have, and puts the following recommendations before you:

- a. The need to ratify a new, modern electoral law that ensures a decrease in the number of constituencies, adopts a mixed system and decreases the minimum rate per seat in the PLC to 1.5% of the total votes in order to encourage political participation and wider representation.
- b. Announce a decree to determine dates for the PLC and the Municipal elections in the OPT at the earliest possible opportunity after the Presidential elections. We hope that the PNA will reconsider its previous decision to conduct partial Municipal elections.
- c. Approve a quota system to ensure maximum representation of women in the PLC and Municipal elections. It is clear that women in Palestine have been subject to discrimination and exclusion, and will need focused policies to help them have due representation in public life.
- d. Ensure full investigation of all the documented cases of criminal misconduct, especially the misuse of small arms and other acts by law enforcement officers, and publishing the results of these investigations as a first step to trial all those who are convicted of criminal acts under the Palestinian law.
- e. Require the Palestinian security forces to carry out their legally authorized roles and put an end to the disputes between them. Specifically, the police force should carry out their duties of law enforcement, and should receive respect for this role from all the other authorities.
- f. Prohibit public carrying of small arms and light weapons by police and security officers when they are not on duty, and prohibit the carrying of these weapons in public by these officers and by any other individuals.
- g. Take steps towards dissolving all illegal armed groups, especially those within security forces, and confiscating the small arms they use and possess.
- h. Conduct a comprehensive review of the judiciary system to ensure respect for the provisions of the Basic Law and for the Judiciary Authority Law.
- i. Ensure the implementation of courts decisions and rulings, and respect for the judiciary and law enforcement bodies, especially in those cases where government or security officials are involved, in compliance with Article 106 of the Palestinian Basic Law.

- j. Comply with article 41 of the Palestinian Basic Law, which rules that laws passed by the PLC must be published in the Palestinian Chronicle once the legislation process is completed and ratified within 30 days of referring them to the President of the PNA.
- k. Implement the Council of Ministers' decision to annex all the PNA's agencies to the relevant Ministries in order to prevent the existing conflict between authorities and the burdening of the general budget. One of these agencies is the General Bureau of Employees, whose authority and responsibilities should be defined to ensure maximum transparency in this sector.
- l. Double the efforts towards the creation and implementation of economic and social policies that would contribute to development in Palestine, and employ more effective procedures to improve the managerial and financial performance in the PNA.

With our thanks and regards;

Al Mezan Center for Human Rights