

Breaches of the International Covenant on Civil and Political Rights in Palestine

A report by Lawyers for Justice group

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Executive Summary

Since the declaration of the state of emergency in 2020, “Lawyers for Justice Group” has followed up on 264 arrests through its own members of the group, followed on human rights and legal representation, in addition to other violations documented by the group other than arrest.

- The number of arrests whose reasons were linked to the state of emergency reached 23, or 8.7% of the total arrests.
- The "group" also dealt with 111 arrests based on their freedom of opinion and expression, 42% of the total arrests, including (29) arrests for publishing political and social criticism on social media, (63) arrests based on political affiliation. Repeatedly using the charge of “ illegal weapon possession” and or “collecting money” against most of the detainees in order to extend their detention before the courts, (13) cases of the arrest were university students, (6) arrests of journalists in connection with their journalistic work.
- The "group" documented 30 arrests based on connection with trade union work, at a rate of 11.3%, including 14 arrests in connection with student senate work in their universities.
- The number of arbitrary arrests that were not brought before any judicial body reached 38, or 14.3% of the total arrests, including 7 arrests of by the name of the governors.
- Testimonies of violation of the right to physical and psychological integrity among the total number of arrested cases, the group followed upon, there were 44 cases, representing 16.6% of the total arrests.
- The "group" monitored 75 arrests against the background of exercising the right to peaceful assembly, or 28.4% of the total arrests.

who are we?

"Lawyers for Justice Group" has started its legal and human rights activities since 2011; started by an individual initiative that arose and developed during the increasing of cases of human rights violations, in the occupied West Bank different governorates, at the time when human rights was subjected to an increasing attacks by the executive authority's encroachment on the powers and work of the legislative and judicial authorities, and the absence of oversight over the performance of the executive authority to hold it accountable.

"Lawyers for Justice Group" provides legal support to cases that are subjected to violations by the security apparatuses against exercising freedom of opinion and expression, freedom to practice union work, freedom of peaceful assembly, political pluralism, through members of the "group" in various governorates of the West Bank. This support in legal representation before the Palestinian courts, the Public Prosecution, and documentation of human rights violations, in addition to raising awareness of the rights of the detainee from the moment of arrest until release.

The "group" in the West Bank, pursued many cases and has been able to document violations, and share its recommendations with officials and human rights organizations to identify and limit violations.

I. Introduction

1- Since the recognition of the State of Palestine as a non-member observer state at the United Nations on November 29, 2012, it hastened to accede to many international conventions and treaties, including the basic human rights conventions, without making any reservations to any provision or any article within any treaties, including the International Covenant on Civil and Political Rights, to which it acceded on April 2, 2014, this accession imposes on the State of Palestine two basic obligations; A national commitment, represented in the need to harmonize internal legislation and procedures with international law, and it is an immediate and direct commitment to accession. And a second one, an international obligation represented in submitting periodic reports on the measures that have been taken by P.A, that represent the implementation of the Covenant, and on the status of human rights, as well as the administrative and legislative procedures and steps taken within this framework, and the progress achieved in the enjoyment of those rights.

2- However, an observer of the current political situation sees the extent of violations and repression that citizens, political activists, human rights defenders, journalists, and even university students are subjected to, from arbitrary arrest and abuse as a result of their exercising to those rights by the security agencies responsible for enforcing the law, in addition to the lack of oversight and accountability Actual persons who commit such crimes.

3- Since its establishment, the Lawyers for Justice Group has focused on following up the grave violations practiced by the de-facto authority in the West Bank, which ranged from infringements on freedom of opinion and expression, peaceful assembly, political affiliation, freedom of student union action, and arbitrary arrests.

4- These violations escalated, especially with the stagnation of the political reality, the failure to contest any legislative or presidential elections since 2006, the disruption of the Legislative Council by a presidential decree, as the frequency of violations of human rights and public freedoms increased, from arbitrary arrest to extrajudicial execution.

2- Violation of the right to freedom of opinion and expression

5- The right to freedom of opinion and expression is one of the basic human rights guaranteed by international conventions, and it has become the most controversial element in contemporary representative democracy at the global level, and emphasizing the importance of this right, that it is one of the fundamental rights that cannot be waived, it was stipulated in the International Covenant on Civil and Political Rights in Article (19) in the first and second paragraphs.

2-1 Restriction of the right to freedom of opinion and expression

6- Despite the affirmation of the right to freedom of opinion and expression in international conventions, these charters allow placing controls and restrictions on this right within narrow exceptional limits, in a manner that serves the interests of society as a whole, and maintains a balance, without compromising or endangering the essence of those rights and freedoms.

7. Accordingly, Article 19 of the International Covenant on Civil and Political Rights, in the third paragraph, states: “3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.”

8- Therefore, any restriction imposed on freedom of opinion and expression should be evaluated in accordance with the conditions set by the international charters to measure its legality, as the origin of things is permissibility and the exception is prohibition or restriction, which proceeds from the fact that freedom is the basis.

2-2 Legal frameworks regulating the right to freedom of opinion and expression in Palestinian national legislation

9- The Palestinian legislator emphasized the right to freedom of opinion and expression, and that it should not be violated it should be respected as it is a constitutional right guaranteed to the human being, in line with the provisions of the International Covenant on Civil and Political Rights. However, there are many taken on the Basic Law and the national legislation in force in Palestine, which violates this right, we will discuss each of them in the following detail:

2-2-1 The amended Palestinian Basic Law of 2003

10- The Basic Law states in Article 19 that: “Freedom of opinion may not be prejudiced. Every person shall have the right to express his opinion and to circulate it orally, in writing or in any form of expression or art, with due consideration to the provisions of the law..” We believe that this text left a wide scope for interpretation by adding the phrase "in compliance with law ", as a guarantee for the exercise of the right to freedom of opinion

and expression, which opens the way for imposing restrictions on this right under the laws, but the basis remains the permissibility of expression of opinion, and there is no difference between an opinion on a political, social or economic issue, and if there are cases of prohibition or restriction, it must be subject to legal formulas that justify it and precede it.

11- as it devoted in article 27 from the Palestinian basic law, reiterate on the importance of the freedom of press, and impose a constitutional protection for it. "1. Establishment of newspapers and all media means is a right for all, guaranteed by this Basic Law. Their financing resources shall be subject to the scrutiny of the law.

12- According to this text, it is not allowed to put any restriction or censorship on press without the two constitutional conditions: a precedent law text that allows that, or a judicial ruling from a competent court to execute this restriction. Therefore, any imposed restrictions from any side, without legal text or without meeting the two conditions, will be a violation for the basic law.

2-2-2 Press and Publication Law No. (9) of 1995

13- There are many objections to the Press and Publications Law; In terms of containing many restrictions, broad, ambiguous and general texts that can be misinterpreted, and constitute a cover for imposing restrictions on freedom of opinion and expression, give the executive authority an opportunity to expand the scope of its powers and impose its control over the media, which poses a threat to freedom of opinion and expression, in addition It is old and needs to be amended in order to be in line with international human rights standards.

2-2-3 Penal Code No. (16) of 1960

14- As for the Penal Code applied in the West Bank, in addition to being a very old heritage and in need of many amendments or even abolition, the adoption of a new law that is in line with the requirements of the modern era, it also constitutes a serious threat to the right to freedom of opinion and expression. It contains many loose and unclear words that can be interpreted differently, such as "hate speech, the prestige of the state, inciting sectarian or racial strife, and others", as these charges get exploited Often by state agencies as a cover to criminalize many permissible acts that fall within the framework of the right to freedom of opinion and expression, to restrict this right and to suppress journalists, political activists and human rights defenders, when exercising their legitimate right to express their opinions.

2-2- 4 Law by Decree No. 16 of 2017 on Cybercrime

15- The law by decree on the cybercrime law is considered one of the legislations that poses a threat to human rights, as it violates the right to freedom of opinion and expression, the right to privacy, and impedes the right to access information, it clearly contradicts the provisions of the International Covenant on Civil and Political Rights.

16- Among the articles stipulated by the decision by law that violate the right to freedom of opinion and expression is Article (29) of the decision by law, the right to privacy is

violated in articles (31) (32) and (33) and (34), and article (39) permits Blocking websites under vague terms that are used as an excuse to block many websites that criticize the authority. Since the authority issued this law decision, the authority has banned many websites, over (30) website in 2017, and (50) in 2019, and the decisions are renewed every year, including : Maidan which belong to Al-Jazeera network, Al-Quds News Network, Palestine Dialogue Network, Mitras, Arab 48, and many others.

17- More than that, Article (45) of the Decision by Law opened the way again to criminalize many acts that are committed using the electronic network, but by using other legislation, the most important of which is the Jordanian Penal Code of 1960, the Press and Publications Law of 1995, and other punitive legislation in force. The effect, which includes texts that criminalize actions under general and broad terms, such as the crimes of defamation, slander, cursing, defamation of high profiles and inciting racial and sectarian fighting, if committed by one of the means of information technology.

18- It is also worth noting Law No. 3 of 1996 regarding telecommunications, as it contains broad terms and legal texts that are used to impose restrictions on freedom of opinion and expression, as it imposes penalties in it, Article (91). Which is frequently used in accusing journalists with the aim of restricting their journalistic work and suppressing their freedom of expression.

19. All previous legislations are held to be in violation of Article 19 of the International Covenant on Civil and Political Rights, as well as Article (2/2) of the Covenant, which states: “Each state party to this Covenant undertakes, if its measures Existing legislative or non-legislative measures do not actually guarantee the implementation of the rights recognized in the present Covenant, by taking steps to change whatever legislative or other measures are necessary for the compliance with the covenant.” Accordingly, from a legislative point of view, the Palestinian National Authority must amend the legislation in force to become in line with what is stipulated in the Covenant, as it is a party to it and is bounded by what is stipulated in it.

2- 3 The reality of exercising the right to freedom of opinion and expression in the West Bank

20- The “Lawyers for Justice Group” monitored many violations of the right to freedom of opinion and expression during the years 2020-2021, by the security apparatuses of the Palestinian National Authority, using various methods of repression, including arrest, beating, and threats. Citizens, university students, political activists, opponents, and journalists as a result of their exercise of this right. The number of cases reached nearly (111), including (29) arrests for posting political and social criticism on social media, (63) arrests based on political affiliation, (13) arrests of university students, and (6) Cases of arrests of journalists in connection with their journalistic work.

21- Among these cases are the following:

(1) Journalist Anas Hawari, for the second year in a row, the journalist is still being tried on six charges brought against him by the Public Prosecution, which are: defaming employees, degrading an employee by doing his professional job, resisting an employee with violence, defaming the authority, violating the Emergency Law of 2020 and obstructing the work of law enforcement agencies, maintaining public order and the competing staff during the declaration of a state of emergency, Hawari case began in May 2020, when members of the Palestinian security services attacked the journalist at one of the “love” barriers set up by the police in light of the (Covid-virus) crisis. 19, his trial sessions are still continuing until this moment of writing this report, continue to be postponed due to the absence of the witness from the intelligence apparatus. The charges against journalist Anas Al-Hawari are nothing but a cover for attempts to restrict his journalistic work and suppress freedom of opinion and expression. He also reported that he was beaten up and assaulted during his arrest.

(2) Journalist Abdul Rahman Zahir, who was arrested in August 2020, for 35 days, by the Preventive Security apparatus, without an arrest warrant, during which he suffered from poor health conditions, and was transferred to the Public Prosecution, which in turn charged him with three charges that affect the essence of his professional journalistic work. It restricts freedom of opinion and expression.

(3) “Publishing information that stirs racial strife through the electronic network, transmitting different news by any of the various means of communication with the intent of inciting fear and slander against the authority.”

22. It should be noted that during the previous years, and specifically after the assassination of the late political activist (Nizar Banat), human rights defenders were subjected to many violations and harassment to silence them, as the security apparatus of the Palestinian Authority adopted new methods to fight them aimed at moral assassination, tarnishing their reputation and affecting their dignity, their honor, among those methods; Using social media, such as (Facebook, WhatsApp), to spread false news and offensive materials that affect the honor and reputation of human rights defenders in Palestine to silence them and fight their defense of human rights.

3 - Violation of the right to peaceful assembly

23- The right to peaceful assembly is the best legitimate way to express opinion, and it constitutes one of the means of pluralism and political participation necessary to build a democratic system, ensuring respect for human rights and human dignity. Given the importance of the right to peaceful assembly, the International Covenant on Civil and Political Rights affirmed: This right and setting clear controls for it, as Article 21 of the Covenant states: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society, for the interests of national security or public safety, (public order), the protection of public health or morals or the protection of the rights and freedoms of others.” In addition to the fact that states parties

are obligated under international law to recognize the right to peaceful assembly, they also recognize this right in their national constitutions.

3-1 Restriction of the right to peaceful assembly

24- Article (21) of the International Covenant on Civil and Political Rights sets out the legitimate reasons that allow restricting the right to peaceful assembly - the same restrictions set by Article (19) of the Covenant on freedom of opinion and expression: It may therefore be subject to certain restrictions, but these shall only be as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals. However, the Human Rights Committee, in its General Comment No. (37) of 2020, specified the exact meaning of these restrictions, as well as the duties and powers of law enforcement agencies, which states parties must abide by.

3-2 The legal framework regulating the right to peaceful assembly in Palestinian national legislation

25- The amended Palestinian Basic Law of 2003, Public Meetings Law No. 12 of 1998, and the Executive Regulations of Public Meetings Law No. 1 of 2000 represent the constitutional and legal reference for the exercise of the right to peaceful assembly in Palestine.

26. The Basic Law provides for this right in the fifth paragraph of Article (26) as follows: “5 To conduct private meetings without the presence of police members, and to conduct public meetings, gatherings and processions, within the limits of the law.” As for the Public Meetings Law, in its articles, guaranteed the right of citizens to hold public meetings freely, and to provide protection for this right. Article (2) stipulated that. Article (3) of the same law requires meeting organizers to send a written notice to the governor or police director for at least 48 hours prior to the date of the meeting, while Article (4) sets out the controls referred to in Article (2) above, for an example Limitation, and the main objective of these controls is to regulate traffic only. Article (5) of the Public Gatherings Law stipulates that: the meeting shall enjoy special protection requested by the organizing bodies from the official bodies, provided measures taken by the official bodies to protect them, do not entail any prejudice to the rights of The freedom of the gathering and the meeting process. We believe that the Public Meetings Law was in harmony with the International Covenant on Civil and Political Rights, and reinforced the principle of democracy in Palestinian society.

27- As for the executive regulations of the Public Meetings Law No. (1) of 2000, which was issued based on Article (7) of the Public Meetings Law giving the Minister of Interior the right to issue the necessary regulations and decisions to implement the law.

28. Among the most prominent of those restrictions imposed by the Executive Regulations in its articles on the exercise of the right to peaceful assembly, is what was stated in Article (3) of the Regulations; Where the police were given the power to interfere with the goal of the march or peaceful assembly by requesting a meeting with those who gave the notice to

discuss the purpose, duration, time and place of the assembly. It is delivered by hand to the applicant, while the Public Meetings Law stipulates that a notice to be provided only, and the purpose of the notice is to organize traffic by the police and provide protection for individuals participating in the assembly or march, if the assembly organizers request that, and not to obtain approval or not before The police director or the governor, the regulation imposed more restrictions by stipulating in Article (9) . “The organizers of the meeting or march must observe the provisions of Presidential Decree No. (3) of 1998 regarding the protecting of national unity and the prevention of incitement.”

29- Presidential decree 3/1998 it contained many vague and loose terms, such as “incitement to sedition, inciting etc.

30. We believe that this decree aims to impose restrictions aimed at confiscating basic freedoms, including the right to peaceful assembly under the pretext of national unity.

3-3 Cases of Violation of the Right to Peaceful Assembly

(1) The “Lawyers for Justice” group followed up (89) cases of arrests against political affiliation of participating in peaceful gatherings condemning the assassination of the political opponent (Nizar Banat). The demonstrators were also subjected to repression, violence and suffocation due to security forces firing tear gas canisters at the demonstrators, (Raafat Sub Laban), works in the office of the High Commissioner, he was directly sprayed with pepper gas in the face, and were also attacking the demonstrators with batons, some individuals in civilian clothes seized the phones of female journalists, including (Najla Zaitoun and Faiha Khanfar), and human rights defenders, including (Omran Al-Rishq) who works for Al-Haq Foundation, and they were threatened and ordered to stop participating in the demonstrations, until now The "group" is following up on complaints about the failure to bring back phones and belongings that were forcibly seized during the demonstrations.

On January 11, 2022, the "group" obtained a decision to acquit (22) activists who participated in the demonstrations, however, as of writing this report, there are still (34) complaints filed with the Palestinian courts that are being pursued by the "group" related to participating in the demonstrations, The basic charge against all complaints is (the accusation of illegal gathering or continuing illegal gathering).

(2) The shooting at a peaceful demonstration in Tubas. On February 1, 2022, “Lawyers for Justice” followed the shooting of high school students during their peaceful sit-in in Tubas governorate, we’ve circulated videos showed that the security members were behind the shooting consequently one student was shot.

4- Violation of the right to participate in political life

31. The right to participate in political life, including the right to vote and to stand for election, is at the heart of democratic governments, based on the will of the people, and the right to vote and to stand for election under fair elections, is linked to a number of other human rights, the enjoyment of which is crucial to conduct a meaningful election process.

32- Given the importance of the right to participate in public affairs and political life, the International Covenant on Civil and Political Rights states in Article 25: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

(c) To have access, on general terms of equality, to public service in its country.”

33- This article recognizes and protects the right of every citizen to participate in the conduct of public affairs, the right to vote or be elected, the right to have the opportunity to hold public office. The Covenant requires states, regardless of what their constitution or type of government is, to adopt such legislative and other measures as may be necessary to ensure an effective possibility for citizens to enjoy the rights that protected by the covenant.

4-1 Participation in political life within the Palestinian situation

34. The Basic Law explicitly states the right to participate in political life in its articles (26)

35- In line with the provisions of the International Covenant on Civil and Political Rights and the amended Basic Law, Decree No. (5) of 2021 was issued regarding the promotion of public liberties, which stipulated the strengthening the climates of public liberties in all the territories of the State of Palestine, including the freedom of political affiliation and nationalism , it emphasized in Article (2) the prohibition of prosecution, detention and arrest, all kinds of accountability outside the provisions of the law, for reasons related to freedom of opinion and political affiliation. Or for all partisan or factional reasons, in the territory of the State of Palestine, with regard to the elections, it stipulated providing complete freedom for electoral campaigning in all its traditional and electronic forms, publishing and printing, organizing and financing political and electoral meetings in accordance with the law.

36- On 5/1/2021, Presidential Decree No. (3) of 2021 was issued regarding the call for legislative, presidential and national assembly elections. Lists and nominations for elections were formed in accordance with the law, it passed the first and second phases, but it was announced that they were postponed by another presidential decree. 22 days before the polling date for political reasons.

37- However, despite the provisions of the law, we do not find any application of it on the ground, as the security apparatus of the Palestinian National Authority abuse, prosecute and detain citizens on the basis of their participation in political life, without any oversight over the violations committed by these apparatuses to the law.

4-2 Arrest on the grounds of participation in political life

38- The Lawyers for Justice Group, followed up (3) cases of arrests of citizens on the background of their participation in the first phase of the local elections, and (3) other cases of arrests during the second phase of local elections, including:

(1) Citizen Musab Sorour: On December 16, 2021, the General Intelligence apparatus in Ramallah arrested him, without a warrant, he was immediately brought before the court on charges of “possession of a weapon without a license,” he was not allowed to hire a lawyer to defend him, The court extended his detention for fifteen days for pending investigation, but the interrogation was around his participation in the local elections that took place in December 2021. On December 29, 2021, Ramallah Magistrate's Court issued a decision to release him on bail, and according to the testimony of the citizen (Surour), during his 13-day detention, he was interrogated about the participation of one of his relatives in the winning list in the village, and his role in forming and mobilizing the list. He also reported that he was hit on the head during his transfer from Ramallah prison to Jericho prison 7 days after his arrest, he went on hunger strike for the first eight days in protest against his arrest on a political basis. Surur was interrogated almost daily by the (Mukhabarat) the Palestinian intelligence apparatus, neither his family nor his lawyer managed to visit him throughout his detention.

(2) Candidate Amin Arman: On January 11, 2022, the activist and electoral candidate in the local elections (Amin Arman) was assaulted and an attempt was made to break the windows of his vehicle, with a set up barrier to prevent him from entering his village at gunpoint by members of the General Intelligence apparatus, they tried to assault him and forcibly arrested him, without any notification or presentation of any legal document. According to (Arman), this attack comes after his list won the local elections, and this arrest attempt comes after a number of previous political arrests that he spent in the P.A. prisons, he says that he is still subjected to harassment, prosecution and threats.

5- Violation of the right to life and arbitrary execution

39- The right to life is the essence of basic human rights, it is an inalienable right. The International Covenant on Civil and Political Rights stipulated this right in Article 6/1, stating that: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Moreover, Article 4 (2) of the Covenant states that exceptional circumstances that threaten the life of the nation and are officially proclaimed, such as internal instability or any other public emergency, may not be invoked to justify any derogation from an individual’s right to life and personal security.

40. Arbitrary execution means: “the killing of a person by an agent of the State or any other person working under the authority, complicity with, condoning or acquiescence of their actions, without appropriate legal and judicial procedures”.

41. Comment No. (6) of the Human Rights Committee on Article (6) of the Covenant at its sixteenth session of 1982 stated: Protection from arbitrary deprivation of life stipulated in

the first paragraph of Article (6) is of the greatest importance. The Committee considers that States parties should take measures not only to prevent the deprivation of life through criminal acts, but also to prevent arbitrary killings committed by their security forces. The deprivation of life at the hands of state authorities is a very serious matter, and therefore the law must control and limit the circumstances in which a person may be deprived of his life at the hands of these authorities.

5-1 The right to life in Palestinian national legislation

42- There is no clear and explicit provision in the Basic Law and national legislation on the right to life, and this is considered a deficiency and requires amendment. However, this right is an assumed human right and the duty is to protect it, it is not permissible to attack it, whether by individuals or by the state, whether It is stipulated by national legislation or not, but the importance of stipulating this right lies in determining severe and deterrent penalties to protect this sacred right.

43. there is no mention of terms such as extrajudicial execution, arbitrary execution and summary execution, which are carried out by an agent of the State or any other person acting under the authority, complicity with, condoning or acquiescence of their actions, without appropriate legal and judicial procedures compared to What is stipulated in international charters, because of the danger and threat it poses to human life and the right to survive, as it poses a threat to other rights and public freedoms, such as the right to freedom of opinion and expression, the right to peaceful assembly, the right to participate in political life, and the right to Litigation, which pushes individuals to remain silent and overlook the abuses out of fear to not being exposed death or arbitrary execution.

5-2 The reality of the violation of the right to life in Palestine

44- The year 2021 marked a significant violation of human rights, as the Palestinian security forces crossed all national and international lines, in the case of the assassination of the political activist and candidate in the legislative elections (Nizar Banat), we discuss its merits as follows:

45- (Nizar Banat): The candidate for the election for the Freedom and Dignity List, a former political detainee by the security apparatus during 2020, for several times, the accusation was always “criticizing the Palestinian Authority.” At dawn on June 24, 2021, based on what came in the report of the independent commission for human rights and Alhaq organization regarding the killing of the activist Nizar Banat, a force from the Preventive Security apparatus in Hebron Governorate, consisting of fourteen people, moved to arrest the political activist (Nizar Banat), as soon as the force arrived at the house, a number of them took off the window with an iron lever and break into the house. The house where (Nizar Banat) sleeps, they opened the door for the rest of the force unit to be able to enter the house, two of the unit members went to the witnesses who were sleeping next to (Nizar Banat) and sprayed them with pepper gas, and pointed pistols toward their heads and asked them not to move or to get out of bed, while a member of the force was carrying an iron lever in his hand, went to Nizar Banat’s bed, and hit him on his head more than once, with

the iron lever, and beat him on the rest of his body, then the rest of the group who entered the house jointly beat Nizar ferociously by levers, sticks, and pistol butts, and with hands and feet, pulled him from the mattress where he was sleeping on the ground, assaulted him while he was asleep on his back. they flipped him on his belly and cuffed his hands, then lift him and hit his head with a building pole, then took him out of the house where he fell by the door, so they dragged him into the street, towards the vehicle and put him inside it while he was unconscious, they continued assaulting him, after he was taken out of the house, around five members of the force entered the house again, they searched the house and confiscated belongings from the apartment owned by (Nizar Banat), then the striking force moved from the place toward the Preventive Security headquarters in Hebron, to announce the death of the victim (Nizar Banat) on 06/24/2021.

6- Violation of the right to physical and psychological integrity “torture”

46. The practice of torture constitutes a serious violation of human rights; As it undermines his dignity, exposes him to harm, and deprives him of his right to life, all forms of torture or even forms of ill-treatment are prohibited acts, the perpetrators must be prosecuted and punished as criminal acts and there is no statute of limitations, the Covenant on Civil and Political Rights affirms the right to physical and psychological integrity. Article 7 states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

6-1 The right to physical and psychological integrity in Palestinian legislation

47- The Basic Law prohibits torture, stipulates in its articles that no one may be subjected to torture, and stresses the need for humane treatment that preserves and respects human dignity, as Article 13 affirms that: “No person shall be subject to any duress or torture. Indictees and all persons deprived of their freedom shall receive proper treatment.” while Article 32 emphasized: “Any violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime.

48. As for the Penal Code No. (16) of 1960, it did not provide a definition to the torture crime, nor did any text specify the elements of this crime and its punishment.

Whoever inflicted any form of violence and force, not allowable by law, in order to obtain a confession for committing a crime or information regarding such a crime, he/she shall be punished by imprisonment from three months to three years.

2. If the acts of violence and force resulted in a sickness or an injury, penalty shall be from six months to three years unless such acts are punishable by a harsher penalty.

49- As for the Revolutionary Penal Code of the Palestine Liberation Organization of 1979, whose application is limited to the military or crimes committed in military areas, as Article

(280) of it stipulates: punishment by imprisonment for at least three to six months, for any deeds of torture to get confession if torture leads to death, the punishment shall be at least five years of hard labor.

50. It is noted from the previous texts that they came to criminalize one form of torture, which is torture aimed at obtaining information or confessions, and did not criminalize psychological torture and inhuman or degrading treatment. Therefore, torture that does not aim to obtain information through it, does not enter Within the scope of the criminalization of this text, it also left the door open for the use of forms of torture if permitted by law, when it used the phrase “not permitted by law.”

51. The prohibition of torture was also mentioned in Law No. 6 of 1998 regarding correctional and rehabilitation centers “prisons”, in Chapter Ten, which stipulates the rights of inmates, where Article (37/2) stipulates that: “It is prohibited to torture an inmate or to use Hardship with him.” It also stipulated in the third paragraph of the same article that: “It is forbidden to address the inmate with obscenities or demeaning titles.” Here, this law stipulates not only physical torture, but also psychological and moral torture.

52- Criminal Procedures Law No. 3 of 2001, in Article 29, stipulates that any person who is arrested or imprisoned under a judicial order issued by the competent authority must be treated in accordance with the rules and law in a manner that preserves his dignity and may not be harmed physically or mentally.

53. However, all of these laws have greatly tolerated the crime of torture, as the penalties for it range from one week to five years. we find that the P.A, since its establishment, has not brought anyone to trial under a charge Torture, despite the cases of torture that have been monitored in its prisons and detention centers, since its inception to this day.

54- The first step in combating torture in the Palestinian case requires, the Palestinian political system takes steps forward to respect the dignity of its citizens, to uphold human rights law, higher than ordinary laws, by harmonizing national legislation with the Covenant and the Convention against Torture to become an integral part of the Palestinian legislation in force.

55. The accession of the State of Palestine to the international conventions against torture, namely: the 1984 Convention against Torture, and the International Covenant on Political and Civil Rights, which are the two covenants that obligate the State of Palestine to prohibit torture, and to take all necessary measures to ensure that, they affirm the prohibition of torture is a ruling base, It is commanded that there is no exception, and nothing may be invoked to commit it.

6-2 Cases of Violation of the Right to Physical and Psychological Integrity in Palestine

56- The Lawyers for Justice Group has monitored many cases of torture during the past period, including the following:

(1) Citizen Islambouli Badir: On November 29, 2021, security members from the General Intelligence apparatus beat him up while crossing the main road in the city of Tulkarm, with the intention of arresting him in an inappropriate way with his child next to him, without any clear accusation being brought against him, he was released the next day.

(2) Student Uday Nakhleh: A former political detainee, from Birzeit University, he was forced to transfer his studies to another university, was charged because of his political background.

Nakhleh was subjected to successive prosecutions, just for communicating with his friends at Birzeit University, ended up being arrested on March 17, 2022, again by the General Intelligence apparatus in Ramallah, and the court ruled to extend his detention for 15 days on March 20, 2022, pending investigation into a political accusation against him. And when Uday asked the judge to speak in court, the court judge did not allow him, and the prosecutor silenced him, and Nakhleh was on a hunger strike from the first moment of his arrest.

On March 31, 2022, a decision was issued to release (Nakhla) on personal bail, and the group worked on documenting the conditions of his arrest after his release from prison. Nakhleh spoke about his hunger strike for the first ten days of his detention. During the interrogation, he was beaten up all over his body. He was subjected to hanging from his hands, ill-treatment, and verbal abuse. In addition, he was imprisoned for three days in a “closet,” a cell that does not exceed a one square meter. The detainee can not even sit down because of her narrowness.

(3) Activist Muhammad Amr and his son Shaddad Amr: On April 19, 2022, forces from the Preventive Security and General Intelligence in Hebron Governorate, opened fire on the house of the activist (Mohammed Amro), a companion -of the late (Nizar Banat)-, during his arrest and his son, who He was not more than 17 years old, from his home, without any legal form being clear, and without presenting an arrest warrant, on the basis of his political views, and (Mohamed Amr) was presented to the Public Prosecution, so that the latter extended his detention for 24 hours on the charge of “resisting security men.” His minor son was not presented to any legal body even though he is arrested with his father. The son, who remained in custody for 24 hours, was unjustly released, and (Mohamed Amr) was released two days after his arrest on a legal bail.

7- Violation of the right to freedom of association and being part of it.

57. The International Covenant on Civil and Political Rights guarantees the right to freedom of association and association, by stating in the first and second paragraphs of Article 22 that: “1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are stipulated by law and which are necessary in a democratic society,

7-1 The right to freedom to establish and join trade unions in Palestinian legislation

58- The Basic Law affirms this right, as Article (25/3) states: “Organization of unions is a right that shall be regulated by the law.” and Article (26/2) stipulates that: “To form and establish unions, to the end of the provision.

59. As for the Law of Charitable Societies and Civil Organizations No. 1 of 2000, it states in Article (1) that: “Palestinians have the right to freely practice social, cultural, professional and scientific activity.” The first paragraph of Article (2) of the Executive Regulations of the Law of Charitable Societies and Civil Organizations states that: “Every Palestinian has the right to participate in the establishment, management and affiliation to associations.”

7-2 The reality of violations to the right to freedom of association and affiliation to it in Palestine

60- The “Lawyers for Justice Group” followed up on many violations committed by the security apparatus of the Palestinian National Authority, which affected the rights of the Palestinian university students, because they exercise their right to union work and their student activity in universities, including:

(1) Students (A.D) and (A.S): On January 2, 2022, the General Intelligence apparatus in of Nablus arrested two university students from An-Najah National University, without presenting an arrest warrant. On the following day, the two students were brought before the Public Prosecution, which charged them with possession of a weapon without license, subsequently their detention was extended by the Public Prosecution in Nablus for another 48 hours on January 3, 2022, then the detention was extended by the Nablus Magistrate’s Court for 7 days on January 5, 2022. After the seven days, on January 13, 2022, a decision was issued to release them on bail, but they were not released; This is because on January 6, 2022, another charge was brought against the two students, which is “affiliation to an armed forces and militias”, their detention was subsequently extended by the Nablus Magistrate’s Court for 15 days, and the extension was renewed for 4 days on January 20, 2022. On January 23, 2022, it was issued a decision to release for the second accusation, on cash bail and personal guarantees for each of them. However, the interrogation of the two students throughout their detention on the first and second charges was about their affiliation to the student movements and their participation in the student senate activities taking place on the campus of An-Najah National University.

(2) The case of three Birzeit University students: “Lawyers for Justice” monitored serious human rights violations against three Birzeit University students, who are: (Y.D) during eleven days of arbitrary arrest, (P. Q) During twelve days of arbitrary arrest, (M.S.) during thirteen days of arbitrary arrest, and they were all arrested during the same period in December 2021 by the General Intelligence apparatus in Ramallah. The arrested students recounted that they were held in a too small room (similar to a closet), in which there was no possibility of sitting. They were held in chains for more than three days and nights,

during which they were deprived of sleep and rest, and were forced to stand on their feet throughout their detention in this narrow room. The group documented that the student (A.S.) was severely beaten in the first days of his arrest, while the General Intelligence apparatus also hanged them from their hands to the ceiling, while they were interrogated against the background of their student activities at Birzeit University, and their interaction within the framework of student blocs. Their families were not allowed to visit or communicate with them.

8- Violation of the right to personal liberty, litigation and fair trial guarantees

61. International and regional human rights instruments, including reports of human rights bodies, domestic law of the states and the jurisprudence of national courts, recognize the right of every person deprived of his or her liberty, to bring proceedings before a court established by law to determine, without delay, the legality of his or her detention; with the right to obtain appropriate remedies if he/she submits an appeal in which the decision is in his/her favor.

62. The Covenant, in article 14, affirms that all people are equal before the judiciary, every individual has the right, when deciding on any criminal charge against him or his rights and obligations or in any civil lawsuit, to have his case under fair consideration proclaimed by a competent, independent and impartial court established by law, any judgment in a criminal case or a civil case must be issued in public, as the Covenant affirmed the presumption of innocence until the guilt is proven.

63. Emphasizing the right to liberty, ensuring due process of law, and ensuring that no one is subjected to arbitrary detention, the International Covenant on Civil and Political Rights states in article 9 “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Depriving anyone of his or her freedom except for reasons stipulated by law and in accordance with the procedure established therein. Any person who is arrested must be informed of the reasons of his arrest promptly, and he must be promptly informed of any accusation against him. He has the right to be tried within a reasonable time or to be released. The detention of persons awaiting trial is not a general rule, but it is permissible to suspend their release on guarantees to ensure their attendance at the trial at any other stage of the judicial proceedings, to ensure the implementation of the sentence when necessary. Every person deprived of his liberty by arrest or detention has the right to appeal the legality of his detention before the courts to determine without delay its legality, order his release if the detention was unlawful, and he is entitled to compensation. The Covenant also stipulates in Article (14/3) everyone shall be entitled to the following minimum guarantees, in full equality.

8-1 The Palestinian case and the right to litigation

64- The Palestinian legislator was keen to stipulate the principle of the right to litigation in the amended Basic Law. Article (9) of it states: “Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, color, religion, political views or disability.” He also stressed that this right is guaranteed to all people, and the Basic Law prohibits the immunization of any decision from judicial oversight in Article (30), which states: “1- Submitting a case to court is a protected and guaranteed right for all people. Each Palestinian shall have the right to seek redress in the judicial system. Litigation procedures shall be organized by law to guarantee prompt settlement of cases. 2. Laws may not contain any provisions that provide immunity to any administrative decision or action or against judicial review. 3. Judicial error shall result in a remedy by the National Authority. Conditions and methods of such remedy shall be regulated by law.

65. It is clear from the previous two texts that the Palestinian legislator stressed the right of individuals to resort to the judiciary to claim their rights, which is an inherent right and a constitutional duty for the judiciary to exercise, it was in line with what international covenants stipulated regarding this right.

66. As for fair trial guarantees; The Basic Law was keen to protect it by laying the foundations for it, which is represented in achieving justice and the rule of law in a manner that preserves rights and freedoms, and in a manner that preserves human dignity, foremost of which is the protection of personal freedom.

67- As for arrests resulting from declaring a state of emergency, Article (12) of the Basic Law applies to them, stating that: “Any arrest resulting from declaring a state of emergency must be subject to the following minimum requirements: 1- Any arrest made by the decree declaring a state of emergency is reviewed. By the Public Prosecutor or the competent court within a period not exceeding fifteen days from the date of arrest. 2- The detainee is entitled to appoint a lawyer of his choice. The Basic Law also took the presumption of innocence and affirmed it in Article 14, stating that: “An accused person is considered innocent until proven guilty in a court of law that guarantees the accused the right to a defense. Any person accused in a criminal case shall be represented by a lawyer.”

68. Basic Law affirmed the independence of the judiciary, as Article (97): it also emphasized the independence of judges, as Article (98).

Palestinian Basic Law stressed the importance of respecting and implementing judicial rulings, refusing to implement them is a constitutional crime that requires punishment. Article (106) states Judicial rulings shall be implemented. Refraining from or obstructing the implementation of a judicial ruling in any manner whatsoever shall be considered a crime carrying a penalty of imprisonment or dismissal from position if the accused individual is a public official or assigned to public service.

69. However, despite the provisions of the Basic Law on the independence of the judiciary and the independence of judges, an amendment was made to the Judicial Authority Law pursuant to Decree-Law No. 40 of 2020 amending Judicial Authority Law No. 1 of 2002, which was issued on December 30, 2020, to disregard the principle of the independence of

the judicial authority, and make the executive authority absolute control over the judicial authority, in violation of what was guaranteed by the Basic Law.

70- With regard to the decision by Law No. (7) of 2022 regarding the amendment of the Criminal Procedures Law No. (3) of 2001 and its amendments, which were published in the Official Gazette on 6/3/2022, after reviewing this decision by law, it became clear to us that, it violates many of the legal principles, human rights and fundamental freedoms guaranteed by the Basic Law and international covenants, to which the State of Palestine is a party and bound by the provisions contained therein. The principle of guaranteeing the right of defense, the principle of confrontation between opponents, the principle of oral arguments. Despite the many calls by human rights defenders to cancel the amendments and present them for societal discussion, the Palestinian National Authority has temporarily suspended their application till June 2022, which poses a risk that they will be activated at any time after this date.

71- The “Lawyers for Justice Group” believes that the continuation of the policy of suppressing public rights and freedoms, in light of the continuous amendments to laws, and ignoring the powers constitutionally entrusted to the legislative authority, under the pretext of a state of emergency, means explicitly violating the principle of separation of powers and destroying the rule of law. The people are the source of the authorities, impose more repression on constitutional rights and freedoms, abolish control over the performance, abuse and deviation of the executive authority. Accordingly, all amendments that affect human rights and the judiciary, which are guaranteed by the Basic Law, which is superior to ordinary laws, as well as those guaranteed by international covenants, must be abolished. public and stresses the need for separation of powers.

8-2 Cases from the Palestinian reality of violations of the right to personal freedom, litigation and fair trial guarantees

72- Most of the arrests carried out by the security apparatus of the P.A are arbitrary arrests, without taking into account the procedures stipulated by law, the detainees are not brought before any judicial body, and many legal texts are exploited and used as a cover by the security forces, people were arrested under fictitious charges, and the real goal behind the arrest is to investigate them against exercising one of their rights guaranteed by law and stipulated in the International Covenant on Civil and Political Rights.

73. Among the cases of deprivation of liberty and arbitrary detention that the “Lawyers for Justice Group” followed up are the following:

(1) Activist Musa Nazzal “Al-Sawy”: On December 7, 2021, members of the General Intelligence apparatus detained the activist (Al-Sawy), without an arrest warrant, the “group” did not find any file for his case with the Public Prosecution, which means that the detention was carried out without a warrant. Any legal basis and in an arbitrary manner, the General Intelligence Service prevented the (Al-Sawy) family from visiting him, which created concern about his health conditions in the detention. The "group", in cooperation with the United Nations Human Rights Office, was able to reach the place of detention of the activist (Al-Sawy), where he was held by the governor of Qalqilya will. The "group"

wrote a letter to the Public Prosecutor to demand the immediate release of Al-Suri, in light of his illegal arrest procedures and to refrain from presenting him to any judicial body to look into the seriousness and justifications of his arrest. On December 15, 2021, the “group” filed an appeal with the Court of Cassation with its administrative capacity to challenge the decision to arrest (Al-Sawy), on behalf of the Governor of Qalqilya, requesting an appointment for a court session to consider the appeal submitted against the arrest of (Al-Sawy), especially he was not presented to the competent judicial authorities throughout of his arrest.

(2) Activist Zuhdi Dannoun: On September 1, 2021, the General Intelligence arrested him in Ramallah, on the basis of his political affiliation. He remained detained by the agency until September 4, 2021, in an illegal manner without being charged, as the law does not allow The agency detained any detainee on their custody for more than 24 hours. On September 4, the public prosecutor came to the agency’s headquarters, and charged Danon with “collecting and receiving funds from an illegal association.”

Dannoun was released five days after his arrest, during which he was not brought before the court. However, his release came through a financial settlement, in which (Zuhdi Dannoun) paid a sum of money to the agency at the request of the agency itself. The intelligence apparatus arrested him again after his victory in the local elections, the investigation was around his participation and victory in the elections, and his political affiliation, the same subject of the previous arrest

9- Conclusion and recommendations

74. The last two years have witnessed a noticeable escalation in the security apparatuses’ violations of public rights and freedoms, reaching their most severe in the middle of last year. The methods used by the security apparatuses varied to abuse the rights of activists, journalists and others, some of which fall within the framework of direct violation to the provisions of the Basic Law and the legal guarantees in national legislation as well as The International Covenant on Civil and Political Rights, others fall within the framework of the arbitrary use of powers to suppress peaceful assembly and freedom of opinion and expression, as well as the excessive use of arrest warrants by the Public Prosecution to cover up arbitrary arrest procedures, seeking to extend the detention of journalists, social media activists and others who are subject to Arbitrarily arrests, directing fictitious charges against them to keep them in detention so that the security apparatuses can investigate them about their political opinions, political affiliation, practicing their journalistic work, or investigating their student activities inside Palestinian universities.

75. The violations that have been practiced during the past period against public rights and freedoms are extremely worrying and must be stopped by all means possible, in order to preserve human rights and democratic values to guarantee the rule of law and institutions. Accordingly, we propose a set of recommendations to reduce and eliminate violations:

(1) The President of the P.A and the Prime Minister must take an explicit position regarding respect for and protection of human rights, to hold accountable all those who committed,

or participated in committing, violations against all rights and public freedoms, and not be satisfied with speeches through the media and work to implement them on the ground. The President of the Palestinian Authority must stop issuing decisions by laws that violate human rights and work to cancel all decisions issued with laws that violate human rights depending on article 43 of the basic law.

(2) We recommend the necessity for the Palestinian Authority to hold legislative elections and form the Legislative Council to re-exercise its legislative role to oversight powers, the need to work without delay to abolish the old legislation in force until now which violates human rights, and to amend the laws that have been issued so that they are in line with what is stipulated in international covenants. Including the International Covenant on Civil and Political Rights, in implementation of its international commitment, as well as the issuance of a new legislation that respects human rights and provides full protection for them.

(3) We recommend the necessity of respecting the principle of separation among the three powers, limiting the hegemony of the executive authority, respecting the principle of independence of the judiciary and judges, and non-interference in their work to ensure the right to access the judiciary in order to protect public rights and freedoms from any violation, and to provide fair trial guarantees.

(4) We recommend the need to respect and protect human rights defenders, not to harm them, and to stop spreading false news aimed at shading, suppressing and silencing mouths.