

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SEALED

UNITED STATES OF AMERICA

v.

SAMI AMIN AL-ARIAN,

Defendant.

Case No.: 8:03-CR-77-T-30TBM
FILED UNDER SEAL

UNITED STATES OF AMERICA

v.

JOHN DOE A01-246 (T-112)

GRAND JURY 06-1 (E.D.VA)
FILED UNDER SEAL

FILED
06 OCT 27 AM 9:43
[Signature]

**DEFENDANT SAMI AMIN AL-ARIAN'S
MOTION TO ENFORCE PLEA AGREEMENT**

Defendant Sami Amin Al-Arian ("Dr. Al-Arian"), by and through undersigned counsel, hereby moves this Honorable Court to enforce the parties' plea agreement and order specific performance of the non-cooperation aspect of that agreement, thereby requiring the writ *ad testificandum* issued to Dr. Al-Arian be quashed. The grounds supporting this motion are set forth in the incorporated memorandum of law.

MEMORANDUM OF LAW

I. INTRODUCTION

On October 19, 2006, Dr. Al-Arian was summoned by the U.S. Attorney's Office for the Eastern District of Virginia to testify before a grand jury empanelled in Alexandria, Virginia, charged with investigating an organization called "IIT." Upon the commencement of questioning by AUSA Gordon Kromberg ("AUSA Kromberg"), Dr. Al-Arian declined to answer any questions on the grounds that his forced cooperation violated the plea agreement he entered into with the government on February 28, 2006, in Case No. 8:03-CR-77-T-30TBM (M.D. Fla.). See *Exhibit A*, Plea Agreement (Dkt. 1563), dated

S-69

February 28, 2006. Later that day, AUSA Kromberg called Dr. Al-Arian before the Honorable Gerald Bruce Lee of the District Court for the Eastern District of Virginia to seek a contempt order against Dr. Al-Arian for his refusal to testify before the grand jury.

The District Court determined that the basis for Dr. Al-Arian's refusal to testify centered on Dr. Al-Arian's belief that the parties' plea agreement foreclosed the possibility of his cooperation with the government. Because that plea agreement was negotiated, drafted, and accepted by this Court, the District Court in Virginia reasoned that this Court was in the best position to determine if the government's attempt to force Dr. Al-Arian to testify before the grand jury constituted a breach of the plea agreement.

Accordingly, the District Court continued the hearing on the government's motion to hold Dr. Al-Arian in contempt to allow this Court the opportunity to decide whether non-cooperation was contemplated by the parties to the above-reference plea agreement. This motion follows the District Court's order. *See Exhibit B*, Order of District Court for the Eastern District of Virginia, dated October 19, 2006.

II. BACKGROUND

On September 21, 2004, Dr. Al-Arian was charged, along with various co-defendants, in a 53-count Superseding Indictment. On December 6, 2005, after a six month trial in the Middle District of Florida, Dr. Al-Arian was acquitted on eight (8) counts and the jury was unable to reach a unanimous verdict on the remaining nine (9) counts. Notwithstanding the jury's favorable verdict, Dr. Al-Arian remained in detention, without bond, awaiting a new trial on the nine remaining counts. During this period, the parties began negotiating in good faith to resolve this case.

The overarching purpose of the parties' plea agreement was to conclude, once and for all, all business between the government and Dr. Al-Arian. *See Exhibit C*, Declaration of Sami Amin Al-Arian, at ¶ 5; *Exhibit D*, Declaration of Linda Moreno, Esq., at ¶ 5. Ultimately, the parties agreed on a resolution that provided for Dr. Al-Arian to receive a sentence of virtually time-served and immediate deportation from the United States. *See*

Exhibit A (Dkt. 1563), at §§ A.7, 8, and 11; *see also Exhibit D*, at ¶ 11.

From the start of plea negotiations, defense attorneys Linda Moreno (“Ms. Moreno”) and William Moffitt¹ (“Mr. Moffitt”) made clear to the government that Dr. Al-Arian would *never* enter into a plea agreement requiring his cooperation. *See Exhibit D*, at ¶ 4. Mr. Moffitt and Ms. Moreno were adamant on this point and the government did not take a contrary position. *Id.* Because the parties understood at the outset of plea negotiations that Dr. Al-Arian would not cooperate with the government, the issue of cooperation was immediately taken off the table and never raised again. *Id.* Notably, during the course of plea discussions, any language that could, in any way, be construed as evidence of cooperation or a commitment to cooperate was excised from the plea agreement and presentence investigation report. *See Exhibit C*, at ¶ 6.

Ultimately, the parties agreed on the following material terms:

- (1) Dr. Al-Arian would plead guilty to count 4 of the Superseding Indictment, which carried a Guidelines range of 46 to 57 months incarceration, *See Exhibit A* (Dkt. 1563), § A.7 at 3;
- (2) The Government would recommend that Dr. Al-Arian be sentenced to the low end of the Guidelines range (i.e., 46 months incarceration), *Id.* § A.11 at 5; and
- (3) Dr. Al-Arian would be expeditiously deported from the United States. *Id.* § A.8 at 4.

On April 14, 2006, Dr. Al-Arian appeared before Magistrate Judge Thomas B. McCoun, III, for entry of his guilty plea. Although the plea agreement provided that the United States Attorney’s Office for the Middle District of Florida and the Counterterrorism Section of the Department of Justice were bound by its terms, during the plea colloquy the government orally amended paragraph A.6 “to further bind the Eastern District of Virginia[.]” *See Exhibit E*, Transcript of Plea Hearing (Dkt. 1567), at 18-19.

¹ Attorney William Moffitt is currently in trial in Chicago. Consequently, Dr. Al-Arian expects to file Mr. Moffitt’s affidavit next week with a notice of supplemental filing.

For a variety of reasons, at the time the plea was negotiated and entered into by Dr. Al-Arian, all parties involved, both government and defense counsel alike, believed Dr. Al-Arian would be sentenced to the low-end of the Guidelines. *See Exhibit F*, Affidavit of Jack Fernandez, at ¶ 4; *see also Exhibit D*, at ¶ 11. Accordingly, based on the amount of time Dr. Al-Arian had spent in pre-trial and post-trial detention (i.e., approximately 38 months), and the amount of gain time *both parties* anticipated Dr. Al-Arian would be credited with by the Bureau of Prisons, at the time of the plea, *both parties* expected that Dr. Al-Arian would complete his prison sentence by June 1, 2006. *See Exhibit D*, at ¶ 11; *Exhibit F*, at ¶ 4. The parties further anticipated that Dr. Al-Arian would be immediately transferred to the custody of the Department of Homeland Security and expeditiously deported.² *See Exhibit D*, at ¶¶ 10, 12. However, on May 1, 2006, Dr. Al-Arian was sentenced to the high end of the Guidelines—57 months incarceration. *See Dkt. 1574*.

In May 2006, AUSA Cherie Kringsman (“AUSA Kringsman”) first informed Ms. Moreno that the U.S. Attorney’s Office for the Eastern District of Virginia was interested in calling Dr. Al-Arian to testify before a grand jury. *See Exhibit D*, at ¶ 14. During this conversation Ms. Moreno expressed her dismay at the government’s decision to contravene the parties’ express understanding that Dr. Al-Arian would not be expected to cooperate with the government. *Id.* at ¶ 5. Moreover, Ms. Moreno conveyed to AUSA Kringsman that she feared, under the circumstances, that Dr. Al-Arian was being called before the grand jury as a contempt trap. *Id.* at ¶ 16. AUSA Kringsman denied this was the purpose of the grand jury proceeding. *Id.*

On September 12, 2006, AUSA Kromberg contacted defense counsel Jack Fernandez (“Mr. Fernandez”) to inform him that the Eastern District of Virginia was interested in either speaking to Dr. Al-Arian informally or immunizing Dr. Al-Arian and

² On April 12, 2006, just two (2) days before Dr. Al-Arian entered his guilty plea, the parties met in the office of the United States Attorney in Tampa, Florida to discuss the logistics of Dr. Al-Arian’s deportation from the United States. *See Exhibit F*, at ¶ 4. During this meeting, the government reiterated its belief that Dr. Al-Arian would be sentenced to the low end of the Guidelines and deported soon after June 1, 2006. *Id.*

calling him before a grand jury to testify about his involvement with and knowledge of an organization called "IIT." See *Exhibit F*, at ¶ 5. Mr. Fernandez echoed Ms. Moreno's fear that the government's interest in Dr. Al-Arian's testimony appeared to be, at minimum, a contempt or perjury trap. *Id.* AUSA Kromberg advised Mr. Fernandez that he was not part of any conspiracy to hurt Dr. Al-Arian. *Id.* However, during the conversation, AUSA Kromberg told Mr. Fernandez that he believed Dr. Al-Arian's sentence and plea deal was "a bonanza." *Id.* Over the course of a week, Mr. Fernandez spoke to AUSA Kromberg on several more occasions.

On September 18, 2006, AUSA Kromberg informed Mr. Fernandez that he was issuing a writ *ad testificandum* to have Dr. Al-Arian transferred to Virginia and that it would probably take the U.S. Marshals Service approximately ten (10) business days to effectuate the transfer. *Id.* at ¶ 6. AUSA Kromberg further stated that Dr. Al-Arian was being scheduled to testify in mid-October. *Id.* Upon informing Dr. Al-Arian of his imminent transfer to Virginia, Dr. Al-Arian brought to Mr. Fernandez' attention the fact that Ramadan was approaching and he asked if it was possible to delay the transfer for 30 days to avoid disrupting his observance of the religious holiday. *Id.* at ¶ 7. Mr. Fernandez called AUSA Kromberg to relay Dr. Al-Arian's request to the government. *Id.* In response to Dr. Al-Arian's request for a delay in his transfer for religious reasons, AUSA Kromberg remarked:

If they can kill each other during Ramadan, they can appear before the grand jury; all they can't do is eat before sunset. I believe Mr. Al-Arian's request is part of the attempted Islamization of the American Justice System. I am not going to put off Dr. Al-Arian's grand jury appearance just to assist in what is becoming the Islamization of America.

Id.

Later that day, Mr. Fernandez followed up his conversation with AUSA Kromberg to discuss his concerns about AUSA Kromberg's comments regarding Ramadan and Muslims in America. *Id.* at ¶ 8. During this conversation, Mr. Fernandez expressed his belief that comments such as the kind made earlier in the day called into question AUSA

Kromberg's objectivity in calling Dr. Al-Arian up to Virginia for questioning. *Id.* On September 20, 2006, in a follow-up telephone conversation between AUSA Kromberg, Mr. Fernandez, Ms. Moreno, and Mr. Fugate, Mr. Fernandez again addressed his concern that AUSA Kromberg's comments about Muslims displayed a lack of objectivity. *Id.* at ¶ 9. Mr. Fernandez went so far as to recommend to AUSA Kromberg that he recuse himself from that part of the investigation concerning Dr. Al-Arian. *Id.* Mr. Fernandez' comments were met with the following fiery response from AUSA Kromberg: "You file whatever you want, it's up to you. We can do this the hard way or the easy way." *Id.*

III. THE PARTIES' PLEA AGREEMENT AND THE NON-COOPERATION ASPECT OF THAT AGREEMENT SHOULD BE ENFORCED.

Here, the writ *ad testificandum* issued to Dr. Al-Arian, compelling his testimony before the grand jury empanelled in Alexandria, Virginia, violates the parties' plea agreement. Furthermore, based on the comments made by AUSA Kromberg to Mr. Fernandez, it also appears this writ was issued to nullify Dr. Al-Arian's sentencing "bonanza," as explained *infra* at 14-16.

A. The Government's Attempt to Compel Dr. Al-Arian to Testify Before the Grand Jury Impaneled in the Eastern District of Virginia Constitutes a Breach of Dr. Al-Arian's Plea Agreement.

1. Plea Agreements Should Not Be Construed to Contravene the Intent of the Parties.

During the course of plea negotiations, an understanding was reached by the parties that Dr. Al-Arian would not be required to cooperate with the government in any manner. *See Exhibit D*, at ¶ 4; *see also Exhibit C*, at ¶ 6. In fact, the plea agreement was intended to conclude all business between the parties. *See Exhibit D*, at ¶ 5; *Exhibit C*, at ¶ 5. Thus, the government's attempt to force Dr. Al-Arian to testify before a grand jury deprives Dr. Al-Arian of the benefit of his bargain and, therefore, violates his plea agreement.

Plea agreements are generally interpreted like contracts. *United States v. Jefferies*, 908 F.2d 1520, 1523 (11th Cir. 1990). However, because constitutional rights are

implicated by a defendant's agreement to plead guilty to a criminal offense, plea agreements receive greater scrutiny than contracts in a commercial setting. *United States v. McQueen*, 108 F.3d 64, 66 (4th Cir. 1997). Furthermore, in analyzing a plea agreement, principles of contract law are tempered by concerns of "honor of the government, public confidence in the fair administration of justice, and the effective administration of justice in a federal scheme of government." *United States v. Harvey*, 791 F.2d 294, 300 (4th Cir. 1986) (citation omitted). Consequently, "[i]n interpreting a plea agreement, [courts] do not accept a hypertechnical reading of the written agreement or a rigidly literal approach in the construction of the language." *United States v. Copeland*, 381 F.3d 1101, 1105 (11th Cir. 2004) (citation and internal quotation marks omitted). Also, insofar as there exists any ambiguity or imprecision with respect to the terms of the parties' agreement, that language must be construed against the government. *Id.* at 1108; *United States v. Dixon*, 998 F.2d 228, 230 (4th Cir. 1993) (citation omitted).

Plea agreements are interpreted to give effect to the parties' intent. *United States v. Eldick*, 443 F.3d 783, 789 (11th Cir. 2006) (citation omitted); *McQueen*, 108 F.3d at 66 ("[P]arties to [a plea] agreement should receive the benefit of their bargain."). Whether the government has violated a plea agreement "is judged according to the *defendant's reasonable understanding* at the time he entered his plea." See *United States v. Boatner*, 966 F.2d 1575, 1578 (11th Cir. 1992) (citation omitted and emphasis added).³ Even if the parties do not memorialize an oral understanding, if a government attorney verbally makes a promise to the defendant, that promise must be kept. See *United States v. White*, 366 F.3d 291, 295 (4th Cir. 2004). Ultimately, "a written plea agreement should be viewed against the background of the [parties'] negotiations[.]" *United States v. Williams*, 444 F.3d 1286, 1305 (11th Cir. 2006).

³ If the Court "do[es] not enforce [the defendant's] reasonable understanding of the plea agreement, he cannot be said to have been aware of the consequences of his guilty plea." *United States v. Rewis*, 969 F.2d 985, 988 (11th Cir. 1992).

It is uniformly recognized that “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 499 (1971). Accordingly, the government’s breach of an express or implied term of a plea agreement violates the defendant’s due process rights. *United States v. Martin*, 25 F.3d 211, 217 (4th Cir. 1994) (citations omitted). If a breach occurs, the court may exercise its discretion to fashion an appropriate remedy, but specific performance of the plea agreement is usually favored. *Santobello*, 404 U.S. at 263, 92 S. Ct. at 499; *see, e.g., United States v. Nelson*, 837 F.2d 1519, 1525 (11th Cir. 1988).

Dr. Al-Arian entered into a plea agreement with the government based on the parties’ explicit understanding that he would *never* be required to cooperate with the government in any matter. The term “cooperate,” in the context of a plea agreement, does not refer exclusively to “voluntary” cooperation, it also refers to “forced” cooperation (e.g., compelled testimony before a grand jury). *United States v. Garcia*, 956 F.2d 41, 45 (4th Cir. 1992). Although this understanding was not memorialized in the written plea agreement, it nonetheless was central to the parties’ resolution of Dr. Al-Arian’s case. *See United States v. Rewis*, 969 F.2d 985, 988 (11th Cir. 1992) (a plea agreement “should be viewed against the background of negotiations and should not be read to directly contradic[t] [an] oral understanding.”) (citation and internal quotation marks omitted); *see, e.g., Martin*, 25 F.3d at 217 (enforcing government’s oral modification of plea agreement). Accordingly, the fact that the government did not include a cooperation provision in the plea agreement was a key inducement to Dr. Al-Arian’s acceptance of the plea agreement. *See Exhibit C*, at ¶ 7.

2. The Language of the Plea Agreement Demonstrates that Dr. Al-Arian Was Not Expected to Cooperate with the Government.

The written plea agreement reflects the government’s understanding that Dr. Al-Arian would not provide it with any cooperation. For instance, in paragraph A.11 the U.S.

Attorney's Office agreed to recommend to this Court that Dr. Al-Arian be sentenced to the low end of the Guidelines. *See Exhibit A*, § A.11 at 5. In addition, the U.S. Attorney's Office agreed to recommend to Homeland Security that it expedite Dr. Al-Arian's deportation from the United States. *Id.* § A.8 at 4. Based on the extent of time Dr. Al-Arian had already spent in pre-trial and post-trial detention, a sentence to the low end of the Guidelines would virtually constitute a sentence of time served. In combination with the government's recommendation that Dr. Al-Arian be deported expeditiously, the parties reasonably anticipated, based on the language of the agreement, that Dr. Al-Arian would be removed from the United States within the first couple weeks of June 2006. The government's aggressive stance on Dr. Al-Arian's deportation demonstrated, and reinforced the reasonable impression in Dr. Al-Arian's mind, that Dr. Al-Arian would not be around long enough to cooperate with the government. Even at the plea colloquy, AUSA Terry Zitek stated that "the process has already started" for arranging Dr. Al-Arian's deportation. *See Exhibit E* (Dkt. 1567), at 31.

Now, AUSA Kromberg is attempting to exploit Dr. Al-Arian's 57-month term of incarceration to try and force his cooperation with an investigation being conducted in the Eastern District of Virginia.⁴ It was only after Dr. Al-Arian was sentenced to 57 months—not 46 months as the parties anticipated—and the government realized that Dr. Al-Arian would be in the United States for a longer period of time than originally contemplated, that

⁴ As described in Ms. Moreno's declaration, during the plea negotiations the defense sought to bind *all* prosecuting authorities in the United States to the plea agreement. *See Exhibit D*, at ¶ 6. Although the government initially agreed in principle with the defense's request to add language to this effect, it ultimately refused to abandon its standard plea agreement language. *Id.* at ¶¶ 7-8. Instead, the government agreed to specifically add the U.S. Attorney's Office for the Eastern District of Virginia to the list of parties bound by the plea agreement. *Id.* at ¶¶ 8-9. This is no coincidence. The parties knew about AUSA Kromberg and his interest in Dr. Al-Arian, so the defense sought to bind the Eastern District of Virginia to the plea agreement to avoid any question that Dr. Al-Arian would not be subject to prosecution in that jurisdiction, or held as a material witness, or called to testify before a grand jury (specifically with respect to IIIT). *Id.* at ¶ 13; *see also Exhibit C*, at ¶ 8. These facts beg a simple question: If adding the Eastern District of Virginia to the plea agreement does not preclude it from seeking Dr. Al-Arian's testimony before a grand jury empanelled there, then what was the point in binding that prosecuting authority to the parties' plea agreement?

it arranged to compel his testimony before the grand jury in Virginia.

3. The Government's Attempt to Force Dr. Al-Arian to Testify Before a Grand Jury Violates the Plea Agreement and Dr. Al-Arian's Due Process Rights.

United States v. Garcia, 956 F.2d 41 (4th Cir. 1992) is dispositive. In *Garcia*, the government offered to recommend to the sentencing judge a 10-year sentence for the defendant if he pled guilty to one count of the indictment and agreed to cooperate with the government. *Id.* at 42. Fearing retribution against his family if he cooperated, the defendant refused the government's offer. *Id.* In response, the government withdrew the cooperation element of its plea offer and agreed to recommend a 15-year sentence for the defendant in exchange for pleading guilty to one count of the indictment. *Id.* The defendant accepted the government's second offer. *Id.* Subsequently, the government sent defense counsel a letter describing the terms of the parties' oral agreement, including the understanding that the defendant would not be required to cooperate with the government. *Id.* However, the parties signed a written plea agreement that did not contain a provision explaining that the defendant was not required to cooperate with the government. *Id.* One month after being sentenced, the defendant was subpoenaed to testify before a grand jury. *Id.* The defendant refused to testify and was held in contempt. *Id.* at 43. The district court denied the defendant's habeas petition based on its conclusion that the plea agreement was unambiguous, thereby barring the introduction of parol evidence (i.e., the government's letter confirming its oral commitment to not seek the defendant's cooperation). *Id.* In reaching its decision, the district court also noted that the written plea agreement did not contain a "no-cooperation required" clause, thus settling the issue. *Id.*

In reversing the district court's decision in *Garcia*, the Fourth Circuit Court of Appeals determined that strict application of the parol evidence rule was not appropriate even though the written plea agreement was clear and unambiguous. *Id.* at 44. It determined that the government's letter to defense counsel evidenced an oral promise to not compel the defendant to cooperate with the government and its omission from the written

plea agreement was due to “government overreaching, inadvertent omission, the dereliction of defense counsel, or some combination of those factors.” *Id.* Notwithstanding the failure to memorialize the no-cooperation element of the parties’ agreement, the court of appeals concluded it did not absolve the government of its obligation to *honor* its commitment to the defendant. *Id.* Therefore, the court of appeals concluded that the government breached the plea agreement, thereby warranting remand and granting of defendant’s habeas petition.

Similarly, in *United States v. Singleton*, 47 F.3d 1177, 1995 WL 66792 (9th Cir. 1995) (unpublished),⁵ the court refused to hold the defendant in contempt for his unwillingness to testify before a grand jury because the defendant entered his plea with the understanding that he would not have to cooperate with the government. In *Singleton*, the defendant refused to consider any plea offer by the government that contained a cooperation provision. *Id.* at *1. During jury selection the parties reinitiated plea discussions, and in the presence of the district court judge, they negotiated the substance of their plea deal. *Id.* Ultimately, a written plea agreement was drafted and executed by the parties. *Id.* This written agreement did not contain any provision regarding cooperation, and like most plea agreements, it contained an integration clause providing that the written agreement constituted the sum total of the parties’ accord. *Id.* A year later, the government issued the defendant a grand jury subpoena. *Id.* at *2. Although the district court denied the defendant’s motion to quash the subpoena, it also denied the government’s request to hold the defendant in contempt for refusing to testify before the grand jury. *Id.* The district court acknowledged that the plea agreement was unambiguous, but concluded that the defendant believed he would not be called to testify before the grand jury. *Id.*

In affirming the lower court’s decision in *Singleton*, the Ninth Circuit Court of Appeals observed that parol evidence confirmed that the defendant accepted the government’s plea offer because he believed he could refuse to cooperate with the government. *Id.* The court of appeals considered parol evidence—in the form of the

⁵ A copy of this case is attached as *Exhibit G*.

district court's own observations during the plea negotiations—notwithstanding the fact that the plea agreement was clear on its face and did not contain any provision indicating that the Government waived its grand jury subpoena power. *Id.* Because the plea negotiations affected the defendant's understanding of the written agreement, the court explicitly rejected the government's contention that plea discussions should not be considered where a written agreement memorializes the terms of the parties' agreement. *Id.* at *3. The court ultimately concluded that forcing the defendant to testify before the grand jury would deny him a benefit bargained for in his plea deal. *Id.* at *4.

Likewise, in the instant case, the written plea agreement should not be construed to contravene the parties' understanding that Dr. Al-Arian would not be required to cooperate with the government. Like the agreements in *Garcia* and *Singleton*, Dr. Al-Arian's plea agreement does not contain a "no-cooperation required" clause—but that does not matter. At the time the parties negotiated the plea agreement, the possibility of cooperation was raised, discussed, and expressly rejected by the defense. *See Exhibit D*, at ¶ 4. In fact, defense counsels made clear to the government that under no circumstances would Dr. Al-Arian agree to a plea deal that included a cooperation provision. *Id.*; *see also Exhibit C*, at ¶¶ 6-7. Moreover, the overarching purpose of the entire agreement was to resolve any and all matters between the government and Dr. Al-Arian. *See Exhibit C*, at ¶ 5; *Exhibit D*, at ¶ 5. The key objective of the parties (i.e., a final settlement of all matters) could not have been achieved if there existed the possibility of cooperation in the future. Therefore, the government knowingly contravened the parties' plea agreement, thereby violating Dr. Al-Arian's due process rights, by issuing a writ to compel his testimony before a grand jury in Virginia.⁶ *See United States v. Martin*, 25 F.3d 211, 217 (4th Cir. 1994) ("If the

⁶ Dr. Al-Arian's case is distinguishable from *In re Grand Jury Proceedings*, 819 F.2d 984 (11th Cir. 1987). In *In re Grand Jury Proceedings*, the defendant was prosecuted by and entered into a plea agreement with the U.S. Attorney's Office for the Northern District of Georgia. *Id.* at 984. The following year, he was compelled by a different prosecuting authority not bound by his plea agreement, the U.S. Attorney's Office for the Southern District of Florida, to testify before a grand jury. *Id.* Ultimately, the defendant was held in contempt and the Eleventh Circuit upheld the contempt order. *Id.* at 987. Here, and unlike the situation in *In re Grand Jury Proceedings*, Dr. Al-

government breaches express or implied terms of a plea agreement, a violation of due process occurs.”) (citations omitted).

4. Parol Evidence May Be Offered to Clarify an Unambiguous Plea Agreement Where there is Evidence of Government Overreaching.⁷

Where there is evidence of “government overreaching,” extrinsic evidence may be introduced to shed light on an otherwise unambiguous plea agreement. *See Harvey*, 791 F.2d at 300. “Proof of the Government’s refusal to abide by . . . an oral promise would clearly constitute evidence of ‘government overreaching’ or ‘fraud in the inducement,’ admissible without running afoul of the parol evidence rule.” *White*, 366 F.3d at 295 (citations omitted). For example, in *White* the defendant sought to introduce parol evidence to prove that the government made an oral representation to defense counsel that the defendant could conditionally plead guilty and still retain the right to appeal the denial of his suppression motion. *Id.* at 292. This oral promise was never incorporated into the plea agreement. *Id.* Notably, no part of the plea agreement addressed the defendant’s right to appeal. *Id.* at 293, 298. However, the defendant asserted he was induced to enter his plea by the government’s assurance that he could appeal his suppression motion. *Id.* at 293. In light of the defendant’s assertions of government overreaching, the Court of Appeals for the Fourth Circuit considered the sworn statements offered by the defendant and his former defense counsel to find that a dispute of material fact existed as to whether an oral

Arian has been compelled by the U.S. Attorney’s Office for the Eastern District of Virginia, a party to the plea agreement, to testify before a grand jury in Virginia. From the outset of plea negotiations, the parties understood that Dr. Al-Arian would never be expected, much less required, to provide any form of cooperation to the government. Unlike the federal prosecutor who sought cooperation from the defendant in *In re Grand Jury Proceedings*, AUSA Kromberg is bound by the parties’ accord.

⁷ In *Jefferies*, the Eleventh Circuit Court of Appeals considered the affidavits of defense counsel without even addressing whether any ambiguity existed in the plea agreement. 908 F.2d at 1523-1524. Because plea agreements, unlike commercial contracts, implicate the waiver of constitutional rights, a rigid adherence to principles of contract interpretation is inappropriate. *See Harvey*, 791 F.2d 294, 300 (In analyzing a plea agreement, principles of contract law are tempered by concerns of “honor of the government [and] public confidence in the fair administration of justice[.]”); *see also Rewis*, 969 F.2d at 988.

agreement had been reached by the parties outside the written plea agreement, thus warranting an evidentiary hearing on the issue. *Id.* at 301-02.

Likewise, the evidence presented here reflects that Dr. Al-Arian's guilty plea was induced by an oral understanding of the parties, in that he would not be required to cooperate with the government. *See Exhibit C*, at ¶ 7; *Exhibit D*, at ¶¶ 4, 13. The government's attempt to contravene the parties' oral agreement constitutes "government overreaching," thereby justifying the consideration of parol evidence on the issue. Here, the declarations offered by Ms. Moreno and Dr. Al-Arian demonstrate that one of Dr. Al-Arian's primary concerns in pleading guilty was avoiding any obligation to cooperate with the government or even creating the impression he had done so. *See Exhibit C*, at ¶ 6; *Exhibit D*, at ¶ 4. Without this explicit understanding, Dr. Al-Arian would have rejected the government's plea offer. *See Exhibit C*, at ¶ 6; *Exhibit D*, at ¶ 4. Accordingly, the government's attempt to ignore the parties' non-cooperation accord constitutes "government overreaching" and, therefore, affidavits of counsel and the defendant are admissible to clarify the intent of the parties in entering this plea agreement.

In conclusion, the "honor of the government [and] public confidence in the fair administration of justice," demand that the government keep its word. *Harvey*, 791 F.2d 300. Here, the parties understood that Dr. Al-Arian would not have to cooperate with the government. *See Exhibit C*, at ¶¶ 6-7; *Exhibit D*, ¶¶ 4, 13. This was a prime inducement to Dr. Al-Arian's acceptance of the plea agreement. *See Exhibit C*, at ¶ 7. Because the writ was issued to Dr. Al-Arian in breach of the parties' agreement, it must be quashed.

B. The Writ *Ad Testificandum* Must be Quashed Because it is Designed to Harass Dr. Al-Arian.

Grand juries may not be used to harass witnesses or targets. *See United States v. R. Enter., Inc.*, 498 U.S. 292, 299, 111 S. Ct. 722, 727 (1991). Yet, that is what is happening in this case. Here, the outrageous comments made by AUSA Kromberg regarding Muslims, coupled with the parties' clear understanding that Dr. Al-Arian would never be expected to

cooperate with the government, shows that the grand jury process is being abused.

The government's attempt to force Dr. Al-Arian to cooperate with its investigation has put Dr. Al-Arian in an impossible situation. Dr. Al-Arian has four options, none of which are fair or appealing:

(1) Refuse to testify and be held in contempt, thereby extending his prison term and delaying his expedited deportation;

(2) Testify truthfully and the government argues his testimony is not consistent with prior statements or its understanding of the facts, thereby subjecting Dr. Al-Arian to perjury charges;

(3) Testify truthfully, the government believes Dr. Al-Arian, but then issues a material witness warrant to keep him in detention in the United States, beyond his term of incarceration, thereby delaying his expedited deportation; or

(4) Testify truthfully, the government believes Dr. Al-Arian, but does not find his testimony particularly helpful, in which case Dr. Al-Arian is deported on schedule and is labeled an informant for the United States government, thereby putting his life in danger and beyond the protection of the United States.⁸

⁸ The United States government even acknowledges that informants and suspected informants are at risk of persecution in the Palestinian-controlled territories. *See* U.S. DEPARTMENT OF STATE, Bureau of Democracy, Human Rights, and Labor, "Country Report on Human Rights Practices for Israel and the Occupied Territories 2005," released March 8, 2006 (a copy is attached as *Exhibit H*). In 2006, the U.S. Department of State reported that Palestinians in the "Occupied Territories Subject to the Jurisdiction of the Palestinian Authority" who were suspected of collaborating with Israeli authorities were subject to detention, torture, and murder. For example:

- On September 26, [2005,] assailants, reportedly from the al-Aqsa Martyrs' Brigades, killed a Palestinian man suspected of collaborating with Israeli authorities. The killers kidnapped him days earlier from the Askar refugee camp near Nablus. *Id.* at 25.
- In August 2004 unidentified assailants threw grenades into a room holding suspected Palestinian collaborators in the Gaza Central Prison. The attack killed two and injured six prisoners. Palestinian security officials arrested *two policemen*, who allegedly carried out the attack on behalf of Hamas. At year's end no further legal action had been taken against the officers. *Id.* (emphasis added).

The government knows these are the only options available to Dr. Al-Arian, yet, it still has insisted on his cooperation. Furthermore, any information Dr. Al-Arian can provide to the government regarding IIT is already in the government's possession in FISA wiretaps and other electronic surveillance, all of which AUSA Kromberg has been provided access. *See Exhibit F*, at ¶ 9. Because at the time the writ was issued AUSA Kromberg knew Dr. Al-Arian did not have any relevant information to supply to the government regarding IIT, and was aware of his disposition not to testify before the grand jury in light of the non-cooperation aspect of his plea agreement, it is plain AUSA Kromberg's primary motives in issuing the writ to Dr. Al-Arian was to obtain a contempt order against him.

Under the circumstances of this case, and in light of the comments made by AUSA Kromberg, it is apparent that the writ issued to Dr. Al-Arian is designed to nullify the "bonanza" of a plea deal he received in the Middle District of Florida, and punish him in other ways (i.e., extend his sentence with a contempt order). Accordingly, the parties plea agreement should be enforced and specific performance warrants that the writ *ad testificandum* issued to Dr. Al-Arian be quashed.

IV. CONCLUSION

WHEREFORE, Dr. Al-Arian, by and through undersigned counsel, moves this Honorable Court to enforce the plea agreement and order specific performance of the non-

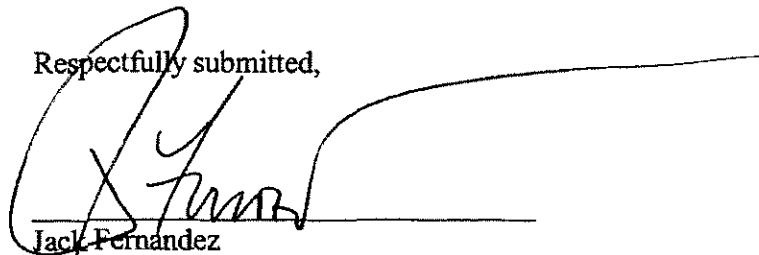
-
- At year's end [2005] Palestinian sources estimated the PA [i.e., Palestinian Authority] imprisoned approximately 239 [Palestinians] suspected of collaboration with Israel. Alleged collaborators often were held without evidence and denied access to lawyers, their families, or doctors. *Id.* at 27.

Notably, the U.S. Department of State's Country Reports on Human Rights Practices have been universally accepted by U.S. federal courts as reliable sources of current country conditions. *See Rojas v. INS*, 937 F.2d 186, 190 n.1 (5th Cir. 1991) (noting that the U.S. Department of State "is the most appropriate and perhaps the best resource the Board [of Immigration Appeals] could look to in order to obtain information on political situations in foreign nations."); *see, e.g., Kazlauskas v. INS*, 46 F.3d 902, 906 (9th Cir. 1995) (referencing the State Department Country Report on Human Rights Practices to ascertain current conditions in Lithuania); *Getachew v. INS*, 25 F.3d 841, 847 (9th Cir. 1994) (relying on State Department Country Report for Human Rights Practices to dispute Board of Immigration Appeals' assessment of country conditions in Ethiopia).

cooperation aspect of that agreement, thereby requiring the writ *ad testificandum* issued to Dr. Al-Arian be quashed.

Dated: October 26, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jack Fernandez', is written over a horizontal line. The signature is stylized and extends to the right, crossing the line.

Jack Fernandez

Fla. Bar No.: 843751

Lee Fugate

Fla. Bar No.: 0170928

ZUCKERMAN SPAEDER LLP

101 E. Kennedy Boulevard, Suite 1200

Tampa, Florida 33602

Tel: (813) 221-1010

Fax: (813) 223-7961

Email: jfernandez@zuckerman.com

lfugate@zuckerman.com

Attorneys for Defendant Sami Amin Al-Arian

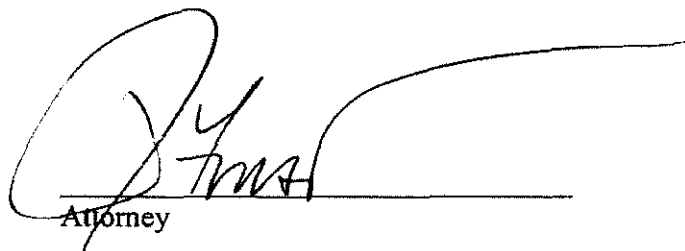
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of October 2006, served via hand delivery or Federal Express the foregoing Defendant Sami Amin Al-Arian's Motion to Enforce Plea Agreement on the following individuals:

Terrence Zitek, Esq.
Walter Furr, Esq.
Cherie Krigsman, Esq.
United States Attorney's Office
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602

The Honorable Gerald Bruce Lee
U.S. District Court Judge
District Court for the Eastern District of Virginia
Albert V. Bryan U.S. Courthouse
401 Courthouse Square
Alexandria, Virginia 22314

Gordon Kromberg, Esq.
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, Virginia 22314



Attorney

Exhibit H



Israel and the occupied territories

Country Reports on Human Rights Practices - 2005

Released by the Bureau of Democracy, Human Rights, and Labor
March 8, 2006

(The Report on the occupied territories is appended at the end of this Report.)

With a population of approximately 6.9 million (including about 5 million Jews within Israel), Israel is a multiparty parliamentary democracy. "Basic laws" enumerate fundamental rights. The 120-member, unicameral Knesset, has the power to dissolve the government and mandate elections. Both the 16th (most recent) Knesset and Prime Minister Ariel Sharon were elected democratically in 2003. In November Sharon requested that the president dissolve the Knesset, announced that he was leaving the Likud Party, and established a new party, *Kadima* ("move forward"). The president set elections for March 28, 2006. On December 29, pursuant to presidential decree, the Knesset was dissolved.

The judiciary is independent and sometimes ruled against the executive, including in some security cases. Notwithstanding some cases of abuse by individuals, the civilian authorities maintained effective control of the security forces. (An annex to this report covers human rights in the occupied territories. This report deals only with human rights in Israel.)

In August and September, Israel withdrew all civilians and military personnel from all 21 Israeli settlements in the Gaza Strip and from 4 settlements in the northern West Bank of the over 200 settlements there. Palestinians in the occupied territories are not citizens of the country and do not enjoy the rights of citizens, even if living in areas under full Israeli authority or arrested in Israel. The approximately 20 thousand non-Israeli residents of the Golan Heights were subject to Israeli authority and Israeli law.

The government generally respected the human rights of its citizens; however, there were problems in some areas, including the following:

- serious abuses by some members of the security forces against Palestinian detainees
- Palestinian terrorist attacks against Israeli civilians and Israeli Defense Force (IDF) soldiers
- resulted in the death of 29 civilians and an IDF soldier within Israel
- poor conditions in some detention and interrogation facilities
- improper application of security internment procedures (see annex)
- institutional, legal, and societal discrimination against the country's Arab citizens
- discrimination in personal and civil status matters against non-Orthodox Jews
- societal violence and discrimination against women
- trafficking in and abuse of women and foreign workers
- de facto discrimination against persons with disabilities
- government corruption

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings.

On September 18, the Ministry of Justice Police Investigation Department (PID) closed its investigation into the police killings of 13 (12 Israeli-Arab and 1 Palestinian) protesters during October 2000 demonstrations (see section 2.b.) without



recommending indictments against any officers. Due to protests by the Israeli-Arab community and NGOs against this decision, as well as the concern that community leaders or the victims' families would appeal the PID's decision to the supreme court, the PID and the attorney general decided on September 28 to reexamine the investigation.

The Orr Commission of Inquiry, established in November 2000 to investigate the killings, recommended a number of measures, including a justice ministry investigation to determine if criminal prosecutions should be initiated against police officials found responsible. The government has not implemented either the Orr Commission recommendations or those of a follow-up interministerial committee. In October 2004 the justice minister appointed one of the officers being investigated to a position seen by observers as a promotion. The Legal Center for Arab Minority Rights in Israel (Adalah) charged that this appointment violated the Orr Commission recommendation that this particular officer not be promoted for four years.

On May 2, Adalah appealed the March 6 closure of the investigation into the July 2003 killing by Border Police of Morassi Jibali, an Israeli Arab shot while a passenger in a vehicle. Police and witnesses gave differing accounts of Jibali's death. Adalah's appeal challenged the justice ministry's finding that the shooting was not illegal. At year's end Adalah's appeal remained pending.

In July 2003 a police officer killed an unarmed Bedouin, Nasser Abu al Qia'an, in his car at a road junction. In September the justice ministry filed an indictment against the police officer, who was subsequently tried and found not guilty on the grounds of self-defense. The Mossawa Advocacy Center for Arab Citizens of Israel (Mossawa) appealed the decision, and at year's end the case was pending.

In September 2003 residents of an Arab community, Kfar Qassem, clashed with border police searching for illegal immigrants. The police wounded one Israeli Arab, when, according to police reports, villagers threw stones. On January 10, the attorney general filed an indictment with the Tel Aviv District Court against the border police officers involved. According to the Arab Association for Human Rights (AAHR), during the year the indictments against the border police officers were dismissed due to lack of evidence.

Terrorist organizations such as the Islamic Resistance Movement (Hamas), Al-Aqsa Martyrs' Brigades, Hizballah, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine, attacked Israelis in Israel. According to government statistics, during the year terrorist attacks killed 29 Israeli civilians and an IDF soldier within the country. Terrorist attacks injured over 430 civilians and over 200 security force personnel during the year. (No breakdown between Israel and the occupied territories was available for those injured.)

Construction of a security barrier (see annex) and effective interdiction contributed to a 60 percent reduction in the number of Israelis killed in terror attacks between 2004 and 2005 and a 30 percent reduction in casualties, according to the government (see annex).

On January 13, Palestinian terrorists killed six Israeli civilians and wounded five others on the Israeli side of the Karni Crossing between Israel and the Gaza Strip. Hamas and the al-Aqsa Martyrs' Brigade claimed responsibility.

On February 25, a Palestinian suicide bomber at the Stage nightclub in Tel Aviv, killed himself and 5 Israeli civilians and wounded approximately 50 persons. Palestinian Islamic Jihad claimed responsibility.

On July 12, a Palestinian suicide bomber at a shopping mall in Netanya killed himself and 5 Israeli civilians and wounded about 90 persons. Palestinian Islamic Jihad claimed responsibility.

On October 26, a Palestinian suicide bomber at a marketplace in Hadera killed himself and 5 Israeli civilians and wounded over 50 others. Palestinian Islamic Jihad claimed responsibility.

On December 5, a Palestinian bomber at a shopping mall in Netanya killed himself and 4 persons and injured at least 50 others. Palestinian Islamic Jihad claimed responsibility.

Palestinian terrorists routinely fired rockets from the Gaza Strip into neighboring Israeli communities. According to the government, the number of Qassam rockets fired at Israeli targets increased during the year to 377, as compared to 309 in 2004. On January 15, a 17-year-old girl in the town of Sderot was wounded by shrapnel from a rocket and died several days later. Her younger brother was wounded. Rocket attacks wounded another five civilians in Sderot on September 24 and 25.

On August 4, Eden Natan-Zada, a member of the illegal right-wing Jewish movement Kach, fired on a bus in the Israeli-Arab town of Shfaram, killing four Israeli Arabs and wounding over a dozen others. Persons who witnessed the attack then killed Zada. On August 7, police arrested three alleged associates of Zada, all of whom were members of Kach, for

possible knowledge of or involvement in the shooting. A court order prohibited publication of any information relating to this case.

In August the government decided that families of Zada's victims would not be eligible for compensation under the Terror Law because the attack was not committed by so-called enemy forces. Subsequently, however, under security authority, the defense ministry decided that the government should compensate the victims. At year's end the compensation cases were still pending.

On May 24, the Haifa District Court convicted Alexander Rabinovitch of involvement in several years of terrorist activity against Israeli-Arab residents of that city, including the attempted bomb attack against Knesset member Issam Makhoul in October 2004. At year's end the court had not announced its sentence.

b. Disappearance

There were no reports of politically motivated disappearances during the year.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Laws, judicial decisions, and administrative regulations prohibit torture and abuse; however, during the year reputable nongovernmental organizations (NGOs) filed numerous credible complaints with the government alleging that security forces tortured and abused Palestinian detainees. The Public Committee Against Torture in Israel (PCATI) filed complaints with the government on behalf of alleged victims of torture, which, PCATI reported, were almost all Palestinian security detainees and prisoners at detention facilities in Israel. For example, on March 10, PCATI petitioned the supreme court on behalf of a Palestinian resident of the West Bank city of Tulkarm. The petition asked the court to order the government to cease immediately illegal means of interrogation, including tightening of manacles, painful positioning, sleep deprivation, beatings, threats, and insults. During court proceedings the detainee was released.

In August PCATI notified the Israel Prison Service (IPS) and the Israel Security Agency (ISA) about treatment of a Palestinian resident of Tulkarm held as of April 22 in the Kishon Detention Center. The detainee alleged he was subjected to painful positioning, beatings, long periods of interrogation, threats, and food and sleep deprivation. PCATI reported that the complainant suffered severe back pains and paralysis in his left leg from the abuse. At year's end PCATI's petitions with the ISA and the IPS were pending.

On December 20, the Tel Aviv District Court rejected the state's petition to dismiss a lawsuit filed by Lebanese citizen Mustafa Dirani, who charged that Israeli security forces tortured and raped him during interrogations between 1994 to 2004 in order to obtain information on the whereabouts of Israeli Air Force navigator Lieutenant Colonel Ron Arad. According to media reports, an IDF doctor who had examined Dirani found evidence to support Dirani's claim. At year's end the case was pending. (Allegations by Palestinian detainees of torture by Israeli security officials are discussed in the annex to this report.)

PCATI stated that no ISA officials had been tried on torture charges during the past four years. PCATI claimed that the government took insufficient action to reprimand ISA interrogators against whom PCATI filed complaints.

During the year the courts convicted border police officers for abuse of Palestinians. On January 13, an Israeli court convicted three former border police officers who had confessed to assaulting eight Palestinians in 2004 from the West Bank village of Yatta. The three policemen admitted beating the Palestinians and stealing their money. On April 5, the Jerusalem District Court sentenced 3 border policemen to prison terms of 6 to 10 months for assaulting 2 Palestinian teenagers in April 2004 near the Israeli town of Abu Ghosh. The court convicted the officers of beating and abusing the Palestinian youths. On July 7, the Tel Aviv District Court sentenced 3 border policemen to 10-month jail terms for abusing and robbing 8 Palestinians in the Israeli city of Lod in July 2004.

Physicians for Human Rights reported that there were no further developments in Israel's investigation into cases of abuse of prisoners in Sharon prison in 2004; there were no further reports of abuse at that prison.

In May 2004 a government official who worked as an inspector at deportation hearings secretly recorded a senior immigration police officer stating that immigration police used excessive force when detaining foreign workers but did not indicate the extent of the abuse. Following this incident the inspector filed a complaint with his superiors about this reported abuse. When the inspector saw that his complaint was not being handled, he wrote letters to the interior ministry, the state comptroller, and other government officials. Shortly after sending the letters, the inspector was dismissed. He contested his dismissal and sued the interior ministry in labor court. On June 22, the court accepted his claim and awarded compensation in the sum of 2 months wages' plus approximately \$6 thousand (approximately 28,300 NIS), and \$1

thousand (approximately 4,700 NIS) in legal expenses. Subsequently, the immigration police officer confirmed the statement that the inspector recorded; however, the Immigration Police spokesperson disputed its veracity. At year's end a Knesset Committee on Foreign Workers continued to monitor excessive force by immigration police when detaining foreign workers.

The Hotline for Migrant Workers (Hotline), an NGO foreign workers advocacy group, helped 10 foreign workers during the year to file complaints with the PID accusing police officers of excessive violence during apprehension. The Hotline reported that foreign workers usually decided not to file complaints or to testify due to fear of prolonged detention while their cases were under investigation.

Prison and Detention Center Conditions

Conditions in IPS facilities, which house common law criminals and convicted security prisoners (primarily Palestinians), and in IDF military incarceration camps, which hold convicted Palestinian security prisoners, generally met international standards. The International Committee of the Red Cross (ICRC) had access to these facilities. In June 2003 the supreme court issued a permanent injunction mandating that every detainee be provided a bed by June 2004. On May 26, in response to a 2004 petition, the high court issued a show-cause order instructing the government to explain why it had not provided a bed for every prison inmate. On September 18, the Israeli Bar Association (IBA) charged that poor jail conditions led inmates to commit suicide.

On January 27, a prisoner died and five were injured at the Megiddo military detention camp when a tent housing the prisoners caught fire. Some prisoners charged the prison authorities with neglecting to repair faulty electrical wires that they said caused the fire. A reputable international organization found the fire to be accidental.

The law provides detainees the right to live in conditions that do not harm their health or dignity. Police detention and interrogation facilities for Palestinian detainees were overcrowded and had austere conditions. Conditions and treatment at the Russian Compound interrogation center in Jerusalem remained harsh. A Physicians for Human Rights in Israel (PHR) representative reported in September that the justice ministry sent them a letter in December 2003 stating that "banana" positioning (prisoner's hands and feet handcuffed together behind the back) was no longer used; however, the PHR representative noted that PHR could not verify this claim. PHR reported that during the year, security forces more frequently relied on psychological rather than strictly physical forms of abuse, including threats of house demolition or questioning prisoners' elderly parents, and kept prisoners in harsh conditions, including solitary confinement, for long periods. A reputable international organization reported that it received information that doctors examined prisoners to determine whether the prisoners could withstand further interrogation. The organization reported it intervened with the government about this practice, but at year's end it had received no response.

While Israeli citizen prisoners 17 years and younger were separated from adult prisoners, Palestinian prisoners 16 years and older were treated and housed as adults. The ICRC reported that, as of the end of December, the government held 460 Palestinians age 15 or younger, the youngest 11 years old. The ICRC also reported that most Palestinian security detainees ages 15 and younger were held in Hasharon minors' prison. According to a reputable international organization, minors held in Hasharon prison had limited access to education and were held in conditions similar to those of adult jails. Conditions in detention facilities were more provisional; no organized education was provided. According to a reputable international organization, conditions in the minors' facility improved since a new prison warden was appointed in 2004.

The ICRC regularly monitored IPS facilities, as well as IDF security prisoner and detention facilities; it did not monitor the secret detention facility. Pursuant to a 1979 ICRC-Israel agreement, it could not visit interrogation facilities but could meet in designated areas of these units detainees who had been interrogated.

The government permitted some NGOs to monitor prison or detention facilities. In addition NGOs can send lawyers and representatives to meet prisoners in those facilities. PHR was allowed to inspect police detention facilities and make several inspection tours per year but was not given comparable access to IPS facilities. The IBA and public defenders were permitted to inspect IPS facilities. The IBA has agreements with the government allowing selected lawyers to inspect prison, detention, and IDF facilities within the country.

In December 2004 in response to a petition by the Center for the Defense of the Individual (HaMoked) to compel the government to release information on a secret IDF detention facility, the supreme court gave the government 60 days to respond to its undisclosed suggestions related to the secret facility. The court ruled that the government must inform the court should any detainee be imprisoned in that facility. According to HaMoked in August the deputy state attorney announced it would create a system to reduce the use of the secret facility considerably. HaMoked repeated its objection to the use of the facility and asked the court to continue proceedings on its petition. HaMoked reported that the court scheduled another hearing for January 2006.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions for citizens. Palestinian security internees fell under the jurisdiction of military law even if detained in Israel (see annex). Non-Israeli former Syrian residents of the Golan Heights are subject to the same laws as apply to Israeli citizens.

An arrested person is considered innocent until proven guilty, has the right to habeas corpus, to remain silent, to be represented by an attorney, to contact his family without delay, and to a fair trial. A bail system exists for Israelis and Palestinians; decisions denying bail can be appealed. As a general practice, according to the NGO B'Tselem, Palestinians detained for security violations were not granted bail. A citizen may be held without charge for 24 hours before being brought before a judge (48 hours for administrative detainees). If the detainee is suspected of committing a "security offense," the basis on which most Palestinians are detained, the police and courts can delay notifying legal counsel for up to 31 days.

The government may withhold evidence from defense lawyers on security grounds; however, the evidence must be made available to the court. In March 2004 the Public Defender's Office charged that the police sometimes failed to inform detainees of their legal rights and did not always provide counsel. As a result the Public Defender's Office estimated that "in recent years" approximately 500 persons were deprived of due process rights.

Role of the Police and the Security Apparatus

The ISA (or Shin Bet), under the authority of the prime minister, combats terrorism and espionage in the country and the occupied territories. The National Police, including the Border Police and the Immigration Police, is under the authority of the minister of internal security. A bureau in the justice ministry reviews complaints against police officers and may impose disciplinary charges or recommend indictments against officers. During 2004 several judges criticized the bureau for launching faulty investigations against police officers who were subsequently acquitted.

The National Police were generally effective, but, according to the Movement for Quality in Government, lacked sufficient resources, particularly personnel and notably qualified personnel to address government corruption. Police corruption was generally not a problem. The police utilized training programs. For example, in November the Police Training Department issued a special freedom of speech training kit to help police officers differentiate between protected free speech and unlawful incitement.

Arrest and Detention

The law provides that foreign nationals detained for suspected violations of immigration law be afforded an immigration hearing within four days of detention. They have the right to, but no guarantee of, legal representation. According to the NGO Hotline, appropriate interpreters were not always present at the hearings, despite a 2002 commitment to provide them. The Hotline received complaints from Israeli attorneys of denial of access to foreign national clients. According to the Association for Civil Rights in Israel (ACRI), voluntary organizations must obtain a power of attorney from the individual they seek to represent before being permitted to work with him. Attorneys now can meet at Ben Gurion Airport with clients denied admission to the country and awaiting deportation, if the clients have passed a security check. According to Hotline, foreign detainees were rarely released pending judicial determination of their status. Moreover, if the detainee's country of origin had no diplomatic or consular representation, detention could last months. According to Hotline, the police detained and deported legal foreign workers to meet quotas to reduce the foreign worker population. The Hotline reported that Immigration Police often detained properly documented asylum seekers, despite their being under the protection of the office of the UN High Commissioner for Refugees (UNHCR).

Foreign embassies frequently received belated notification, or none at all, of their citizens' arrests, especially in the cases of foreign nationals alleged to have committed security-related offenses. In some cases foreign consulates waited for weeks to gain consular access to prisoners.

Pursuant to the 1979 Emergency Powers Law, the defense ministry may detain persons without charge or trial for up to six months, renewable indefinitely subject to district court review. Such detainees are permitted legal representation, but the court may rely on confidential information denied to detainees and their lawyers. Detainees can appeal their cases to the supreme court.

The Illegal Combatant Law allows the IDF to detain persons suspected of "taking part in hostile activity against Israel, directly or indirectly" or who "belong to a force engaged in hostile activity against the State of Israel." Under this law persons may be held for up to 14 days without access to an attorney. In the past human rights groups alleged abuse of administrative security detention orders and claimed such orders were used even when the accused posed no clear

danger.

In August ACRI petitioned the administrator of the high court to bar the government's use of special courts established in the country's Negev region to hear cases of individuals arrested for protesting government policies and actions, including those arrested in the withdrawal from settlements in the Gaza Strip and from the northern West Bank. ACRI argued that these courts heard approximately 60 police remand requests at a time, and that judges could not properly prepare for the cases. ACRI also charged that such arrestees did not have the opportunity to meet with their attorneys. ACRI reported that the court agreed in August to limit the use of such courts to emergency situations and did so.

On December 22, the Tel Aviv District Court approved a plea bargain convicting Israeli citizen Tali Fahima of relaying information to the enemy, contacting a foreign agent, and breaching a legal order. The court sentenced her to 3 years in jail, but with time served Fahima could be released in 11 months. The state dropped the most serious charge of aiding an enemy in time of war. The defense ministry had placed Fahima under administrative detention between September and December 2004 based on confidential evidence that she was involved in terrorist activity. The supreme court denied Fahima's appeal in November 2004. In December 2004 the Tel Aviv Magistrate's Court indicted her for assisting the enemy during wartime and passing information to the enemy.

In January 2004 the government released Mustafa Dirani, head of security for the Amal militia; Sheikh Obeid, a Lebanese cleric; and approximately 25 other Lebanese prisoners held as enemy combatants, in return for release of Elchanan Tanenbaum, a kidnapped Israeli held by the Hizballah terrorist group in Lebanon, and the remains of three IDF soldiers kidnapped to Lebanon in 2000. On September 8, the high court declined to rule on an appeal submitted by the attorney for Obeid and Dirani challenging the Illegal Combatants Law. The court noted the appeal was moot since both appellants had been released and repatriated to Lebanon.

The government reported that it had detained Hassin Makded in secret facility "1391" for over 18 months under "extraordinary circumstances and exceptional grounds." He was subsequently released. The government did not identify the period during which he was detained. The supreme court continued to consider a petition challenging the legality of this secret facility (see section 1.c.).

According to a reputable international organization, at year's end, 3 Lebanese nationals and 61 Jordanian nationals remain detained, most of them on security charges.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected this provision in practice.

The Judicial Branch is organized into three levels: magistrate courts; six district courts; and the supreme or high court. District courts prosecute felonies, and magistrate courts prosecute misdemeanors. There are military, religious, labor relations, and administrative courts, with the High Court of Justice as the ultimate judicial authority. The high court is both a court of first instance and acts as an appellate court when it sits as the supreme court. Religious courts, representing the main recognized religious groups, including Christian communities, have jurisdiction over matters of personal status for their adherents (see section 2.c.).

Trial Procedures

The law provides for the right to a fair trial, and an independent judiciary generally enforced this right. The country's criminal justice system is adversarial, and professional judges decide all cases.

Nonsecurity trials are public except when, in the opinion of the court, the interests of the parties are determined to be best served by privacy. Security or military trials are open to independent observers at the discretion of the court, but not to the general public. The law provides for a hearing with legal representation, and authorities generally observed this right in practice. In cases of serious felonies—crimes subject to penalties of 10 years or more—indigent defendants receive mandatory legal representation. Indigent defendants facing lesser sentences are provided representation on a discretionary basis. Counsel represented approximately 70 percent of defendants.

The 1970 evidentiary rules governing trials under military law of Palestinians and others applicable in the occupied territories are the same as evidentiary rules in criminal cases. Convictions may not be based solely on confessions; however, according to PCATI, in practice security prisoners have been sentenced on the basis of their coerced confessions, those of others, or both. Counsel may assist the accused in such trials, and a judge may assign counsel to those defendants. Indigent detainees do not automatically receive free legal counsel for military trials. The defendant and the public receive the charges in Hebrew, and the court can order an Arabic translation. Military and criminal court

sentencing procedures were consistent. Defendants in military trials can appeal through the Military High Court and also petition the civilian high court in cases in which they believe there were procedural or evidentiary irregularities.

There are also custodial courts and four deportation courts to address the removal of illegal immigrants. In May 2004 the custodial courts were placed under the jurisdiction of the justice ministry. These courts handle thousands of cases annually.

In May 2004 after arresting new suspects, police released three Israeli Arabs who had been jailed for 10 months charged in the July 2003 killing of IDF corporal Oleg Shaigat. One of those released asserted that his confession was coerced. According to the government, during the year the state attorney investigated the matter, adjusted operational practices, and established a joint team to implement the new practices.

Since the May 2003 arrest of Sheikh Raed Salah, the Arab-Israeli former mayor of Umm al-Fahm, human rights NGOs have claimed that he was unfairly denied bail despite his status and community ties; however, in January Salah pleaded guilty to transferring funds to illegal organizations and giving information to a foreign agent. Subsequently, the government dropped its most serious charges, including that he channeled money to a terrorist organization. The Haifa court sentenced Salah to three and a half years in prison and, pursuant to the plea bargain, released him on July 16, six months after sentencing. Salah also received a three-year suspended sentence to be imposed if he again commits any of the offenses for which he was convicted. He also was prohibited from entering Jerusalem without police permission for four months.

Political Prisoners

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

Laws and regulations provide for protection of privacy of the individual and the home. In criminal cases the law permits wiretapping under court order; in security cases the defense ministry must issue the order. Under emergency regulations authorities may open and destroy mail based on security considerations.

In May 2004 the high court banned the unsupervised electronic flow to public bodies and banks of data on private citizens maintained by the government's population registry.

Separate religious court systems adjudicate personal status matters, such as marriage and divorce, for the Jewish, Muslim, Christian, and Druze communities. Jews can marry only in Orthodox Jewish services. Jews and members of other religious communities who wish to have civil marriages; Jews who wish to marry according to Reform or Conservative Judaism; those not recognized by Orthodox authorities as being Jewish; and those marrying someone from another faith, must marry abroad to gain government recognition. While government-recognized civil marriages are available in Cyprus, this requirement presents a hardship.

On July 27, the Knesset extended until March 2006 the 2003 law that prohibits citizens' Palestinian spouses from the occupied territories from residing in the country; however, it amended the law so that Palestinian men aged 35 and older and women aged 25 and older are eligible to apply for citizenship through family unification (see section 5). Civil rights groups criticized the amended law for continuing to deny citizenship and residency status to spouses of Israeli Arabs, who constitute the majority of those who marry Palestinians from the occupied territories. At year's end the supreme court was considering petitions by NGOs, including Adalah, that challenged the law, as well as its amendments.

The authority to grant status to the non-Israeli spouse, including Palestinian and other non-Jewish foreign spouses, resides with the minister of the interior. An ACRI report indicated that the ministry refused to register children in the population registry born to an Israeli father and foreign national mother.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the government generally respected these rights in practice subject to restrictions concerning security issues. The law prohibits hate speech and incitement to violence, and the 1948 Prevention of Terrorism Ordinance prohibits expressing support for illegal or terrorist organizations.

Nuclear whistleblower Mordechai Vanunu, released in April 2004 after serving 18 years in prison for treason and espionage, continued to be subjected to detailed restrictions on speech and movement (see section 2.d.). As a condition for release, he was prohibited from meeting with members of the foreign press unless granted permission by the government. Vanunu reportedly openly violated this prohibition during the year. According to his attorney, aside from his petition with the supreme court demanding the annulment of the restrictions on movement and association, Vanunu was challenging indictments for having met on several occasions since his release with foreign nationals and the foreign press and for traveling to the West Bank. At year's end these proceedings were ongoing.

In November 2001 Arab Knesset Member Azmi Bishara was indicted, after the Knesset lifted his immunity, for making allegedly pro-Hizballah statements in 2000 in Syria and later in the Israeli-Arab city of Umm al-Fahm. In November 2004 the supreme court denied a petition to dismiss the charges. On July 31, the supreme court heard arguments on lifting Bishara's parliamentary immunity. At year's end the case was still pending.

On December 15, the attorney general announced a police investigation into allegations that Israeli-Arab Knesset member Taleb el-Sana traveled to Syria, which is considered an "enemy country," on November 8. Travel to an enemy country without first obtaining interior ministry permission violated ministry regulation. El-Sana allegedly traveled to Syria after the ministry denied his request.

In August 2004 the supreme court ruled that the Government Press Office (GPO) could not, as a blanket policy, refuse press credentials to Palestinians from the occupied territories seeking to report official events in Israel. The court said a blanket policy did not properly balance freedom of the press and national security. In July the IDF confiscated the GPO credentials of Yishai Carmeli-Polak, an Israeli journalist and director of documentary films. Carmeli-Polak has produced documentaries about demonstrations against the separation barrier in the West Bank village of Bil'in. The government returned the credentials in August after civil rights and media organizations protested.

The country has 12 daily newspapers, 90 weekly newspapers, more than 250 periodical publications, and a number of Internet news sites. All newspapers in the country were privately owned and managed. According to the Journalism Ordinance, anyone wishing to publish a newspaper must apply for a license from the locality where the newspaper will be published. The ordinance also allows the minister of interior, under certain conditions, to close a newspaper. In November 2004 the high court heard a petition filed by ACRI challenging the ordinance. ACRI withdrew its petition after the interior ministry pledged to prepare legislation effectively canceling the ordinance. At year's end legislation had not been enacted.

The quasi-independent Israel Broadcast Authority controls television Channel 1 and Kol Israel (Voice of Israel) radio; both are major sources of news and information. The Second Television and Radio Authority, a public body, supervises the 2 privately owned commercial television channels and 14 privately owned radio stations. On February 2, the authority prohibited advertisements for the so-called Geneva Accords in which Palestinian public figures told Israelis, among other points, "You have a partner for a peace agreement." The authority claimed that its regulations on television commercial ethics prohibited it from airing commercials on "controversial issues." Three cable and one satellite television companies carry both international networks and shows produced for the domestic audience.

The law authorizes the government to censor on national security grounds any material reported from the country or the occupied territories regarded as sensitive. An agreement between the government and media representatives provides for military censorship only in cases involving issues that the armed forces believe could likely harm the country's security interests. Media organizations may appeal the censor's decision to the high court, and they cannot be closed by the military censor for censorship violations. The military censor cannot appeal a court judgment. Foreign journalists must agree to submit sensitive articles and photographs to the military censor. In practice they rarely complied; however, the censor generally reviewed such material after the fact. On March 23, the major daily *Ha'aretz* published an apology for not submitting to the censor two December 2004 articles on military high technology sales to China. Channel 2 was called to a tribunal on the same issue and forced to apologize. In March the BBC also apologized to the government for ignoring a requirement to submit for censorship review an interview with Mordechai Vanunu when the government refused to renew the visa of the BBC Jerusalem deputy bureau chief without an apology.

News printed or broadcast abroad may be reported without censorship. There were no recent reports that the government fined newspapers for violating censorship regulations.

The government generally respected academic freedom and access to the Internet. In September 2004 Adalah petitioned the high court to prohibit ISA intervention in the appointment of educators in the Ministry of Education (MOE) Arab Education Division. On July 22, according to Adalah the government informed the high court that it would abolish the MOE ISA position for vetting Arab school teachers and administrators. On August 8, Adalah formally asked the MOE whether ISA officials served in the MOE in any capacity. According to Adalah as of year's end, the ministry had not responded.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The law provides for freedom of assembly and association, and the government generally respected these rights in practice. Throughout July the government, citing security concerns, prevented thousands of demonstrators from rallying close to the Gaza Strip to protest the government's decision to withdraw from Gaza and four settlements in the West Bank.

On December 15, Adalah filed complaints with the PID against border policemen for allegedly using excessive force against a demonstration in the Bedouin community of Al-Mashash on November 15. The demonstration and ensuing police raid were prompted when government officials arrived in the Negev village to deliver demolition orders for illegally constructed buildings. According to Adalah, 12 protesters, including a pregnant woman, were injured during the clashes.

Freedom of Association

The law provides for the right of association, and the government generally respected this provision in practice.

c. Freedom of Religion

The law provides for freedom of religion, and the government generally respected this right in practice. The Basic Law and Declaration of Independence recognize the country as a "Jewish and democratic state," establishing Judaism as the country's dominant religion. Government allocations of state resources favor Orthodox Jewish institutions.

The law confers recognition on some religious communities, granting them legal authority over their members in personal status matters, such as marriage and divorce. These communities include: Eastern Orthodox; Latin (Roman Catholic); Gregorian-Armenian; Armenian-Catholic; Syrian (Catholic); Chaldean (Uniate); Greek Catholic Melkite; Maronite; Syrian Orthodox; and Orthodox Jewish. Since the founding of the country, the government has recognized three additional religious communities—the Druze in 1957, the Evangelical Episcopal Church in 1970, and the Baha'i Faith in 1971. The government has defined the status of several other Christian denominations by means of individual arrangements with government agencies. According to the government, there were no religious denominations awaiting recognition during the year.

Several religious communities are not recognized, including Protestant groups; however, unrecognized communities may practice their religion freely and maintain communal institutions, but were ineligible to receive government funding for religious services.

According to government figures, during the year the budget for religious services and religious structures for the Jewish population was approximately \$260 million (1.19 billion NIS). Religious minorities, which comprised approximately 20 percent of the population, received about \$13 million (61 million NIS), or 5 percent of total funding. At least \$209 million (960 million NIS) of the budget for Jewish religious services and education went toward Orthodox services, rabbis' salaries, and education.

The fact that the government does not explicitly codify recognition of a Muslim community is a vestige of the Ottoman period, when Islam was the dominant religion. Lack of codified recognition did not affect the religious rights of Muslims. Legislation enacted in 1961 afforded Muslim courts exclusive jurisdiction in matters of personal status concerning Muslims. Secular courts have primacy over questions of inheritance, but parties, by mutual agreement, may bring cases to religious courts. Muslims also can bring alimony and property division matters associated with divorce to civil courts.

Under the Law of Return, the government grants citizenship and residence rights to Jewish immigrants and their immediate family members. On March 31, the high court ruled that, for the purpose of conferring citizenship rights, the government must recognize non-Orthodox conversions of noncitizen legal residents that were begun in Israel but formalized abroad by acknowledged Jewish religious authorities, even if not Orthodox. In May 2004 the high court held that non-Jews who immigrate to the country and convert according to Orthodox requirements can become citizens under the Law of Return. The court let stand the state's practice of not recognizing conversions to Judaism performed within the country by non-Orthodox rabbis. On November 29, the Israel Religious Action Center challenged this practice in court. The case was pending at year's end.

In December 2004 ACRI released a report charging that the interior ministry's population authority sought to prevent non-Jews—particularly spouses of Israeli citizens—from obtaining resident status. ACRI charged that the interior ministry's population registry subjected non-Jewish spouses and non-Jewish adopted children of Jewish immigrants to unfair and at times arbitrary requirements for residency. Most cases involved persons who immigrated under the Law of Return from the former Soviet republics and their non-Jewish spouses and non-Jewish adopted children. In August 2004 the interior minister acknowledged the problems and changed selected policies. On April 4, Prime Minister Sharon established an

interministerial committee to draft legislation outlining guidelines by which foreigners might become citizens. At year's end the interministerial committee had not taken action. According to the May 11 edition of the daily *Ha'aretz*, "There is broad agreement in the government and academia that the policy must be strict and make it difficult for non-Jews to obtain citizenship in Israel."

Many Jewish citizens objected to exclusive Orthodox control over aspects of their personal lives. Approximately 300 thousand citizens who immigrated either as Jews or as family members of Jews are not considered Jewish by the Orthodox Rabbinate. They cannot be married, divorced, or buried in Jewish cemeteries within the country. Jews who wish to marry in Reform, Conservative, or secular ceremonies must do so abroad. According to Central Bureau of Statistics figures released in March, over seven thousand citizens married abroad in 2002. In April the high court instructed the government to inform it within three months of its position on recognizing marriages performed by officials of foreign embassies in the country; however, at year's end the government had not responded. A 1996 law requiring the government to establish civil cemeteries has not been implemented adequately.

Non-Orthodox Jews faced greater difficulties than Orthodox Jews in adopting children. In December 2004 upon petition of the Israeli Religious Action Center, the high court ordered the government to justify the practice under which the Adoption Service of the social affairs ministry placed non-Jewish children only in Orthodox Jewish homes. At year's end the case remained pending.

Muslim groups complained that the government does not equitably fund the construction and upkeep of Muslim holy sites in comparison to that of Jewish Orthodox sites. They also charged that the government was reluctant to refurbish mosques where there was no longer a Muslim population and allowed mosques to be used for nonreligious purposes.

The 1967 Protection of Holy Sites Law protects all holy sites, but the government has issued implementing regulations only for Jewish sites. In November 2004 Adalah petitioned the supreme court to compel the government to issue regulations to protect Muslim sites; it charged that the government's failure to implement regulations had resulted in desecration and conversion of individual sites. The court accepted the petition and ordered the government to respond by January 1, 2006.

AAHR reported in December 2004 that some 250 non-Jewish places of worship were destroyed during or since the 1948 war or made inaccessible to Israeli Arabs. For example, AAHR reported that in June highway construction desecrated an Islamic cemetery located near the Israeli-Arab village of Fardis. AAHR subsequently reported that following a meeting between Fardis community residents and the highway planners, construction was halted to avoid continued damage to the cemetery.

According to representatives of Christian institutions, visa issuance rates for Christian religious workers significantly improved from rates in previous years. The interior ministry's Christian Department reported that it had approved most of the three thousand applications made by clergy during the year.

The Knesset has not ratified the Fundamental Agreement establishing relations between the Holy See and Israel negotiated in 1993. Representatives of the government and the Holy See met several times during the year seeking to reach an agreement on tax, economic, and legal matters. The negotiations addressed the continuation of tax exemptions for Roman Catholic institutions and property (churches, monasteries, convents, educational, and social welfare organizations) and the access of the institutions to Israeli courts. Under current Israeli law, property disputes involving religious institutions are handled by the executive branch of the government. At year's end negotiations continued.

During the year there were reports that airport immigration officials denied entry to non-Jews with mutilated or expired passports; however, officials permitted Jews with damaged or expired travel documents to enter.

On July 7, the Messianic congregation in Arad published a letter in *Iton HaTzvi* that reported harassment by members of an ultra-Orthodox community. On September 12, the high court heard a petition by ultra-orthodox Jews seeking the right to demonstrate at the house of a family of Messianic Jews and reversal of a police decision prohibiting such a demonstration. At year's end there was no further information on a court ruling. According to Messianic Jews resident there, since April 2004 the Gur Hassidim have demonstrated regularly in front of the homes of Christians and Messianic Jews in Arad to protest alleged proselytizing by this group.

On December 24, a foreign observer reported that a group of approximately 200 ultra-Orthodox Jews disrupted the religious service of a Messianic congregation in Be'er Sheva. According to the account, the group pushed and slapped the congregation's pastor and damaged property. The mob harassed members of the congregation attempting to escape, surrounding their vehicle and trying to overturn it. Police dispersed the mob, allowing congregation members to escape. On December 26, the foreign observer filed a report with the Be'er Sheva police.

Missionaries were allowed to proselytize, although the Church of Jesus Christ of Latter-day Saints voluntarily refrained from doing so under a longstanding agreement with the government.

Societal Abuses and Discrimination

Between February 10 and 12, Druze rioters damaged or burned dozens of Christian businesses, homes, and cars in the northern village of Mughar after a Druze falsely claimed that Christian youths placed pornographic pictures of Druze girls on the Internet. The rioters also damaged a Melkite Catholic church. At least a dozen persons were reported injured; many Christians fled Mughar and refused to allow their children to return to school for weeks. Druze religious leaders denounced the riots, and Christian community representatives criticized the government for not responding more quickly. In June the government announced the allocation of \$2 million (9.2 million NIS) in state funds to compensate residents for property damaged during the riots. At year's end according to legal representatives of the families, no compensation had been distributed. On September 29, the PID decided not to try four police officers for failing to prevent the attacks and closed the cases against them.

During police and ISA operations in April and May, police arrested and released nine Israeli Jews on suspicion of planning attacks on mosques on the Temple Mount in Jerusalem. The police did not press charges.

On September 5, a young religious Jew spat at Greek Orthodox priests in Jerusalem. The perpetrator was arrested, fined, and banned from the Old City of Jerusalem for 30 days. Incidents occurred in which ultra-Orthodox Jews threw rocks at motorists to protest their driving on the Sabbath.

On August 19, police arrested Shimon Ben Haim and Victoria Shteinman for desecrating a Muslim holy site by throwing a pig's head, wrapped in a Keffiyeh with "Mohammed" written on it, into the courtyard of a mosque near Tel Aviv. On September 4, Ben Haim was indicted for insulting a religion and Shteinman as his accomplice. A Tel Aviv court released both on bail pending trial; however, at year's end the trial had not begun.

Neo-Nazi graffiti were sprayed on monuments and gravesites of several well-known Israeli historical figures. In May swastikas and graffiti comparing Prime Minister Sharon to Adolf Hitler were sprayed on the road into the Yad Vashem Holocaust museum. In June police began investigating two IDF soldiers caught participating in neo-Nazi ceremonies.

For a more detailed discussion, see the *2005 International Religious Freedom Report*.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The law provides for these rights, and the government generally respected them in practice for citizens. (See annex for discussion of restrictions on movement within the occupied territories, between the territories and Israel, and the construction of a security barrier.)

Citizens generally were free to travel abroad and to emigrate, provided they had no outstanding military obligations and no administrative restrictions. The government may bar citizens from leaving the country based on security considerations.

Pursuant to the terms of his release after having served 18 years in prison on espionage and treason charges (see section 2. a.), Mordechai Vanunu continued to be prohibited from obtaining a passport, traveling outside Israel, going within 500 meters of airports and overland border crossings, and entering any foreign diplomatic offices. On April 19, the interior minister extended these prohibitions for another year. In May the Jerusalem District Court ruled that Vanunu could travel to the West Bank since such travel did not entail going abroad. On November 18, police arrested Vanunu at a Jerusalem checkpoint after he returned from a Jerusalem suburb; police reportedly claimed that he violated his restrictions. At year's end Vanunu's case continued.

Throughout July police, citing security concerns, barred demonstrators opposed to the evacuation of settlements from traveling to rallies in the Gaza Strip. Several local civil rights NGOs criticized the government for impeding citizens' rights to travel and to assemble.

In May 2003 Sheikh Raed Salah, leader of the Northern Branch of Israel's Islamic Movement, was arrested for allegedly providing funds to terrorist groups (see section 1.e.). In February Salah accepted a plea bargain which dropped several charges; he received credit for time served and was released in July. As a condition of release, he was prohibited from entering Jerusalem without police permission for four months.

Citizens, including dual nationals, must enter and leave the country using their Israeli passports only. In addition no citizen

is permitted to travel to countries officially at war with Israel without government permission.

The 2003 Citizenship and Entry into Israel Law bars Palestinians from the occupied territories from acquiring residence or citizenship rights through marriage to Israelis or to Palestinian residents of Jerusalem. In July the Knesset extended the law until March 2006 and amended it so that Palestinian men aged 35 and older and women aged 25 and older were eligible for Israeli citizenship through family unification. Advocacy groups claimed that, despite the amendment, the law discriminated against Arab citizens and residents (see section 5).

The law prohibits forced exile of citizens, and the government generally respected this prohibition in practice. In May the media reported that police advised Sheikh Kamel Khatib, deputy chairman of the Islamic Movement's Northern Branch, that his participation in a London conference on the Palestinian right of return would be illegal, since agents hostile to Israel allegedly organized the conference. Khatib did not attend the conference. According to the media, Khatib said that police told him that he would be subjected to detention or an unspecified harsher measure upon his return.

Protection of Refugees

The government provides refugees the protections available under the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, and had established a system whereby persons can apply for refugee status. Palestinians were considered to be protected by the UN Relief and Works Agency for Palestine Refugees and, therefore, not eligible for refugee status.

The government cooperated with the Office of the UNHCR and other humanitarian organizations in assisting Jewish refugees. The government also provided temporary protection to individuals who may not qualify as refugees under the 1951 Convention and its 1967 protocol. The government provided temporary humanitarian protection to persons from "conflict countries" in Africa.

The UNHCR referred eligible refugee applicants to the National Status Granting Body (NSGB), and the interior ministry made final adjudication. The Tel Aviv University Refugee Rights Clinic charged that the NSGB's procedures were not transparent, that the NSGB did not publish data on its activities, and that applicants denied status often were not given a reason.

The government did not return those denied refugee status to their home countries against their will, and they reportedly could remain in detention facilities for months. For asylum seekers from countries with which Israel was at war, the government attempted to find a third country to accept them. The government provided asylum seekers with temporary work permits but not social benefits. Persons granted refugee status received renewable temporary visas.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage.

Elections and Political Participation

The country is a parliamentary democracy with an active multiparty system. Relatively small parties, including those primarily supported by Israeli Arabs, regularly win Knesset seats. The Likud Party led by Ariel Sharon won a plurality of Knesset seats in January 2003; Sharon formed a government in which he became prime minister. On November 21, Sharon requested the president to dissolve the Knesset, citing difficulties in maintaining a governing majority, and announced that he was leaving the Likud Party. On November 24, Sharon established a new party, *Kadima* ("move forward"). The president set elections for March 28, 2006. On December 29, pursuant to presidential decree, the Knesset was dissolved.

The Basic Law prohibits the candidacy of any party or individual that denies either the existence of the State of Israel as the state of the Jewish people or the democratic character of the state, or that incites racism.

In May 2004 the Knesset amended the law to require that a party obtain 2 percent rather than 1.5 percent of the vote to win Knesset seats. Israeli-Arab leaders criticized the amendment and claimed that it would adversely affect smaller parties, such as those representing the Israeli-Arab community.

The 120-member Knesset has 18 women members. The 20-member cabinet included 3 women until November, when the Labor Party resigned from the government, taking 1 woman minister. Six women sit on the 14-member high court. The

Knesset included 11 Arabs and 2 Druze. Most of the 11 Arabs represented parties supported largely or entirely by the Arab community. In March 2004 for the first time since the establishment of the state, an Arab Christian was appointed as a permanent justice to the high court. No Muslim or Druze citizens have served on the court.

On July 20, the government amended the 1956 Equal Representation of Women law to mandate the inclusion of women in government-appointed teams for peace negotiations and for setting domestic, foreign, and security policy.

In March 2004 the state comptroller discovered 2,298 citizens who, if alive, would have been age 110 or over, but appeared on the electoral rolls, and some were identified as having recently voted. The comptroller recommended an investigation. The government established an interministerial committee to prepare a computerized procedure to avoid future problems. In addition, following the government's cross-reference of names between ministerial databases, some 9 thousand residents over 100 years old were declared dead by the Population Registry.

Government Corruption and Transparency

Corruption was considered a problem by many Israelis.

In July the Knesset established the Parliamentary Investigation Committee to Uncover Corruption in the Governing System but disbanded it in December to avoid politicizing the committee prior to the March 28, 2006, elections.

The Labor Party continued to investigate allegations that, during the party's May membership drive, party activists forged voter registration forms. In November the party voided thousands of questionable signatures and deleted them from the voter registration list.

The attorney general continued to review Prime Minister Ariel Sharon's connections to the "Cyril Kern Affair," in which Kern allegedly acted as a conduit for or source of illegal funding that Sharon used to refund earlier illegally obtained campaign contributions. At year's end the case was still under investigation. On November 16, Omri Sharon, Prime Minister Sharon's son and a member of the Knesset, pleaded guilty to lying under oath and falsifying company financial records to conceal illegally raised funds in conjunction with his father's 1999 campaign in the Likud party primaries.

In July 2004 the prime minister dismissed Minister of Infrastructure and Knesset Member Josef Paritzky from the cabinet after Channel 1 Television broadcast a tape of Paritzky allegedly plotting with a private detective to defame a party rival. On January 17, the state attorney closed the case against Paritzky. He found no legal basis for criminal charges but harshly criticized Paritzky's behavior. Paritzky continued to serve in the Knesset.

In September 2004 Knesset Member Tzachi Hanegbi was suspended from his post as minister of public security pending a criminal investigation into allegations of inappropriate political appointments while serving as environment minister from 2001-03. On December 7, the police recommended that the attorney general indict Hanegbi for irregular political appointments. At year's end Hanegbi continued to serve as minister-without-portfolio while the attorney general continued to consider the case.

The law affords the public access to government information, and citizens could petition for such access. According to the ACRI and the Movement for Quality in Government (MQG), an NGO that investigates corruption and nontransparency issues, the government does not effectively implement its freedom of information act. The MQG charged that it had difficulty obtaining information from the government, notably on the budget and privatization.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

Numerous domestic and international human rights groups operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to their views.

NGOs must register with the government by submitting an application and paying approximately \$20 (85 NIS). They operated under the laws covering nonprofit organizations. Registered NGOs received state funding as a matter of government policy. Israeli Arab NGOs have complained in recent years of difficulties in registering and receiving state funding.

In 2003 the foreign affairs ministry established a liaison unit to develop and maintain relations with international and domestic NGOs, assist domestic NGOs to participate in UN and other international forums, and facilitate visits to the country by international NGO representatives.

During the year the interior ministry, operating under a 2002 order, barred entry to all foreign nationals affiliated with certain Palestinian human rights NGOs and solidarity organizations.

(See annex regarding NGOs in the occupied territories.)

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination on the basis of race, gender, marital status, political beliefs, or age. These laws sometimes were not enforced, either due to institutionalized discrimination or to lack of resources. On September 7, then interior minister Ophir Pines-Paz termed the country's policy toward its Arab citizens "institutional discrimination" and called for affirmative action.

Women

The Equality of Women Law provides for equal rights for women and protection from violence, sexual harassment, sexual exploitation, and trafficking; however, violence against women was a problem. The government reported that between January 1 and October 6, some 15 thousand cases of spousal violence were filed with the police. Police addressed about 20 thousand domestic violence cases a year, of which approximately 17 thousand were complaints by women against their spouses. The government reported that in 2004 it convicted 1,297 persons of spousal abuse. The social affairs ministry provided battered women with shelter care and operated a national hot line for battered women. The government reported that the police operated a nationwide computerized call center to inform victims about their cases and employed a computerized database to link sex crime cases and to assist in identifying and locating offenders. The IDF and the Military Police Investigative Unit accepted reports on domestic violence where the suspect was likely to carry an IDF-issued weapon. A wide variety of women's organizations and hot lines provided services, such as counseling, telephone crisis intervention, legal assistance, and shelters to abused women.

Rape is illegal; nevertheless, NGOs considered the incidence of rape a concern. Crisis hot line rape reports rose by 15 percent during 2004, according to the annual report of the Association of Rape Crisis Centers in Israel released in February. According to police, the incidence of rape in Tel Aviv rose 27 percent in 2004.

In past years women's organizations reported instances of Arab women killed by male relatives in "honor" cases, although there is no accurate estimate of the number. The Women Against Violence Organization (WAVO), reported that at least nine Israeli-Arab women were victims of honor killings during the year and estimated that annually an average of 10 Israeli-Arab women were victims of family honor killings. Police suspected that family members killed an Israeli-Arab woman from the town of Ramle on January 1 because she disgraced the family. At year's end the case was pending. In July police investigated a case in which a man and a woman, both Israeli Arabs, were shot and killed. Police suspected that the killing involved family honor, as the victims were not married but lived together. Police ordered an investigation; however, at year's end the case was pending.

On October 22, police found a Druze woman hanging from a tree and charged three members of her family, including her father, with murder. The police suspected that male family members killed her for disgracing the family. According to WAVO the local community alleged that the police arrested the wrong persons and that evidence pointed elsewhere. At year's end police investigation continued.

On December 17, police arrested two brothers from the Israeli Arab town of Mughar after they confessed to killing their sister ostensibly to preserve their family's honor. On December 19, they were arraigned in the Acre Magistrate's Court on murder charges. At year's end the case was pending.

On May 19, unknown perpetrators burned a textile workshop in the Negev region Bedouin town of Lakia operated by a volunteer association to improve the status of women. The association suspected that community men who objected to women working outside the home set the fire. At year's end police continued to investigate, but no arrests were made.

Prostitution is not illegal. The law prohibits operation of brothels and organized sex enterprises, but brothels operated in several major cities.

The Prevention of Stalking Law and the Prevention of Family Violence Law require that suspected victims be informed of their right to assistance. According to a government report submitted to a UN committee on May 29, since 2002, 2,946 requests for restraining orders were submitted to the courts based on this law, rising from 472 cases in 2002 to 1,307 cases in 2004. In a March report to the UN Session of the Commission on the Status of Women, several women's NGOs stated that approximately 130 thousand women in the country between the ages 25 and 40 had been sexually harassed in the workplace. During the period between January 1 and October 1, the police opened 158 cases involving sexual

harassment, and 137 of those were forwarded for prosecution.

The law provides for class action suits and requires employers to provide equal pay for equal work; however, significant wage gaps remained. According to a March publication by the Central Bureau of Statistics, women earned 83 percent as much as men, and women executives earned 74 percent as much as their male counterparts.

Religious courts adjudicate personal status law, and these courts restricted the rights of Jewish and Muslim women. Jewish women are not allowed to initiate divorce proceedings without their husbands' consent. Consequently, thousands of so-called *agunot* may not remarry or have legitimate children because their husbands either disappeared or refused to grant divorces. Rabbinical tribunals may sanction husbands who refuse to divorce wives, but may not grant a divorce without his consent. A Muslim woman may petition for and receive a divorce through the Shari'a courts without her husband's consent under certain conditions, and may, through a marriage contract, provide for certain cases where she may obtain a divorce without her husband's consent. A Muslim man may divorce his wife without her consent and without petitioning the court.

Children

The law provides for the overall protection of children's rights and welfare, and the government was generally committed to ensuring enforcement of these laws. The government has continued to legislate against sexual, physical, and psychological abuse of children and has mandated comprehensive reporting. There were five shelters for children at risk of abuse.

According to a report issued by the National Council for the Child, the number of reported cases of child abuse and neglect has risen by 130 percent in the last decade. The report stated that approximately 39 thousand children were abused in 2004, compared with 16,800 in 1995. According to a police report released to a Knesset committee in December, children constituted more than 50 percent of the sexual offenses victims each year.

On August 8, the National Insurance Institute's annual report stated that approximately a third of the country's children lived in poverty, and the number of poor children grew by 9.4 percent in 2003. The 2004 report of the Israeli-Arab advocacy NGO Sikkuy (the Association for the Advancement of Civic Equality in Israel) stated that 45 percent of Arab families were poor (in contrast to 15 percent of Jewish families), and Arab children were twice as likely to die in infancy as Jewish children. A health ministry report released on August 25, recorded infant mortality among Negev region Bedouin at 15 per 1,000 births.

Education is compulsory through the ninth grade. The government operated separate school systems for Hebrew-speaking children (mostly Jewish), Arabic-speaking children (mostly Israeli-Arab), and Orthodox Jews. However, government spending on and services for children was less in Arab areas than in Jewish areas. According to a study at Hebrew University, three times as much money was invested in Jewish children as in Arab children. Human Rights Watch reported in May that the government provided 1 teacher for every 16 Jewish primary school children compared to 1 teacher for every 19.7 Arab children.

During the year the education ministry stated that it was implementing some reforms in nine unspecified Arab localities, as recommended by the government's 2004 National Task Force for the Advancement of Education in Israel (the Dovrat Commission).

In December 2004 the Dovrat Committee also issued recommendations affecting ultra-Orthodox schools. Ultra-Orthodox political parties, such as United Torah Judaism, opposed government interference in its school system. The only nonpublic schools receiving government funding were ultra-Orthodox Jewish schools. State subsidized ultra-Orthodox religious schools have not complied with the requirement for all state-funded schools to teach core subjects such as mathematics. In December 2004 the high court ruled that they must comply by the opening of the 2007 school year or lose official funds.

In August Adalah filed a petition with the Tel Aviv District Court against the Municipality of Lod and the MOE, following their refusal to register an eight-year-old Arab child in a Jewish elementary school in Lod. The municipality and MOE argued it was better for the child to attend an Arab school. In response to a September 4 court order, the municipality registered the boy in the Jewish school and Adalah withdrew its petition.

Jewish children attended schools where the language of instruction was Hebrew and the curriculum included Jewish history. Israeli-Arab children, almost without exception, chose schools with instruction in Arabic in which the curriculum had a less Jewish focus. Israeli-Arab advocacy groups charged that the education of Arab children was inferior to that of Jewish children in the secular system. According to the Higher Follow Up Committee for Arab Affairs, there was a five thousand-classroom shortage in the Arab sector. The civic equality NGO Sikkuy stated in its 2003-04 report that

approximately half of age 15 and older non-Jewish Israelis did not have a high school education, compared with one fifth of Jewish Israelis.

According to an Israeli-Arab advocacy group, 21.5 percent of Jews begin university studies compared with 11.5 percent of those defined as "members of other religions," mostly Arabs. Arab Knesset members have criticized the lower academic achievements of Arab students and charged that it indicated discrimination in the system. Preschool attendance for Bedouin children was the lowest in the country, and the dropout rate for Bedouin high school students was the highest.

The minimum legal age of marriage is 17 for both boys and girls. According to the NGO Israel National Council for the Child, marriage under age 17 occurred among minority groups, such as Muslims, certain ultra-Orthodox Jewish groups, and new immigrants from Ethiopia and from Islamic states in the former Soviet Union.

In February 2004 Elem, an NGO that assists troubled youth, estimated that more than a thousand women younger than age 18 worked as prostitutes.

Trafficking in Persons

The law prohibits only trafficking in women for the purpose of sexual exploitation; however, trafficking for the purpose of labor as well as for prostitution remained a serious problem. The penal code stipulates that coercion to engage in prostitution is a criminal offense, punishable by between 4 and 20 years imprisonment, and makes it a crime to induce a woman to leave the country to "practice prostitution abroad." The operation of brothels and "organized sex enterprises" is illegal.

The law guarantees foreign laborers legal status, decent working conditions, health insurance, and a written employment contract; however, some employers forced individual laborers who entered the country, both legally and illegally, to live under conditions that constituted trafficking. While law enforcement agencies have successfully prosecuted employers for labor law violations, including for violations that were tantamount to trafficking, they have not severely penalized labor agencies for trafficking because legislation does not make trafficking illegal if it is for purposes other than prostitution. There were numerous documented cases of foreign laborers living in harsh conditions, subjected to debt bondage, and restricted in their movements.

Organized crime groups trafficked women, primarily from the former Soviet Union, sometimes luring them by offering service sector jobs. Foreign workers came mainly from Southeast Asia, East Asia, Africa, Turkey, Eastern Europe (Romania), and South and Central America. Some traffickers reportedly sold foreign-origin women to brothels, forced them to live in harsh conditions, subjected them to beatings and rape, and forced them to pay for transportation costs and other "debts" through sexual servitude. According to local NGOs, during the year traffickers brought between one thousand and three thousand women into the country for prostitution. The government reported that during the year, 59 trafficked women resided in the "Maggan" Shelter, and an additional 128 trafficking victims stayed in the detention facilities. The government estimated that at least 682 more women met the basic criteria to be classified as cases of trafficking victims even if they did not so admit.

In October, 2 NGOs claimed there were 200 thousand foreign workers in the country and that 20 percent of these workers were trafficking victims. During the year the Ministry of Industry, Trade, and Labor (ITL) revoked 185 permits to hire foreign workers, opened 1,220 files against employers suspected of violating foreign worker employment laws, and imposed 8,356 administrative fines on employers. Also during the year, the ITL filed 208 criminal indictments against employers, including manpower companies, for violations of labor laws and won 38 judgments against violators.

The government did not strengthen laws to fight trafficking. In 2003 the government established a Border Police unit to combat smuggling of persons and drugs across the border with Egypt. During the year this special unit caught 345 Israelis and foreign nationals infiltrating into the country, including 45 women trafficked for prostitution or smuggled for housework. A 2003 law provides minimum sentencing requirements for convicted sex traffickers. During the year the police arrested 78 people for trafficking in persons for the purposes of prostitution and related offenses; the state detained 18 suspects without bail until the conclusion of their trials. Police officials attributed the lack of major arrests and a decrease trafficking arrests at the border to their heightened activity over the past two years.

Courts imposed tougher sentences for trafficking in women than previously, but these sentences remained significantly lighter than the maximum allowable prison sentence of 20 years. On average since the Knesset passed the antitrafficking law in 2000, judges have sentenced traffickers to six years in prison with a two-year suspended sentence. The government has typically awarded compensation to trafficking victims of less than 10 percent of the permitted maximum compensation of approximately \$50 thousand (230 thousand NIS).

The government investigated allegations of misconduct and corruption by individual police officers, including taking bribes, tipping off brothels of raids, and sexually harassing trafficking victims. During the year 2 NGOs surveyed 106 trafficked women, 44 percent of whom claimed that policemen patronized their brothel. The government claimed to have received no reports during the year regarding officials who participated in, facilitated, or condoned trafficking in persons; it made no arrests, and issued no indictments or prosecutions for this offense.

The justice ministry set a guideline that investigations of complaints by foreign workers should be concluded within 45 days. When prosecutors gathered sufficient evidence for indictment, they filed the indictment through an accelerated procedure to ensure that the proceedings will be effective even if the foreign worker left the country. In a recent case against police officers convicted of sexual crimes with a foreign worker, the supreme court accepted the appeal of the prosecution and increased a sentence from 24 to 42 months in prison. In another case a police officer was convicted of demanding sexual favors from a woman that he threatened to arrest and deport if she did not comply. He had not been sentenced as of October.

The 50-person-capacity government-run shelter for trafficking victims was often filled to capacity; NGOs claimed that additional shelters were needed. According to the government, during the year 108 trafficking victims chose to testify, compared with 81 victims in 2003. The government transferred 46 women to the government-run shelter, 36 of whom agreed to testify against their traffickers. In 2003 the state attorney's office, the police, and the Knesset urged the courts to accelerate hearing testimony from trafficking victims; the law stipulates that testimony must be taken within 2 months of the indictment of suspected traffickers, but there were victims who waited as long as 18 months. According to the government, between January and October, in all districts victims waited an average of two months from the time of filing the indictment until the first court hearing.

The government has not drafted an antitrafficking plan. Although it approved funding in May for an interministerial coordinator to combat trafficking in persons, at year's end it had not appointed a coordinator or provided funding for an assistant. The government and an NGO cooperated to train judges who preside over deportation hearings. In October the government formed an interministerial team to address issues relating to trafficking in persons for the purposes of both prostitution and labor. It met three times between October and January and included representatives from the ministries of foreign affairs, justice, interior, industry trade and labor, social affairs, the police, and the immigration administration. Also with assistance from NGOs, the government distributed brochures through its embassies in such source countries as Moldova and Uzbekistan, warning potential victims of the threat. The NGOs associated with this process claimed that the number of brochures was insufficient to reach potentially vulnerable foreigners.

As a result of coordinated international police efforts during the year, several governments extradited individuals to Israel on charges of trafficking in persons. For example, Russian officials extradited Israeli national Shota Shamelashvili, where at year's end he was on trial for trafficking in persons. Also, Ukrainian officials extradited Sergey Matatov, where at year's end he was on trial for trafficking in persons. Likewise, as a result of joint investigations, Israeli and Belarussian officials arrested several suspected members of two criminal groups that trafficked women from Belarus to Israel.

Persons with Disabilities

The government provided a broad range of basic benefits for persons with disabilities. The law provides for protection and equality of the rights of persons with disabilities. Persons with disabilities continued, however, to encounter difficulties in areas such as employment and housing. According to the government, the Commission for Equal Rights of People with Disabilities, within the justice ministry, addressed some 500 discrimination cases, mainly in the areas of accessibility and employment. On March 22, the government enacted a law to require greater building and public area access for persons with disabilities. However, the government did not enforce a previous law primarily due to a lack of funding. Accessibility to public transportation was not mandated by law.

In May the government voted to adopt proposals submitted by a government committee to promote the integration of persons with disabilities into society.

National/Racial/Ethnic Minorities

The 2003 report of the Orr Commission, which was established following the police killing of 12 Israeli-Arab demonstrators and a Palestinian in October 2000 (see section 1.a.), stated that government handling of the Arab sector was "primarily neglectful and discriminatory," was not sufficiently sensitive to Arab needs, and that the government did not allocate state resources equally. Consequently, "serious distress prevailed in the Arab sector..." including poverty, unemployment, a shortage of land, serious problems in the education system, and substantially defective infrastructure. Problems also existed in the health and social services sectors.

In June 2004 the government adopted an interministerial committee's proposals to act on some of the Orr Commission's

findings, including: establishment of a government body to promote the Arab sector; creation of a volunteer, national civilian service program for Arab youth; and the creation of a day of national tolerance. At year's end the government implemented neither these proposals nor the original Orr Commission recommendations. On September 18, the PID closed the investigation into the police killings in the October 2000 riots; however, on September 28, the attorney general and the PID decided to reexamine the investigation (see section 1.a.). At year's end there had been no further action.

In December 2004 the Knesset established a subcommittee, chaired by an Israeli-Arab member, charged with monitoring needs of the Israeli-Arab sector and advocating alterations in the budget to benefit that sector. The subcommittee met during the year, but, according to Mossawa, the government's response to the subcommittee's queries was inadequate.

According to 2004 reports by Mossawa and the Arab Association for Human Rights, racist violence against Arab citizens has increased, and the government has not acted to prevent this problem. Advocacy groups charged government officials with making racist statements.

In June 2004 the Jerusalem District Court filed six indictments for incitement to racism against fans of a local soccer team for shouting "death to the Arabs" at a soccer match. According to Mossawa fans engaged in similar anti-Arab behavior at soccer matches in September, but the police did not make arrests. In a January 10 letter to the Israel Football Association (IFA), Mossawa charged that the IFA had not acted to prevent racist activities at matches. In a March 7 letter responding to Mossawa's concerns, Mossawa reported that the group pledged to work against racism, but Mossawa has claimed that the IFA has still not taken actions to address this problem.

In March a Dahaf Institute poll of Israeli Jews found 59 percent of those polled agreed or tended to agree that the state should encourage Israeli Arabs to emigrate. On September 21, a major local newspaper published a column whose author advocated that the country encourage its Arab citizens to emigrate.

Approximately 93 percent of land in the country is public domain, the majority of which is owned by the state, with approximately 12.5 percent owned by the Jewish National Fund (JNF). All public lands and that owned by the JNF are administered by the governmental body, the Israel Lands Administration (ILA). By law public land may only be leased, and the JNF's statutes prohibit land sale or lease to non-Jews. In separate petitions to the high court in 2004, Adalah and civil rights groups sought, among other points, nondiscriminatory procedures for allocating and leasing land. In January the attorney general ruled the government cannot discriminate against Israeli Arabs in marketing and allocation of lands it manages, including lands the ILA manages for the JNF. Adalah criticized the attorney general, however, for also deciding that the government should compensate the JNF with land equal in size to any plots of JNF land won by non-Jewish citizens in government tenders.

The community of Katzir, a town in the Galilee established by the Jewish Agency, had refused to provide an Israeli-Arab family, the Ka'adans, title to a plot of land despite a 2000 supreme court ruling that the government cannot discriminate against Israeli Arabs in the distribution of state resources, including land. The family petitioned the court again in September 2003 to compel the government to implement the court's 2000 ruling. In May 2004 the ILA allocated the plot of land to the family, who signed a contract on December 19, enabling them to start building their house.

Education ministry regulations required Israeli-Arab contractual or maintenance workers in Jewish educational institutions in Jerusalem to undergo mandatory security checks and to be supervised by a Jewish foreman. After a petition by Adalah, the attorney general ordered in June the cancellation of the regulations; however, at year's end it could not be determined that the regulations were no longer applied.

Israeli-Arab advocacy organizations have challenged the government's policy of demolishing illegal buildings in the Arab sector. They claimed that the government restricted issuance of building permits for Arab communities more than for Jewish communities, thereby limiting Arab natural growth.

In February 2004 security forces demolished several homes in the Arab village of Beineh, claiming that they were built illegally. On April 19, Adalah appealed to the attorney general requesting that he reverse a decision not to indict police officers for alleged assault and property damage involved in the house demolition operation. Adalah claimed that the police investigation was negligent and that it was unreasonable not to indict the police officers. At year's end the appeal remained pending.

In January the government established a new police unit to combat illegal construction and land use. The media reported that the unit will focus on the Israeli-Arab sector and areas surrounding development towns.

The Orr Commission found that "suitable planning should be carried out [in the Arab sector] as soon as possible to prevent illegal construction..." A ministerial committee, created to advise the government on implementing the Orr Commission

recommendations, called on the ILA to complete master plans for Arab towns, approximately half of which currently lacked such plans. In June 2004 the supreme court ruled that omitting Arab towns from specific government social and economic plans is discriminatory. This judgment builds on previous assessments of disadvantages suffered by Arab Israelis. New construction is illegal in any towns that do not have master plans or in the country's 37 unrecognized Bedouin villages. In September, according to a Bedouin advocacy group (the Regional Council for Unrecognized Villages in the Negev), security forces demolished several Bedouin homes in the unrecognized villages of Al-Zaroora, Al-Bhaira, Al Sir, and Al-Mazra'a.

Israeli-Arab organizations and some civil rights NGOs challenged as discriminatory the 1996 "Master Plan for the Northern Areas of Israel," which listed priorities as increasing the Galilee's Jewish population and blocking the territorial contiguity of Arab towns. The Israeli-Arab organizations presented their objections at a hearing in March 2003, but the National Council for Building and Planning, a government body responsible for developing the master plan, has not responded. To date the government has not implemented this plan.

The Bureau of Statistics noted that the median number of school years for the Jewish population is three years more than for the Arab population. According to data released in September by the Higher Arab Follow-up Committee, the Arab student dropout rate overall was 12 percent and 70 percent at schools in the unrecognized villages in the Negev, compared with 6 percent overall in Jewish schools.

Israeli Arabs also were underrepresented in the student bodies and faculties of most universities, professions, and business. According to Sikkuy's 2003-04 annual report, non-Jews made up 9.8 percent of university undergraduates and Israeli Arabs constituted 1 percent of all lecturers or professors at academic institutions--50 to 70 out of more than 3 thousand. In October an Arab Israeli was appointed for the first time as dean of research at the University of Haifa.

Well-educated Arabs often were unable to find jobs commensurate with their education. A small number of Israeli Arabs hold responsible positions in the civil service, generally in the Arab departments of government ministries. In 2003 the government approved affirmative action to promote hiring Israeli Arabs in the civil service. However, according to current government figures, only 3 percent of civil service employees were from the Arab sector. In November the deputy civil service commissioner reported that Arabs made up only 5.6 percent of the total number of new civil service employees hired in 2004. During a June 21 meeting of the Knesset Internal Affairs Committee, retired Supreme Court Justice Theodore Orr, who headed the Orr Commission, criticized the government for not implementing the affirmative action law.

A 2000 law requires that minorities have "appropriate representation" in the civil service and on the boards of government corporations. In January 2004 Prime Minister Sharon mandated that every state-run company's corporate board have at least one Arab member by August 2004. In June 2004 the media reported that the number of Arabs on state-run corporate boards had declined. According to data from the Government Companies Authority, during the year Arabs filled 50 out of the 551 board seats of 105 state-run companies.

Israeli Arabs complained upon occasion during the year of discriminatory treatment by the state airline. Mossawa reported that, it received complaints from Israeli Arabs of discriminatory treatment at the airport. According to the AAHR, in July two Israeli Arabs were prohibited from taking their laptop computers with them on an El Al flight from Austria to Israel; Jewish passengers were allowed to take their laptops. The Israeli Arabs used a different airline to return to Israel.

The law exempts Israeli Arabs from mandatory military service, and in practice only a small percentage of Israeli Arabs so served. Citizens who did not serve in the army enjoyed less access than other citizens to social and economic benefits for which military service was either a prerequisite or an advantage. Israeli Arabs generally were restricted from working in companies with defense contracts or in security-related fields. In December 2004 the Ivri Committee on National Service recommended that Israel Arabs be given an opportunity to perform national service. By year's end the government had not addressed the Ivri Committee recommendations. Males in the Israeli Druze community, which numbered around 100 thousand, and in the Circassian community, which numbered some 3 thousand, were subject to the military draft, and the overwhelming majority accepted service willingly. Some Bedouin and other Arab citizens not subject to the draft also served voluntarily.

The Bedouin sector of the population was the country's most disadvantaged. The Orr Commission of Inquiry report called for "special attention" to the living conditions of the Bedouin community. Approximately 140 thousand Bedouin lived in the Negev, half in 7 state-planned communities and 8 recognized communities, and the rest in 37 unrecognized villages. During the year the government officially recognized the Israeli-Arab village of Ein Hod in the Carmel area, after village residents had petitioned the government for more than 57 years. Recognized Bedouin villages received basic services but remained among the poorest communities. Unrecognized villages paid taxes to the government; however, they were not connected to the national water and electricity infrastructure and not eligible for government educational, health, and welfare services. In September ACRI and PHR petitioned the supreme court to require the government to connect a house in an unrecognized Bedouin village to the electrical power lines so a three-year-old suffering from cancer could benefit from air conditioning, as the doctor recommended. At year's end the request remained pending.

In March 2004 the supreme court issued a temporary injunction to prevent the ILA from spraying herbicide on Bedouin crops on state-owned land. According to Adalah the court extended its injunction in October 2004. In February the ILA admitted in an affidavit to the supreme court that it sprayed Bedouin agricultural fields with chemicals that were not approved by the agriculture ministry and banned from aerial spraying. After a November 28 hearing, the case was still pending.

Government planners noted that there were insufficient funds to relocate Bedouin living in unrecognized villages to new townships and that the average Bedouin family could not afford to purchase a home there. Clashes between authorities and residents of unrecognized villages continued during the year.

In July the government extended until March 2006 the 2003 Citizenship and Entry into Israel Law, which bars Palestinians from the occupied territories from acquiring residence or citizenship rights through marriage to Israelis (see section 2.d.). The government also amended the law to allow Palestinian men aged 35 and older and women aged 25 and older to request Israeli citizenship through family unification. In July Adalah petitioned the high court to suspend implementation of the amended law as still discriminatory, and requested a court ruling on Adalah's 2003 challenge to the original law. In November during ongoing supreme court hearings on a petition by civil rights NGOs challenging this law, the government informed the court that since 2001, 25 Palestinian spouses of Arab citizens have been involved in terrorist activity. At year's end the case remained pending.

There are approximately 20 thousand non-Israelis living in the Golan Heights; they have been subject to Israeli military authority since 1967 and to Israeli civil law since Israel annexed this Syrian territory in 1981. They are primarily ethnic Druze; however, Syria regards them as its citizens and they largely have refused Israeli citizenship. Israel accords them permanent resident status; they receive Israeli travel documents and hold identity cards that entitle them to the same social benefits as Israeli citizens. Most obtain these services in Syria. Syrian Golan residents of the Druze confession continue travel to Syria to pilgrimage to the Shrine of Abel, with Israeli permission.
Other Societal Abuses and Discrimination

On March 23, Jewish, Christian, and Muslim religious leaders protested against a gay pride march planned for Jerusalem in June. On June 26, the Jerusalem District Court ordered the Jerusalem municipality to permit the gay pride march. During the June 30 march, an ultra-Orthodox Jew stabbed three participants. Police arrested Yishai Shlifel and charged him with three counts of attempted murder. His trial was scheduled to continue in January 2006. In April unknown arsonists damaged a Jerusalem nightclub catering to homosexuals. According to the Jerusalem Open House for Pride and Tolerance, at year's end police had made no arrests and the investigation had not advanced.

In April the government announced a policy of recognizing same-sex couples with children as a family for purposes of receiving housing aid. The government also did not challenge a 2004 Nazareth District Court decision recognizing same-sex partners for the purposes of inheritance rights.

Section 6 Worker Rights

a. The Right of Association

Citizens may join and establish labor organizations. Most unions belong to Histadrut (the General Federation of Labor in Israel) or to a much smaller rival federation, the Histadrut Haovdim Haleumit (National Federation of Labor), both of which are independent of government. Histadrut's members elect national and local officers, and officials of its affiliated women's organization, Na'amat, from lists of those in the union. Histadrut membership remained approximately 650 thousand, and Histadrut's collective bargaining agreements covered most non-Histadrut workers.

The law does not permit nonresidents, including Palestinians from the West Bank and Gaza, to join Israeli trade unions or organize their own unions in Israel. Protections contained in Histadrut work contracts and grievance procedures extend to nonresident workers in the organized sector. Palestinian participation in shop-level workers' committees was minimal.

Labor laws apply to noncitizens. However, a 2003 amendment to the Social Security Act stipulates that undocumented workers are not entitled to receive certain social security benefits, including maternity leave and compensation for work-related injuries. The Foreign Workers Act stipulates that foreign workers do not receive National Health Insurance, and that the employers of migrant workers must provide private insurance, which is less comprehensive. In March an amendment to the act requires transfer of severance pay for foreign nationals to a fund that they may access only when their residency permits expire. Currently, this amendment applies only to construction workers, according to the June internal regulations of the industry, trade, and labor ministry.

b. The Right to Organize and Bargain Collectively

Citizens exercised their legal rights to organize and bargain collectively. The law specifically prohibits antiunion discrimination. No antiunion discrimination was reported.

Nonresident workers could not organize unions or engage in collective bargaining but could be represented by the bargaining agent and protected by collective bargaining agreements. Between January and September, the industry, trade, and labor ministry issued 77,639 permits for foreigners to work in the country, most of which, the ministry reported, were assigned. The government estimated non-Palestinian foreign workers, both legal and illegal (between 50 thousand and 70 thousand), comprised 7 to 8 percent of the labor force. Foreign workers must pay an agency fee in lieu of union dues, entitling them to protection by collective bargaining agreements. The ministry extended collective bargaining agreements to nonunionized workplaces in the same industrial sector. The ministry also oversaw personal contracts in the unorganized sectors of the economy which do not offer union protection from, among other possible actions, immediate dismissal without recourse.

Workers exercised the right to strike less frequently than in previous years. If essential public services are affected by a strike, the government may appeal to labor courts for back-to-work orders during continued negotiations. Worker dismissals and the terms of severance arrangements have traditionally been the central issues of disputes. A Histadrut agreement on workers' wages reached early in the year with the government (the largest employer in the country) helped to diminish the number of strikes.

In the most significant strike of the year, more than 100 workers at the transportation company Metrodan in Beersheva struck for 147 days, starting in November 2004. According to Histadrut it was the longest strike in the country's history. Since Metrodan provided all public transportation in the country's largest southern city, the supreme court ultimately addressed the dispute and ruled for the workers and Histadrut.

There are no export processing zones. In December 2004 the government established a Qualified Industrial Zone (QIZ) with Egypt, creating duty-exempt zones for joint Israel-Egypt manufacturing for exports. The government established a comparable QIZ with Jordan in 1998. Since the factories are located in Egypt and Jordan respectively, Egyptian and Jordanian labor laws apply.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including by children, and neither the government nor Histadrut received reports that such practices occurred for citizens, residents such as Syrian citizens of the Golan Heights, or nonresident Palestinian workers. Civil rights groups charged that unscrupulous employers exploited adult non-Palestinian foreign workers, both legal and illegal, and held them in conditions that amounted to involuntary servitude (see section 6.e.).

Trafficking in persons for the purpose of prostitution and labor remained a problem (see section 5).

d. Prohibition of Child Labor and Minimum Age for Employment

Children at least 15 years old who have completed their education through grade nine may be employed only as apprentices. Children who are 14 years old may be employed during official school holidays in light work that will not harm their health. Working hours for those between the ages of 16 and 18 are restricted to ensure time for rest and education. The government enforced these restrictions in practice. According to Histadrut the labor ministry responded to complaints about child labor and intervened to stop the practice, but it was not able to monitor the agricultural sector where, Histadrut claimed, children under the age of 15 worked throughout the year.

There was no reliable data regarding the incidence of child labor, although NGOs believed that it occurred to a limited degree, primarily in urban, light industry. Although in previous years, the government, Histadrut, and NGOs received reports of illegal child labor in the undocumented Palestinian population, they did not receive such reports during the year.

e. Acceptable Conditions of Work

The minimum wage was approximately 45.3 percent of the average wage and remained approximately \$900 (4,100 NIS) per month for a 40-hour week. The government considered the minimum wage, often supplemented by special allowances for citizens, to provide a citizen worker and family with a decent standard of living. Some union officials, NGOs, and social commentators disputed this claim.

By law the maximum hours of work at regular pay are 42.5 hours a week.

Employers are required to obtain a government permit to hire Palestinian workers from the occupied territories. All Palestinians from the occupied territories working legally in the country were employed on a daily basis and, unless employed on shift work, were not authorized to spend the night in the country.

Palestinian employees whose Israeli employers recruited them through the labor ministry received their wages and benefits through that ministry. Palestinian workers were not eligible for all National Insurance Institute (NII) benefits although the ministry deducted a union fee and required contributions to the NII. For example they did not receive unemployment insurance, general disability payments, or low-income supplements. Israeli employers directly paid Palestinian employees not employed through the labor ministry; the workers received the same benefits as those paid through the ministry.

According to agreement between the government and the Palestinian Authority (PA), employers paid an "equalization fee" to the Israeli Treasury, in the amount of the difference in cost between employing a (lower paid) foreign worker and an Israeli worker. The government stated that these sums would be forwarded to the PA when it established a national insurance institute.

Since 1993 the government has agreed to transfer the NII fees collected from Palestinian workers to the PA, which was to assume responsibility for all pensions and social benefits of Palestinians working in the country. As a prerequisite to transferring these funds, the PA was to have established mechanisms to provide these services in the PA-controlled territories. Subsequently, government officials have continued to withhold all of the PA payments pending its creation of a social security department to distribute the fees.

Following the outbreak of violence in 2000, the government's closure policy on the occupied territories prevented nearly all Palestinians from getting to employment in the country (see section 2.d.). Closures have continued periodically for the past five years. During periods of nonclosure, Palestinians required Israeli-issued permits to enter Israel. Permits may be issued for a single day or for periods of several months. Frequently, during closures, government authorities invalidated some or all existing valid permits, requiring even long-established travelers to secure new permits, often multiple times during the year. Accordingly, statistics on permit issuance and use do not reflect actual numbers of individual travelers allowed into the country. Many Palestinian laborers may have used the permits to make numerous entries; the government did not provide data as to how many different individual Palestinian laborers received work permits.

The Labor Inspection Service, along with union representatives, enforced labor, health, and safety standards in the workplace, although resource constraints affected overall enforcement.

Workers could not legally remove themselves from dangerous work situations without jeopardy to continued employment. Additionally, foreign workers risked immediate deportation. However, any worker could challenge unsafe work practices through government oversight and legal agencies. NGO and police reports continued to charge that unscrupulous employers sometimes forced illegal workers to live in situations amounting to involuntary servitude, because of the workers' vulnerable legal status and lack of recourse.

The law prohibits brokers and employers from collecting hiring fees from migrant workers. According to NGOs many foreign workers paid fees to brokers in their countries of origin to work in the country. The brokers then paid Israeli employers to hire the foreign workers. Some foreign workers reported paying fees in their home country, while others reported paying some fees, in cash, to brokers in Israel. Employers seeking to avoid paying workers' wages (and to receive brokerage fees for new workers) reportedly sometimes threatened violence and imprisonment to force existing workers to depart.

Public debate continued regarding non-Palestinian foreign workers. In October the industry, trade, and labor ministry and the immigration authority estimated such workers at between 127 thousand and 147 thousand. Legal workers came from many countries, including Jordan, Thailand, the Philippines, and Romania. Illegal workers came from Jordan, Eastern Europe, and Southeast Asia; they worked in the construction and agricultural sectors, and as domestic help.

The government estimated that, between January 1 and October 9, 21,566 foreign workers departed, with 7,235 deported or leaving involuntarily, and 14,331 departed voluntarily.

Human rights groups claimed that since foreign worker visas were tied to specific employment, even legal foreign workers had little influence on their work conditions.

The law does not permit foreign workers to obtain citizenship or permanent residence status unless they are Jewish. In June the government enacted a one-time program, valid to the end of the year, allowing children age 10 and above of foreign workers to become permanent residents and eventually citizens, if they were born and raised in the country and

their parents entered the country legally. The government estimated that two thousand children and six thousand immediate family members would be eligible to become citizens under this provision; however, NGOs asserted that the numbers would be much lower. At year's end the government had received 228 applications for legalization under this new program, regarding 650 persons. NGOs cited these low numbers as evidence that the new program was too restrictive. At year's end the government had neither awarded nor denied citizenship to any applicant, although it approved 35 applications and began processing the necessary documentation.

NGOs alleged that Israeli and foreign traffickers lured foreign workers to the country with promises of jobs that proved nonexistent. Foreign workers reportedly paid up to \$10 thousand (45 thousand NIS) to employment agencies for work visas. In a significant number of cases, according to NGOs, employers dismissed workers shortly after arriving. Allegedly the manpower companies worked with authorities to deport the newly arrived workers, who were then replaced by others, earning the companies additional fees. NGOs argued that most workers expected to work for the two-year duration of their visas to recoup their initial payments. Dismissed foreign workers who avoided deportation often sought illegal employment.

Workers may contest deportation orders in a special court, but often lacked fluency in Hebrew, placing them at a considerable disadvantage. At least three times during the year, deportation tribunal judges noted lack of translation services hindered the judicial process. On September 25, in response to an NGO petition to the supreme court, the government indicated work continued on the draft of a tender for translation services. According to NGOs the government had spent three years drafting the tender, and at year's end it had not been completed.

In March 2004 in response to judicial criticism concerning protracted detention of foreign workers, the attorney general ordered that they be brought before the court within four days of arrest. The government generally honored the attorney general's directive. NGOs assist workers facing deportation, and there have been cases when the worker's status was reinstated. For example, in May the Tel Aviv Labor Court ordered immigration police to return two Thai workers deported before they could testify in their civil and criminal cases against their employer for inhumane treatment. At year's end the workers' lawyer reported that the court was willing to accept their testimony without requiring their return.

The court also provided a forum where workers subject to deportation orders could claim unpaid wages or other benefits; however, NGOs reported that workers often were deported before they could lodge claims. NGOs also noted cases in which the police injured foreign workers during arrest (see section 1.c.).

The Occupied Territories (Including Areas Subject To The Jurisdiction Of The Palestinian Authority)

Israel occupied the West Bank, Gaza Strip, Golan Heights, and East Jerusalem during the 1967 War. In 2005 the population of Gaza was approximately 1.4 million, of the West Bank (excluding East Jerusalem) approximately 2.4 million, and of East Jerusalem about 415 thousand, including approximately 177 thousand Israelis. Approximately 250 thousand Israelis resided in the West Bank. Various Oslo-era agreements transferred civil responsibility to the Palestinian Authority (PA) for Gaza and parts of the West Bank and divided the territories into three types of areas denoting different levels of PA and Israeli control. However, after Palestinian extremist groups resumed violence in 2000, Israeli forces resumed control over a number of these areas, citing the PA's failure to abide by its security responsibilities. On February 8, Israeli Prime Minister Ariel Sharon and newly elected PA President Mahmud Abbas agreed to cease violence and hostilities completely. During the year violence declined, and Israeli-imposed internal and external access restrictions lessened.

Between August 15 and September 12, the Israeli government evacuated all 21 settlements in Gaza and 4 settlements in the northern West Bank. PA security forces assumed overall security responsibility for Gaza. The Rafah crossing was closed beginning September 7, pending an agreement on border crossings. By mid-November the PA and Egypt controlled the Rafah border, and by year's end there was limited Palestinian transit through the crossing.

The PA has a democratically elected president and legislative council, which select and endorse a prime minister and cabinet. On January 9, Palestine Liberation Organization (PLO) Chairman Mahmud Abbas won approximately 62 percent of the popular vote in a presidential election regarded as generally free and fair. The PA held multiple rounds of municipal elections during the year; however, Abbas postponed Palestinian Legislative Council (PLC) elections, scheduled for July 17, until January 25, 2006.

Israel exercised occupation authority through the Ministry of Defense's Office of Coordination and Liaison.

During the year 190 Palestinians were killed during Israeli military operations. A total of 50 Israelis, including 9 Israeli Defense Force (IDF) soldiers and 2 foreigners in both Israel and the occupied territories were killed in terrorist attacks. In October 2003 three US security personnel were killed and one wounded when a bomb detonated under their car in Gaza. At year's end there had been no progress by the PA's investigative team, and the case remained unsolved.

The PA generally did not maintain effective control over its security forces, and there were reports that members of the PA security forces committed numerous, serious abuses, including torture. The Israeli government maintained effective control of its security forces; however, there were reports that Israeli security forces used excessive force and abused and tortured detainees.

In September the Israeli Supreme Court reaffirmed its earlier decision that the separation barrier is permissible under both international law and Israeli law, however, the Israeli Supreme Court questioned whether the segment of the barrier at issue utilized the least intrusive route available, and it asked the government to consider whether there was an alternative route. The court further found that in September there were 43 remaining petitions regarding other portions of the wall that now would be decided by the court. In an advisory opinion, the International Court of Justice concluded in 2004 that the barrier was contrary to international law in a number of respects.

Regarding the PA, there were reports of the following problems:

- torture
- arbitrary and prolonged detention
- poor prison conditions
- infringement of privacy and freedom of speech
- insufficient measures to prevent attacks by terrorist groups either within the occupied territories or within Israel
- numerous instances of violence against Israeli civilians, resulting in deaths and injuries in the West Bank, Gaza, and Israel
- corruption and lack of transparency
- domestic abuse of women
- societal discrimination against women and persons with disabilities and child labor

Regarding the Israeli occupying forces, there were reports of the following:

- damage to civilians in the conduct of military operations
- numerous, serious abuses of civilians and detainees
- failure to take disciplinary action in cases of abuse
- improper application of security internment procedures
- use of temporary detention facilities that were austere and overcrowded
- limited cooperation with nongovernmental organizations (NGOs)

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

Killings by Palestinian and Israeli security forces and by Israeli settlers and Palestinian militant groups remained a serious problem.

According to Human Rights Watch (HRW), as of June the IDF reported 131 criminal investigations into the use of weapons that resulted in injury or death, resulting in 28 indictments and 7 convictions, with the remaining cases still in process. The IDF also reported that as of June, 611 investigations were opened in response to complaints of physical abuse, such as beatings, and complaints of property destruction. These investigations have led to 77 indictments.

On July 8, an Israeli security guard patrolling the separation barrier shot and killed a 15-year-old Palestinian boy. According to Palestinian witnesses, the boy was working in his family's agricultural fields near Bayt Liqya in the West Bank. Israeli authorities placed the guard under house arrest pending police investigation. At year's end there were no results from the investigation.

On August 17, Asher Weisgan, from the Israeli settlement of Shvut Rachel, shot and killed four Palestinian workers and wounded two others. On August 31, Israeli authorities in Jerusalem District Court indicted Weisgan on four counts of murder. At year's end the case had not been tried.

On September 30, IDF soldiers shot and killed an unarmed 13-year-old Palestinian boy during a pre-dawn raid on the Askar refugee camp, near Nablus. Initial IDF inquiry concluded the soldiers violated rules of engagement. At year's end the IDF was studying whether to conduct a military police investigation.

On October 27, Israeli forces launched a missile strike on a car in Gaza's Jabaliya refugee camp reportedly carrying an

Islamic Jihad operative. Six other persons were killed and 19 wounded.

On November 1, Israeli missile strikes killed an al-Aqsa Martyrs' Brigades commander and a local Hamas leader in their car at the Jabaliya refugee camp north of the Gaza Strip. Nine bystanders were also injured.

On November 9, an Israeli border policeman shot and killed 35-year-old Samir Ribhi Da'ari, a Palestinian from Issawiyeh village, a neighborhood of East Jerusalem. Israeli authorities initially claimed that Da'ari attempted to drive his vehicle over the border policeman during the arrest of Da'ari's brother. A subsequent autopsy revealed Da'ari was shot in the back; at year's end court action against the policeman was pending.

On December 22, an Israeli raid in Nablus killed a reported commander of a local militia as well as two other Palestinians.

On February 10, Palestinian gunmen attacked the Gaza Central Prison and killed three prisoners as they awaited trial for two separate shooting deaths. The gunmen took one individual from the prison to the al-Burayj refugee camp and killed him publicly. The attackers were reportedly members of the families of the two shooting victims. At year's end there had been no arrests.

On July 23, Palestinian militants attacked vehicles traveling in the vicinity of the Abu Holi checkpoint in Gaza. Three IDF soldiers were injured, and two Israeli civilians were killed. Three militant groups claimed responsibility.

On August 24, a Palestinian stabbed two Jewish yeshiva students from a Western country in the Old City of Jerusalem and killed one. On October 8, Israeli security forces arrested a Palestinian from Hebron, who subsequently confessed to the killing. At year's end there was no further legal action.

On September 7, approximately 100 armed men attacked the Gaza City home of Musa Arafat, former PA Gaza National Security Forces chief, and killed Arafat and two bodyguards. The Popular Resistance Committees claimed responsibility for the attack. At year's end the PA had issued but not served an arrest warrant for one Popular Resistance Committee member.

On September 26, assailants, reportedly from the al-Aqsa Martyrs' Brigades, killed a Palestinian man suspected of collaborating with Israeli authorities. The killers kidnapped him days earlier from the Askar refugee camp near Nablus.

On October 2, a Palestinian civil police commander and two civilians were killed during a fight with Hamas members in Gaza. At least 51 others were injured, and 2 Gaza City police stations were heavily damaged.

On December 8, a knife-wielding Palestinian killed an Israeli soldier at the Qalandiya checkpoint north of Jerusalem; at year's end the Palestinian was awaiting trial.

On December 29, a Palestinian suicide bomber killed an Israeli guard and two Palestinians at a checkpoint near Tulkarm in the West Bank. The Palestinian Islamic Jihad claimed responsibility.

In December 2002 'Imran Abu Hamdiyah, a 17-year-old Palestinian, was found dead in Hebron. In April 2003 Israeli officials arrested four border police officers on charges that they beat and then dumped Hamdiyah from their moving vehicle. On September 22, the Jerusalem District Court sentenced one of the four officers to four and one-half years in prison for assisting in Hamdiyah's death. At year's end the trial of the remaining three officers continued.

In October 2004 an Israeli settler, Boaz Albert, shot and killed 18-year-old Salman Yussuf Safadi near the settlement of Yizhar. On February 27, the Israeli police informed B'tselem that Albert claimed self defense. The investigation was completed and forwarded to the Israeli state attorney for review; however, at year's end the State Attorney's Office had yet to respond or charge Albert.

In September 2004 an Israeli settler, Yehoshua Elitzur, shot and killed Palestinian taxi-driver Sa'al Jabara near Nablus. Witnesses said Elitzur shot Jabara at close range after he slowed his car to ask whether Elitzur needed assistance. On June 9, an Israeli court convicted Elitzur of manslaughter. At year's end Elitzur awaited sentencing.

In August 2004 unidentified assailants threw grenades into a room holding suspected Palestinian collaborators in the Gaza Central Prison. The attack killed two and injured six prisoners. Palestinian security officials arrested two policemen, who allegedly carried out the attack on behalf of Hamas. At year's end no further legal action had been taken against the officers.

Three US security personnel in a diplomatic convoy were killed in an attack in Gaza in October 2003. At year's end there was no progress by the PA's investigative team, and the case remained unsolved. During the year foreign governments continued to press the PA to resolve the case.

b. Disappearance

There were no reports of politically motivated disappearances during the year. However, the PA neither prevented nor adequately investigated kidnappings of Palestinians or foreign nationals that occurred in conjunction with rising lawlessness in the West Bank and Gaza. For example on December 21, in northern Gaza, armed Palestinians kidnapped two foreign citizen school administrators. After PA official intervention, the kidnappers released their victims, but they have not been apprehended.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

PA Basic Law prohibits torture or force against detainees; however, international human rights groups stated that torture was a significant problem, and its use was not restricted to persons detained on security charges.

Torture by PA security forces reportedly was widespread. Documentation of abuses by PA security forces was very limited, due partly to hesitancy by alleged victims to make public claims of torture or abuse against PA authorities. Palestinian security officers have no formal guidelines regarding legal interrogation conduct; most convictions were based largely on confessions.

Israeli law, as interpreted by an Israeli high court decision, prohibits torture and several interrogation techniques but allows "moderate physical pressure" against detainees considered to possess information about an imminent terrorist attack.

The Association for Civil Rights in Israel 2004 report stated that the Public Committee Against Torture submitted over 100 complaints of torture in 2003. The Physicians for Human Rights in Israel reported that during the year, Israeli security forces used psychological abuse more frequently, including threats of house demolition or of questioning elderly parents, and kept prisoners in harsh conditions, including solitary confinement for long periods, rather than subjecting them to physical abuse. Israeli law prohibits forced confessions, but most security case convictions were based on confessions made before defendants had legal representation.

A detainee may not have legal representation until after interrogation, a process that may last weeks. The International Committee of the Red Cross (ICRC) is notified of arrests 12 days after they occur, and the ICRC is allowed to visit detainees 14 days after arrest. Detainees sometimes stated in court that their confessions were coerced, but there were no instances in which judges excluded such confessions.

On September 28, IDF soldiers entered a home in Tulkarm and ordered the residents out of the house, after which the soldiers ordered the men to undress in the street. B'tselem sought clarification from the IDF regarding these procedures. At year's end the IDF had not responded.

On November 21, Israeli soldiers assaulted Palestinian students in Hebron. The students had protested near a checkpoint against searches of their persons and possessions. At year's end no action had been taken against the soldiers.

In January 2004 at the Huwwara checkpoint, an IDF sergeant handcuffed and beat a Palestinian man in front of his family. The sergeant was convicted by a military judicial panel in September 2004, sentenced to 6 months in jail, and demoted to the rank of private; he also admitted beating at least 8 other Palestinians and smashing windshields of 10 taxicabs. At year's end there was no report on further legal action.

In September 2004 the Israeli Justice Ministry indicted five border policemen accused of severely abusing two Palestinians detained for lacking the necessary permits in Abu Dis. According to the indictment, the border policemen forced the Palestinians into a building; beat and abused them with rifles, boots, and fists before forcing them from a second floor window. On February 13, a Jerusalem court convicted 1 of the 5 policemen and sentenced him to 14 months in jail and 1-year probation. At year's end the trial for the other defendants continued.

In 2003 IDF soldiers at the Huwwara checkpoint outside Nablus demanded that two Palestinians clean the checkpoint. When the men refused, the soldiers handcuffed, blindfolded, and detained them for several hours. When B'tselem investigated the incident, the soldiers claimed their superiors had ordered them to do it. B'tselem requested an official investigation of the incident in 2004; however, at year's end there was no official response.

Prison and Detention Center Conditions

PA prison conditions were poor. Facilities were dilapidated and neglected; most were destroyed during the Intifada, and prisoners were kept informally incarcerated. There were separate facilities to hold juvenile prisoners. Prison facilities were poorly protected and subject to intrusions by outsiders. The PA generally permitted the ICRC access to detainees and allowed regular inspections of prison conditions; however, the PA denied access to some detainees for 14 days following their arrests. The PA permitted monitoring of its prisons, but human rights groups, humanitarian organizations, and lawyers reported difficulties gaining access to specific detainees. Human rights organizations stated their ability to visit PA prisons and detention centers varied depending on which organization ran the facility. Human rights monitors said prison authorities did not consistently permit access to PA detention facilities, and they rarely could see inmates being interrogated.

Conditions of Israeli permanent prison facilities generally met international standards. Provisional detention centers were less likely to meet standards. According to the 2004 Israel Public Defender's Office report on detention facilities of the Prisons Service and Police, detainees in the Jerusalem Russian Compound facility endured overcrowded cells and suffocating conditions. Detention and interrogation facilities for Palestinian detainees, including the four interrogation centers (Shikma, Kishon, Petah Tikva, and the Jerusalem Internment Center) were austere, overcrowded, provisional facilities. Israel held at least 117 Palestinian prisoners in some form of solitary confinement. Israel permitted monitoring of prison conditions by the ICRC and other groups, although human rights groups reported delays and difficulties in gaining access to specific detainees.

The NGO Palestinian Prisoners Club reported that there were approximately 1,153 medical cases in Israeli prisons. Following the August 2004 hunger strike, Israeli authorities increased medical attention and authorized several private doctors to visit prisoners; however, prisoners continued to claim that medical attention was inadequate.

On July 28, Public Committee Against Torture in Israel demanded Israeli authorities investigate the death of 18-year-old Jawab Abu Maghasib, who died while in administrative detention at Ketziot prison in Israel. Abu Maghasib, who had been under administrative detention since 2002, reportedly suffered from a medical condition.

d. Arbitrary Arrest or Detention

Palestinian law prohibits arbitrary arrest and detention; however, it allows police to hold detainees without charges for 24 hours. Courts may approve detention without charges for up to 45 days. A trial must start within six months of arrest or the detainee must be released. In practice the PA detained many Palestinians without charge for months.

Role of the Police and Security Apparatus

Israeli security forces in the West Bank and Gaza consisted of the IDF, the Israel Security Agency (Shin Bet), the Israeli National Police (INP), and the Border Police, an operational arm of the INP that is under IDF command when operating in the occupied territories. Israeli military courts tried Palestinians accused of security offenses.

Palestinian security forces were under the authority of the PA.

Palestinian police were normally responsible for security and law enforcement for Palestinians and other non-Israelis in PA-controlled areas of the West Bank and Gaza. Palestinian security forces included the National Security Forces, the Preventive Security Organization (PSO), the General Intelligence Service, or Mukhabarat, the Presidential Security Force, and the Coastal Police. Other quasi-military security organizations, such as the Military Intelligence Organization, exercised the equivalent of law enforcement powers. The General Intelligence Law, signed into effect in October, placed the Mukhabarat under PA President Abbas's authority.

In April Abbas placed operational control of the security services under the interior minister. While the order was given to consolidate the security forces under the interior minister, this was not done in practice, and there were ongoing problems in the delineation of responsibilities, with no clear chain of command. In practice the Mukhabarat and the PSO maintained independent commands and reported directly to the president. On September 25, Abbas restructured the Palestinian National Security Council, incorporating competing security interests. The PA lacked full control over security forces. On December 20, armed members of Fatah-affiliated Al-Qqsa Brigades briefly seized Bethlehem's municipal building, reportedly demanding employment.

PA security forces detained persons without informing judicial authorities and often ignored laws protecting detainee rights and court decisions calling for release of alleged security criminals. At year's end Palestinian sources estimated the PA imprisoned approximately 239 suspected of collaboration with Israel. Alleged collaborators often were held without evidence and denied access to lawyers, their families, or doctors.

Arrest and Detention

Under applicable occupation orders, Israeli security personnel may arrest without warrant or hold for questioning a person suspected of having committed or being likely to commit a security related offense. Israeli Military Order 1507 permits the Israeli security forces to detain persons for 10 days, during which period they cannot see a lawyer or appear before court. Administrative security detention orders could be issued for up to six-month periods and renewed indefinitely by judges. The law expressly authorizes an appeal of the circumstances of each security detention order to the Israeli Supreme Court. No detainee has ever successfully appealed a detention order under this process. Israeli Military Order 1369 provides for a 7-year prison term for anyone not responding to a summons in security cases. Suspects are entitled to an attorney, but this right can be deferred during interrogation, which can last up to 90 days. Israeli authorities stated that they attempted to post notification of arrests within 48 hours, but senior officers may delay notification for up to 12 days.

Additionally, a military commander may request a judge to extend this period in security cases indefinitely. The Israeli military orders required notification of family members of specific cases of detention; however, many families reported serious problems in learning of the status and whereabouts of prisoners. Evidence for administrative detentions in security cases was often unavailable to the detainee or his attorneys due to security classification, but it was made available to the court.

Palestinians claimed that security detainees held under Israeli security detention military orders were in fact political prisoners. At year's end Israel held approximately 9,170 Palestinian security prisoners, of whom at least 740 were in administrative detention.

In February and June, the Israeli government released 898 Palestinians in accord with the February Sharm al-Shaykh agreement. Most had served more than two-thirds of their sentences.

During the year Israel conducted some mass arrests in the West Bank; however, most arrests targeted specific persons. Beginning on September 25, in response to rocket attacks from Gaza, the IDF arrested over 300 suspected Hamas and Palestinian Islamic Jihad activists in the West Bank in a period of days, including a number of Hamas municipal election candidates.

Palestinians transferred to prisons in Israel had difficulty obtaining legal representation because only Israeli citizens or Palestinian lawyers with Jerusalem identification cards were permitted to visit them. However, in 2004 the government revised procedures to permit more access by lawyers, and more lawyers exercised access. Israeli authorities in some instances scheduled appointments but then moved the prisoners to other prisons to delay lawyer-client meetings for as long as 90 days.

The Israeli government frequently failed to notify foreign consular officials in a timely manner after detaining their citizens.

During the year Israel transferred one Palestinian from the West Bank to Gaza. On February 27, the IDF deported an 18-year-old Palestinian from Dheisheh refugee camp in Bethlehem to Gaza following his completion of a 14-month prison sentence. On February 20, Israel allowed 16 deportees to Gaza to return to the West Bank. At year's end approximately 40 others awaited permission to return to the West Bank.

e. Denial of Fair Public Trial

The PA court system is based on Israeli military orders and legal codes, including Jordanian and Ottoman Law that predate the 1967 occupation. A High Judicial Council maintained authority over most court operations. In 2003 the PA justice minister ordered the state security courts terminated. However, Palestinian human rights groups charged the PA did not implement the justice minister's order adequately and called on the PA president to abolish these courts formally. On June 22, PA President Abbas ordered retrials for those sentenced to death by the state security courts. Military courts, established in 1995, have jurisdiction over police and security force personnel as well as crimes by civilians against security forces. In November Abbas issued a decree establishing a court for election issues to be composed of nine judges.

PA courts were inefficient, lacked staff and resources, and often did not ensure fair and expeditious trials. These problems predated PA jurisdiction and were aggravated by subsequent lack of PA attention. PA executive and security services frequently failed to implement court decisions and otherwise inhibited judicial independence.

Ongoing violence adversely affected PA administration of justice. Many police stations and incarceration facilities were damaged or destroyed. Travel restrictions, curfews, and closures significantly impeded administration of justice.

Israeli law provides for an independent judiciary, and the government generally respected this in practice. The IDF usually tried Palestinians accused of security offenses in the occupied territories in military courts. The law comprehensively defined security offenses and may include charges as varied as rock throwing or membership in outlawed terrorist organizations, such as Hamas or the Popular Front for the Liberation of Palestine. Military prosecutors brought charges. Israeli military courts rarely acquitted Palestinians charged with security offenses; sentences occasionally were reduced on appeal.

Trial Procedures

Israeli military trials followed the same evidentiary rules as in regular criminal cases. The accused is entitled to counsel, and a judge may assign counsel. Charges are made available to the defendant and the public in Hebrew, but the court may order an Arabic translation. The court may hear evidence in security cases denied to the defendant or his attorney; however, a conviction may not be based solely on such evidence. Convictions may not be based solely on confessions, although in practice some security prisoners were convicted on the basis of allegedly coerced confessions by themselves and others. Defendants can appeal through the Military High Court or to the civilian high court in certain instances.

The Israeli government sometimes delayed trials for very extended periods because Israeli security force witnesses did not appear, the defendant was not brought to court, files were lost, or travel restrictions delayed attorneys (see section 2.d.). Palestinian legal advocates alleged that delays were designed to pressure defendants to settle their cases.

Crowded facilities, poor arrangements for scheduling and holding attorney-client consultations, and confessions prepared in Hebrew hindered defense efforts.

Israeli settlers were tried under Israeli law in the nearest Israeli district court. Civilian judges presided; Israeli law (not military orders) governed the standards of due process and admissibility of evidence. The Israeli government rarely prosecuted settlers for crimes against Palestinians and, in the rare instances when convicted, they regularly received lighter punishment than Palestinians convicted in Israeli courts (see section 1.a.). According to B'tselem, during the year the Israeli police claimed that it had conducted 299 investigations into reported settler attacks on Palestinians; indictments were filed in 65 of these investigations.

In May 2004 a Tel Aviv District Court convicted West Bank Fatah leader and PLC member, Marwan Barghuti, on three charges of murder and a charge of attempted murder involving terror attacks. Barghuti rejected the Israeli court's jurisdiction, did not mount a legal defense, and did not appeal the five consecutive life sentences he received. There was no further legal action during the year.

Pursuant to law the PA can impose the death penalty on a person convicted of any of 42 offenses. Military courts and state security courts have imposed most death sentences attributed to the PA. There is no judicial procedure to appeal these sentences, and only the PA president has the authority to ratify or alter the sentence. If the president does not act, the individual remains in jail.

On June 12, the PA executed four men, the first executions since 2002. The state security courts, established by the presidential decree in 1995 but terminated by the PA justice ministry in 2003, convicted one of the four executed men.

In November 2004 an Israeli military court delayed PLC member Husam Khader's trial until March 6. Khader was arrested in March 2003 for alleged involvement in Intifada-related violence. On November 27, after repeated delays, an Israeli military court sentenced Khader to seven years in jail for Intifada-related violence.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The PA required the attorney general to issue warrants for entry and searches of private property; however, Palestinian security services frequently ignored these requirements. Police searched homes without the consent of their owners. In some cases police forcibly entered premises.

Under occupation orders an IDF officer of the rank of lieutenant colonel or above could authorize entry of private homes and institutions without a warrant, based upon military necessity. On some occasions IDF personnel beat occupants and destroyed or looted property. Authorities stated that these were punishable violations of military regulations with compensation due.

Israeli security forces demolished and sealed the homes of Palestinians suspected of terrorism or the relatives of such suspects, without judicial review (see section 1.g.). According to B'tselem, from October 2001 to January, the Israeli government demolished 666 homes in the occupied territories as punishment. On February 17, Israeli Defense Minister

Mofaz announced the cessation of punitive house demolitions.

On February 23, the IDF occupied a Palestinian home in Yatta village south of Hebron for two days. During the period the IDF confined seven family members, including three children and a sick elderly person, to one room.

Israel demolished many homes between the Rafah refugee camp and the border with Egypt on the grounds that some houses concealed tunnels used for weapons smuggling or provided cover for attacks against Israeli soldiers. However, there were no operations comparable to "Operation Rainbow" in May 2004, which destroyed 298 homes according to UN agencies and left approximately 3,800 persons homeless. Between 2000 and the Israeli withdrawal from Gaza, the IDF demolished approximately 1,500 buildings in Rafah making more than 15 thousand Palestinians homeless.

On August 21, IDF Chief of Staff Dan Halutz announced that there would be no legal action against the former IDF commander in the Gaza Strip, Ze'ev Zakai, for unauthorized demolition of 40 buildings in Khan Yunis. An IDF committee earlier determined that had Zakai requested permission to demolish the structures, it was reasonable to conclude he would have received it.

Israeli authorities limited Palestinian home construction, notably in East Jerusalem. Israeli authorities generally restricted Palestinian home building elsewhere in the West Bank and near Israeli settlements. According to the Israeli Committee Against House Demolitions (ICAHD), approximately 10 thousand structures in East Jerusalem were defined by the Israeli government as illegal; consequently, Jerusalem municipal authorities and the interior ministry systematically demolished such structures. In 2004 ICAHD reported over 150 buildings in East Jerusalem were destroyed, and 94 East Jerusalem structures were demolished during the year.

The IDF destroyed numerous citrus, olive, and date groves, and irrigation systems in Gaza, stating that Palestinians had been firing Qassam rockets from those areas. Human rights groups reported that over the past 3 years, 2,400 Palestinian olive trees were destroyed, mainly by Israeli settlers.

The IDF also cleared and took permanent control of privately owned Palestinian land to construct the separation barrier. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), the separation barrier was approximately 243 miles long, with 166 miles under construction, and was projected to extend 670 miles upon completion. OCHA noted as of October, the Israeli authorities, through military orders, had confiscated approximately 8,785 acres of West Bank land to construct the separation barrier. According to Israel it sought to build the barrier on public lands where possible, and where private land was used, provided opportunities for compensation. Palestinians largely declined to seek compensation out of concern that this would legitimize the Israeli land confiscations. Additionally, numerous cases were filed in Israeli courts challenging the route of the fence.

Human rights monitors reported that the IDF provided greater protection to Palestinian farmers from Israeli settler attacks than they did in the past. Still, Palestinians complained that the IDF measures gave insufficient time to complete the harvest and that they were limited in their ability to protect their property by curfews and travel restrictions. On August 22, Israeli settlers inflicted considerable damage to Palestinian homes and cars near the settlement of Homesh, which was scheduled to be evacuated. No settlers were charged. In October and November, Israeli NGOs documented attacks by settlers on Palestinian homes and their property in Salem, Hebron, and the Khoruba Valley resulting, among other damage, in destruction of approximately 300 olive trees. Israeli authorities took no action against the settlers.

In February Palestinian residents of Madama village, south of Nablus, claimed to police that settlers from the nearby Yizhar settlement deliberately sabotaged the village's water supply. Israeli police opened an investigation; however, at year's end there were no developments in the case.

g. Use of Excessive Force and Violations of Humanitarian Law in Internal and External Conflicts

Palestinian members of Hamas, Fatah-affiliated militant groups, and Palestinian Islamic Jihad attacked and killed Israeli civilians, foreign nationals, and soldiers, both in Israel and in the occupied territories. They used weapons in such a manner as to inflict casualties on noncombatants, such as suicide bombs, rockets, and mortars. In addition they often fired at Israeli security forces from civilian population areas, increasing the risk that Israeli return fire would harm noncombatants. The PA took some steps to prevent terrorist attacks and banned the display of weapons in public, but these steps did not prevent or deter numerous attacks. Armed members of various groups ignored PA directives; PA security has not consistently prevented them from displaying weapons in public. During the presidential campaign, Fatah presidential candidate Abbas publicly called the armed Intifada counterproductive to Palestinian interests.

In March the PA and Palestinian factions agreed to uphold a *tahdiyah*, or period of calm, whereby armed Palestinian groups would refrain from attacks on Israeli targets; however, during the year militant factions broke this agreement killing

and injuring Israelis.

According to the PA health ministry, the Palestine Red Crescent Society (PRCS), and B'tselem, at least 190 Palestinians were killed during Israeli military and police operations during the year. The IDF stated that the majority of Palestinians killed were armed fighters or persons engaged in planning or carrying out violence against Israeli civilian and military targets. According to the PRCS, IDF operations and clashes with Palestinians resulted in injuries to approximately 900 Palestinians.

According to a June HRW report, Israeli military investigative practices were not "impartial, thorough, or timely." The report charged that the IDF had criminally investigated less than 5 percent of the civilian deaths since the start of the second Intifada in September 2000 until November 2004, and this failure fostered a climate of impunity within the IDF. The IDF stated it conducted 130 investigations involving incidents where soldiers opened fire against regulations, and issued 28 indictments, with 7 convictions, and 1 acquittal; the remaining 20 court cases were ongoing. The other incidents were still under investigation.

The IDF conducted numerous military incursions into Palestinian population centers in response to Palestinian mortar and antitank fire from the centers. These actions often resulted in civilian casualties. Israeli forces fired tank shells, heavy machine-gun rounds, and rockets from aircraft at targets in residential and business neighborhoods where they believed Palestinian gunfire originated. Palestinians often used civilian homes to fire upon Israeli forces and booby-trapped homes and apartment buildings. In response the IDF usually raided, and often destroyed, these buildings.

On January 31, IDF gunfire killed a 10-year-old Palestinian girl and injured a second. Both girls were inside their UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) school in Rafah at the time of the incident. The IDF opened an investigation into the shooting; however, at year's end there had been no conclusion from the investigation.

In May 2004 in Rafah, two Palestinian children were shot in the head on the roof-terrace of their home while performing household chores. Amnesty International (AI) concluded that IDF snipers killed both; Israeli army officials suggested an explosive device set by Palestinians killed them. At year's end there was no information on any further official investigation.

In October 2004 IDF soldiers shot and killed Iman al-Hams, a 13-year-old Palestinian schoolgirl, as she approached an IDF outpost in the southern Gaza Strip. The girl approached the outpost carrying a bag of schoolbooks that troops suspected contained explosives. After the girl had been shot from a distance, the IDF company commander allegedly repeatedly fired his automatic weapon into her at close range. In November 2004 an IDF military court indicted the company commander for illegal use of weapons, obstructing justice, unbecoming behavior, and improper use of authority. On February 6, the military court released the company commander after a soldier who witnessed the incident recanted his testimony. Another witness stated that he could not confirm that the company commander had aimed his weapon at the girl. At year's end the family of Iman al-Hams awaited a decision from the Israeli high court on their petition for a broader investigation into the case.

In October 2004 the IDF severely damaged the Gaza City wastewater treatment plant resulting in substantial damage to parts of the plant funded by a Western aid organization. An investigation was begun into the incident; however, the IDF stated that the plant was not intentionally targeted. The Western aid organization has received no further information on the status of the investigation.

IDF soldiers reportedly fired without warning on trespassers in or near restricted areas. On April 9, IDF soldiers shot and killed three Palestinian teenagers near the border fence separating Gaza from Egypt. Palestinians said the youths were playing soccer, but the IDF charged that they were attempting to smuggle weapons. The IDF ordered an investigation; however, at year's end the investigation was not complete.

On August 24, IDF personnel raided the Tulkarm refugee camp and killed five Palestinians. The IDF initially claimed that those killed were connected to terrorist attacks in Israel. A subsequent investigation, however, revealed that three of the five killed were unarmed teenagers while the two adults, shot at close range, were unarmed, low-ranking militants. The IDF chief of staff ordered a special inquiry into the IDF raid; however, at year's end there were no results from the inquiry.

During the year according to Palestinian security and media reports, the IDF targeted for killing at least 30 Palestinians suspected of involvement in terrorism. IDF forces killed at least five bystanders in these operations—some were civilians; others were affiliated with terrorist organizations. Approximately 50 others, mostly bystanders, were injured during these operations. On September 25, the Israeli government announced resumption on a limited basis of targeted killings; it had halted such killings following the February Sharm al-Shaykh summit.

Israeli security personnel operating checkpoints killed a number of Palestinians. On July 18, the IDF opened fire in the

direction of Palestinians waiting to cross the Abu Holi checkpoint in the Gaza Strip and killed a 14-year-old Palestinian boy. The IDF opened an investigation into the incident; however, at year's end there were no results.

While protecting the construction of the separation barrier, Israeli security personnel killed a number of Palestinians. On May 4, cousins Jamal Jaber Ibrahim Assi, age 15, and Odai Mufid Mahmud Assi, age 14, were shot and killed near Bayt Liqya, west of Ramallah, during clashes between Palestinian protesters and soldiers. According to Palestinian witnesses, IDF soldiers initially fired rubber bullets and tear gas, but subsequently they fired live ammunition. The IDF ordered a Military Police investigation and suspended the deputy company commander from operational duty until the completion of the investigation. At year's end there were no conclusions from the investigation.

During the year Israeli forces delayed the movement of, and occasionally fired upon, medical personnel and ambulances.

On January 26, the IDF fired upon a PRCS ambulance that was being driven to evacuate an injured person near Qalqilya.

On February 10, the IDF denied access to a PRCS ambulance transporting a pregnant woman in the Gaza Strip from al-Mawassi enclave to a hospital in Khan Yunis. The security officials delayed access for over two hours before finally denying it.

On April 8, clashes occurred at the Qalandiya checkpoint between the IDF and Palestinian youths who were prohibited from entering Jerusalem for Friday prayers. Two Palestinians were shot.

The IDF abuse of Palestinians or their vehicles at checkpoints continued. In its 2004 report, Machsom Watch (an Israeli women's organization that monitors checkpoints in the West Bank and Jerusalem) alleged a series of abuses. On October 4, IDF soldiers manning the Huwwara checkpoint, south of Nablus, beat and kicked a Palestinian man, according to representatives from Machsom Watch. The Palestinian, who was hospitalized with a concussion and required stitches to his face, said that the beating occurred following an argument with an IDF soldier on duty at the checkpoint.

Palestinians frequently threw stones and Molotov cocktails, and on occasion fired live ammunition at Israeli security forces. Israeli security forces on various occasions responded with tear gas, rubber bullets, and live fire, including tank fire.

Israeli forces used Palestinians as "human shields" in violation of Israeli law. In 2002 the Israeli high court granted an injunction against the use of Palestinians as "shields" for Israeli forces. The IDF admitted violations of existing procedures and reiterated that IDF forces "are absolutely forbidden to use civilians of any kind as a means of 'living shield' against gunfire or attack by the Palestinian side, or as 'hostages.'" On October 6, the Israeli high court ruled that it was illegal for the IDF to use Palestinian civilians as "human shields" during arrest operations against suspected Palestinian militants. The IDF chief of staff ordered the Israeli army to implement the high court decision immediately.

Prior to the high court decision, on May 23, an Israeli television news report showed footage of an IDF soldier aiming a rifle with a teargas grenade while standing behind a 17-year-old blindfolded Palestinian in Dura village, west of Hebron. The television report claimed that the IDF used the Palestinian as a shield against rock-throwers. The IDF denied the allegation, stating that IDF personnel arrested the Palestinian for throwing rocks at soldiers and kept him under guard until transferring him to police custody.

On August 31, IDF soldiers entered the home of Mahmud Rajabi in Hebron and reportedly detained three members of the family to serve as human shields. The IDF commander of the operation reportedly said that the soldiers used the brothers to prevent rock and bomb throwing at the soldiers in the house. On September 2, the soldiers vacated the premises.

In September 2003 B'tselem and the Association for Civil Rights in Israel petitioned the high court to open military investigations into all cases where IDF soldiers killed Palestinians who had not engaged in hostilities. At year's end the high court had not ruled on the petition.

On July 27, the Knesset approved an amendment to the Civil Wrongs Law that would prohibit Palestinians residing in the occupied territories from seeking compensation for death or injury at the hands of the IDF or property damage. The amendment prohibits "a national of an enemy state or resident of a conflict zone" from bringing claims against Israel in an Israeli court. On September 1, nine Israeli and Palestinian human rights organizations petitioned the high court for a temporary injunction. The high court was scheduled to hold a hearing on March 1, 2006.

Section 2 Respect for Civil Liberties, Including: a. Freedom of Speech and Press

The PA does not have laws providing for freedom of press; however, the law permits every person the right to freedom of

thought, conscience, and expression, and the right to express opinions orally, in writing, or through any other form. However, a 1995 presidential decree included injunctions against writing anything critical of the PA or the president. Although the PA did not restrict freedom of speech or press, members of the ruling Fatah faction restricted freedoms of speech and press.

Working conditions for journalists in the West Bank and Gaza improved noticeably during the year. The democratic election of Mahmud Abbas as president of the PA in January improved press freedom and working conditions for journalists. Self-censorship and fear of being harmed or harassed by armed activists and militant groups remained the greatest challenges for journalists working in the West Bank and Gaza.

On May 15, in an apparent act of intimidation, unknown individuals spray-painted the vehicle of a Palestinian journalist in the Gaza Strip. PA police declined to investigate. In the same month, Palestinian journalists in Gaza went on strike for a week to protest PA police beating journalists.

On July 19, the Palestinian Journalists Syndicate, controlled by the Fatah movement, instructed local reporters and photographers not to cover clashes between Hamas and Fatah in the Gaza Strip and warned that any violation of its instructions would bear personal and legal consequences.

There were three Palestinian dailies and several Palestinian weekly newspapers. There also were several monthly magazines and three tabloids. The PA operated two television stations and one radio station. There were approximately 30 independently owned television stations and approximately 9 such radio stations. According to an August study published by the Palestinian Center for Public Opinion, approximately 38 percent of Palestinians in the occupied territories had access to the Internet.

The PA took steps to end incitement in Palestinian media. During the year the Palestinian Broadcasting Corporation (PBC) reduced its inflammatory material, including incitement to violence. PA Minister of Information, Nabil Sh'ath, instructed the PBC in February to eliminate images of dead bodies and other graphic footage and inflammatory videos. The PBC also no longer broadcast nationalistic songs that typically called for fighting the "Zionist enemy."

The Israeli occupation authorities limited speech. In East Jerusalem Israeli authorities prohibited display of Palestinian political symbols; displays were punishable by fines or prison, as were public expressions of anti-Israeli sentiment and of support for Islamic extremist groups. Israeli authorities censored press coverage of the Intifada and reviewed Arabic publications for security related material.

As a general rule, Israeli media covered the occupied territories, except for combat zones where the IDF temporarily restricted access. The government claimed restrictions were necessary for journalists' security.

Closures and curfews limited the ability of Palestinian journalists to do their jobs. Between June and August, the government restricted media access to settlements in Gaza and the northern West Bank that it was evacuating. Journalists complained of area closures, long waits at the Gaza border crossing, and the government's inadequate transportation provisions.

On July 4, the IDF detained an Israeli television reporter and a newspaper photographer covering IDF removal of Israeli activists from a hotel in the Gaza settlement of Gush Katif. The IDF claimed that the journalists violated a closed area order but apologized for handcuffing them.

On August 15, the PA and the Palestinian Journalists Syndicate accused the Israeli government press office of refusing to accredit Palestinian journalists before and during the disengagement from Gaza in an apparent effort to prevent local journalists from reaching settlement areas and covering events.

There were several allegations from foreign media that the IDF fired upon journalists.

On January 2, Majdi al-Arabid, a journalist working in the Gaza Strip, was shot in the stomach near Bayt Lahia while reporting on IDF operations against Palestinians suspected of firing rockets into Israel. Reportedly al-Arabid attempted to identify himself before being shot. An IDF spokesperson said that soldiers were unaware that journalists were in the area. The IDF reportedly opened an investigation; however, at year's end there was no information on the status of that investigation.

During the year Israeli gunfire injured at least one journalist during clashes between the IDF and Palestinians. IDF soldiers beat journalists on several occasions, detained others, and confiscated their press cards in Bil'in village where there were weekly protests over construction of the separation barrier.

In May 2003 James Miller, a British national, was killed by the IDF while filming a documentary in Rafah in the Gaza Strip. On April 14, after an investigation a disciplinary military court hearing acquitted an IDF officer on charges of illegal use of firearms. The IDF decided in March not to prosecute the officer on criminal charges. On April 21, the IDF announced that it had filed an appeal to reopen proceedings against the officer. At year's end there was no information regarding the status of the appeal.

In April 2003 an IDF soldier killed Nazeeh Darwaza while he was filming a wounded child during an IDF incursion in Nablus. In June 2004 Israeli government officials informed B'tselem that the military attorney general was investigating the case. At year's end there was no further information.

Rising levels of lawlessness in the Gaza Strip subjected journalists to harassment and kidnappings. On August 15, unidentified gunmen in the Gaza Strip kidnapped French journalist Muhammad Ouathi, who was covering the Israeli disengagement from Gaza. On August 22, the kidnappers released Ouathi.

On October 12, gunmen kidnapped two Western journalists as they traveled near Khan Yunis in the Gaza Strip. The armed men reportedly had sought employment with the PA security services. The kidnappers released both journalists approximately six hours later.

The PA had authority over all levels of education. During the year the PA did not interfere with education; however, the violence and restrictions on the movement of Palestinians by Israeli security forces adversely affected academic institutions. Israeli closures, curfews, and the separation barrier restricted access to Palestinian academic institutions. The separation barrier also prevented some students from taking examinations. Israeli shelling and gunfire during military operations damaged a number of schools and, in some cases, killed schoolchildren (see section 1.g.). According to the UN Children's Fund (UNICEF), 269 school buildings were damaged between 2000 and the end of the year. The PA education ministry calculated physical damage to schools and universities at more than \$10 million (46 million NIS). In some instances Israeli authorities entered campuses to arrest students.

In September Israeli authorities required thousands of Palestinian schoolchildren, who resided on the eastern side of the separation barrier around Jerusalem, to transit gated checkpoints to attend school in East Jerusalem. West Bank teachers who worked in East Jerusalem schools faced difficulties in acquiring permits to reach their classrooms; many did not receive permits until December.

In November 2004 a remote control bomb exploded in the office of Yaser al-Madhoun, a Palestinian professor at al-Azhar University in Gaza City, and killed him; another Palestinian was injured. At year's end PA police continued the investigation. b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

PA law permits public meetings, processions, and assemblies, within legal limits; however, the PA imposed some formal limits on freedom of assembly. While it required permits for rallies, demonstrations, and large cultural events, it rarely denied these permits. In Gaza police approval was required for political meetings at specific halls and for buses to transport passengers to attend such meetings. The PA prohibited calls for violence, displays of arms, and racist slogans, although it rarely enforced these provisions.

Israeli military orders banned public gatherings of 10 or more persons without a permit; however, Palestinians could ignore this order without punishment.

Israeli security forces used force against Palestinians involved in demonstrations (see section 1.c.). Israeli and Palestinian authorities disputed whether Palestinians attacked security forces during such demonstrations. In 2001 the IDF authorized gunfire to suppress rock-throwing.

Since February Palestinians and Israelis have demonstrated repeatedly in the village of Bil'in, west of Ramallah, against construction of the separation barrier. Throughout the year confrontations between the IDF and protesters resulted in numerous injuries. Soldiers beat, injured with rubber bullets, or tear gassed at least 160 protesters.

Freedom of Association

PA law allows for the freedom of association. The PA limited freedom of association somewhat; however, charitable, community, professional, and self-help organizations operated.

In 2001 Israeli officials closed Orient House, the preeminent Palestinian political institution in Jerusalem. In 2002-03, Israel closed other prominent Palestinian centers and offices in East Jerusalem. Israeli authorities claimed that these institutions operated under PA supervision in violation of signed agreements. At year's end all remained closed.

c. Freedom of Religion

Palestinian law provides for religious freedom, and the PA generally respected this right in practice; however, there was deterioration in the status of the PA's respect for religious freedom.

Islam is the official religion of the PA. Religion must be declared on identification papers, and personal status legal matters must be handled in ecclesiastical courts. The PA's Ministry of Waqf and Religious Affairs constructed and maintained mosques and paid salaries of imams. Christian clergymen and charitable organizations received limited financial support. The PA did not provide financial support to any Jewish institutions or holy sites in the occupied territories; these areas were generally under Israeli control.

The PA judiciary failed to adjudicate numerous cases of seizures of Christian-owned land in the Bethlehem area by criminal gangs. There were credible reports that PA security forces and judicial officials colluded with gang members to extort property illegally from Christians. Several attacks against Christians in Bethlehem went unaddressed by the PA, but authorities investigated attacks against Muslims in the same area.

Following Israeli disengagement from Gaza, Palestinian crowds set fire to 4 of 19 abandoned synagogues but caused little structural damage. The PA announced plans to demolish the remaining synagogues and did so by year's end.

The PA required that religion be taught in PA schools and provided separate instruction for Muslims and Christians.

Israeli authorities generally respected religious freedom and permitted all faiths to operate schools and institutions. There were reports that the Israeli government seized land belonging to several religious institutions to build its separation barrier. However, according to the Israeli government, it sought to build the barrier on public lands where possible, and where private land was used, provided opportunities for compensation.

Throughout the year Israeli authorities granted more visa requests for Christian clergy; however, problems persisted with over 30 requests outstanding. The shortage of foreign clergy impeded the functioning of Christian congregations.

Internal and external closures prevented tens of thousands of Palestinians from reaching places of worship in Jerusalem and the West Bank, particularly during religious holidays. Citing security reasons the Israeli government frequently prevented nearly all West Bank Palestinians and most male Muslim worshippers with Jerusalem blue identification cards under the age of 45 from attending Friday prayers inside the Haram al-Sharif/Temple Mount, the third holiest site in Islam. Israeli authorities restricted most West Bank residents and virtually all Gaza residents from entering Jerusalem during Ramadan, the Muslim holy month of prayer and fasting.

Israeli police continued to escort tourists to the Haram al-Sharif/Temple Mount to assert the right of non-Muslims to visit the shrine. Non-Muslims were not permitted to worship publicly at the shrine; however, Waqf officials accused Israeli police of permitting Jewish groups to worship.

Societal Abuses and Discrimination

Palestinian media frequently published and broadcast material about the Israeli occupation that included anti-Semitic content. Rhetoric by Palestinian terrorist groups included expressions of anti-Semitism. Some Muslim religious leaders preached sermons on the official PA television station that included expressions of anti-Semitism. On the positive side, on October 28, Israeli media quoted PLO Chief Negotiator Sa'eb Erekat's statement that the Iranian president's declaration that Israel should be wiped off the map was "unacceptable."

On May 13, Ibrahim Mdaires, an imam in Gaza, accused Jews of inflating the dimensions of the Holocaust. On May 19, media quoted PA Minister of Information Nabil Sh'ath as calling for Mdaires' suspension from the PA religious affairs ministry and Muslim Waqf (religious trust), which employed Mdaires, and banned him from delivering Friday sermons. At year's end Mdaires was not delivering Friday sermons.

The PA Ministry of Education and Higher Education (MOEHE) continued to revise its primary and secondary school textbooks. International academics concluded that Palestinian textbooks did not cross the line into incitement; however, critics noted the new textbooks did not recognize Israel on its maps and often ignored historical Jewish connections to

Israel and Jerusalem. For more detailed discussion, see the *2005 International Religious Freedom Report*.

d. Freedom of Movement Within the Occupied Territories, Foreign Travel, Emigration, and Repatriation

The PA generally did not restrict freedom of movement. The Israeli occupation authorities often restricted the daily movement of Palestinians and frequently heightened these restrictions citing military necessity.

The Israeli government continued construction of a security barrier along parts of the Green Line (the 1949 Armistice line) and in the West Bank. Palestinians filed a number of cases with the Israeli Supreme Court challenging the routing of the barrier. In June 2004 the court ruled that a section of the barrier must be rerouted; determining that the injury caused by the routing of the barrier did not stand in proper proportion to the security benefits; various portions of the barrier route were rerouted. In July 2004 the International Court of Justice issued an advisory opinion, concluding that the construction of the barrier was in a number of aspects contrary to international law.

In September the Israeli Supreme Court reaffirmed its earlier decision that the separation barrier is permissible under both international law and Israeli law; however, it questioned whether the segment of the barrier at issue utilized the least intrusive route available, and it asked the government to consider whether there was an alternative route. The court further found that in September there were 43 remaining petitions regarding other portions of the wall that now would be decided by the court.

At the end of the year, the route of the barrier divided approximately 142,641 acres with a population of 49,400 Palestinians from the rest of the West Bank. According to OCHA the barrier impeded Palestinians from reaching their land to harvest crops and graze animals. Residents' access to schools, medical care, and other services was also impeded. In October 2003 Israeli military orders required the approximately five thousand Palestinians residing in "seam zones" between the separation barrier and the Green Line to obtain residency permits to remain in these areas. Permits are valid for up to a year for residents and only for one gate.

Areas near the barrier or its projected route have been designated as military zones; Palestinians had no expectation they could obtain permits to build near Israeli communities or the barrier.

During periods of unrest (in the aftermath of terrorist attacks or during military exercises), Israeli authorities prohibited travel between some or all towns within the territories. Such "internal closures" were supplemented, during periods of potential unrest and during major Israeli and Muslim holidays, by "comprehensive, external closures," which precluded Palestinians from leaving the territories. During the year there were no extended blanket closures, although several Gaza crossing points were simultaneously closed for extended periods, completely closing off Gaza. During most of the year, Israeli authorities prohibited passage between Gaza and the West Bank. At year's end bus convoys outlined in the November 15 Agreement on Movement and Access had not begun. On September 7, Israeli authorities closed the Rafah terminal. Following the disengagement from Gaza, the PA and Egypt periodically opened the terminal to pedestrian traffic. On November 25, the Rafah terminal reopened, marking the first time the PA independently operated an international border crossing, although under European Union monitoring. At year's end as a general rule, only Palestinian identification holders could transit this crossing.

On December 28, Israeli authorities, in response to Qassam rocket fire, implemented a "buffer zone" in the northern Gaza Strip encompassing former Israeli settlements. Palestinian militants had used the area to fire rockets at Israeli communities.

Since 1993 Palestinians could enter East Jerusalem only with a travel permit issued by Israeli authorities. Israel also imposed curfews in some areas, which confined Palestinians to their homes in areas where the IDF conducted military operations. Following the June 12 suicide bombing in Netanya, the IDF imposed a curfew on Tulkarm lasting over three days. On June 20, the IDF imposed a curfew on Baqa al-Sharqiyah, near Tulkarm, for one and a half days following the killing of an Israeli civilian (see section 1.a.). In December 2004 a terrorist attack extensively damaged the Rafah terminal and killed five Israeli soldiers. The IDF closed the terminal until February 1.

The PA issued passports for Palestinians in the West Bank and Gaza. Because there are no commercial flights from the territories, travelers must depart by land into Jordan or Egypt. Transit passes for travelers using Ben Gurion airport were not available, except for a few humanitarian cases. NGOs claimed that Israeli authorities harassed their representatives who were attempting to enter via Ben Gurion airport.

Palestinians with Jerusalem identification cards issued by the Israeli government needed special documents to travel abroad. Upon request the Jordanian government issued passports to Palestinians in the West Bank and East Jerusalem. Palestinians in East Jerusalem who wish to travel to Jordan must leave their Israeli identification documents with Israeli

authorities at the Allenby Bridge. Travelers could obtain applications for bridge-crossing permits to Jordan at East Jerusalem post offices. Screening was conducted at Allenby Bridge.

External and internal closures contributed to increased unemployment and poverty. Approximately 146 thousand West Bank and Gaza workers, representing approximately 25 percent of the Palestinian work force, depended on day jobs in Israel, Israeli settlements, and Jerusalem. Closures impeded Palestinians from reaching jobs or markets in the occupied territories and disrupted internal and external trade. The unemployment rate was estimated at 28 percent at year's end. In addition Israel's strict closure policies frequently restricted the ability of Palestinians to reach places of worship.

In November 2004 the IDF arrested four Birzeit University students from Gaza who lacked permits to stay in the West Bank and returned them to Gaza. Since 2000 many of the 350 Gazans enrolled in Birzeit returned home after West Bank permits expired. During the year there were approximately 35 Gazans studying at the university, many of whom had not seen their families in 4 years.

Apart from closures, delays at checkpoints and roadblocks affected all aspects of life, particularly emergency health care. According to OCHA in the West Bank at year's end, there were 463 obstacles to movement, including 49 fully manned checkpoints, 10 occasionally manned checkpoints, 261 earth mounds blocking roads, 54 cement roadblocks, 53 road gates, 15 earthen walls, 10 trenches, and 11 road protection fences. In addition there were 65 gates along the separation barrier. Of the gates along the separation barrier, 27 were accessible to Palestinians in possession of permits, 27 were for the IDF and closed to Palestinian traffic, and 11 gates were opened only during the olive harvest season. The operating hours of the accessible gates to Palestinians were sometimes limited and irregular.

According to comments quoted in the Israeli press, on September 6, Defense Minister Mofaz instructed IDF soldiers to display "no pity" at checkpoints in the West Bank, adding that security concerns were paramount to any delays or anger of those having to pass through the checkpoints.

According to OCHA the 463 obstacles to movement in the West Bank, compared with 680 in November 2004, 605 in April, and 376 in August. The reduction since November 2004 stemmed from the removal of earth mounds and concrete roadblocks and from the completion of the separation barrier in some areas. Although ambulance response times improved as Israeli authorities issued additional permits, many problems remained, including for ambulances attempting to reach remote West Bank villages.

Villagers from Jayyus, in the West Bank, were unable to exit the village to tend fields or graze sheep. On April 8, the Israeli civil administration (Qalqilya region) notified Jayyus residents that the IDF intended to confiscate eight *dunums* (approximately three acres) of their farmland along the Palestinian side of the separation barrier to create a security road. The civil administration also reportedly told residents that the IDF would close two barrier gates that provided the only available access to their land on the barrier's western side. Palestinians said the confiscation and closures would bar them from land they own and rely on for income. At year's end only Palestinian farmers with valid permits from the civil administration could access Jayyus lands west of the barrier; during the year Israeli authorities rejected 118 applications for access permits.

On February 15, a Palestinian woman gave birth at the Qalandiya checkpoint with assistance from PRCS medical staff after the IDF prevented her husband from crossing the checkpoint in his vehicle. Israeli officials forbid Palestinian-plated vehicles from crossing at the Qalandiya checkpoint.

On April 12, a Palestinian male died in a PRCS ambulance at the Bayt Iba checkpoint after a 20-minute delay by IDF authorities. PRCS medics failed to revive the man, who was being transported to a hospital in Nablus.

On March 13, Israeli settlers from Ma'on attacked and beat Palestinian shepherds from Jawayah village grazing sheep in an agricultural area near the Ma'on settlement. The following day settlers from Ma'on shot at and attacked the Palestinian shepherds. Israeli authorities have not implemented adequate measures to protect the Palestinians from such abuses.

Palestinians residing in the Israeli-controlled section of Hebron (H2), which includes the Old Arab Market and areas adjacent to four Israeli settlements, faced extensive restrictions on movement. According to OCHA there are 101 significant obstacles to movement in H2. Access for Palestinians to the Old City was limited to six IDF-controlled gates. IDF closures of businesses, prolonged curfews, and settler harassment forced Palestinian shopkeepers to relocate. Of the 1,610 shops officially licensed in H2 before September 2000, more than a thousand closed, one-third by military order. Attendance at 3 Palestinian schools near 4 Israeli settlements in Hebron declined by almost 50 percent. These children were harassed when attempting to walk to the schools.

Israel offered Palestinian residents citizenship following its 1967 occupation of East Jerusalem. Most chose not to accept

Israeli citizenship but instead sought a residence permit, known as a Jerusalem identification card. Under the law such residents risk loss of status if their ties with Jerusalem lapse, although human rights groups reported that such revocations were infrequent and selectively enforced. In July 2004 an Israeli ministerial committee reportedly adopted an unpublished resolution calling for the application of the 1950 Absentee Property Law to East Jerusalem. On February 1, the Israeli attorney general ordered the government not to apply the Absentee Property Law to land and buildings in East Jerusalem owned by Palestinians living in the West Bank; in point of fact, the government apparently had not attempted to implement that law in East Jerusalem.

The Israeli government, under the interior ministry, and the Jerusalem municipality continued to demolish Palestinian houses and other structures in East Jerusalem constructed without building permits. It was a slow and expensive process for Palestinians to receive permits to build in East Jerusalem.

Residency restrictions affected family reunification. Israeli authorities did not permit Palestinians who were abroad during the 1967 War, or who subsequently lost residence permits, to reside permanently with their families in the occupied territories. It was difficult for foreign-born spouses and children of Palestinian residents to obtain residency. Palestinian spouses of Jerusalem residents must obtain a residency permit and reported delays of several years before being granted residency. The Israeli government occasionally issued limited-duration permits, but renewing the permits could take up to eight months, which resulted in many Palestinians falling out of status. Palestinians in East Jerusalem also reported extensive delays in registering newborn children with Israeli authorities.

Neither the Israeli government nor the PA used forced exile or forcibly deported anyone from the occupied territories during the year.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government Elections and Political Participation

Following the November 2004 death of PA Chairman Yasir Arafat, Palestinians elected Mahmud Abbas as PA president on January 9. Seven candidates competed in a vigorous election campaign. The Israeli government and the PA followed the 1996 parameters for Palestinians residing in East Jerusalem to vote, but inadequate arrangements kept turnout in Jerusalem low.

In December 2004 the PA held municipal elections in 26 West Bank localities for the first time since 1976. The PA held additional municipal elections in Gaza on January 27; a second round of elections on May 5 in Gaza and the West Bank; a third round on September 29 in the West Bank; and a fourth round on December 15 in the West Bank. Domestic and international election observers found these elections met democratic standards, while noting several technical and procedural problems. The PA had yet to schedule additional rounds of municipal elections in the remaining West Bank and Gaza municipalities.

The 88-member PLC and Chairman of the Executive Authority were elected in 1996 in a process that international observers concluded generally met democratic standards, despite some irregularities. The PLC rescheduled legislative council elections from July to January 25, 2006.

On November 28, violence and reported fraud disrupted voting in primary elections to determine Fatah candidates for the January 25, 2006, legislative council elections; primary elections were suspended in Gaza and the West Bank. Efforts to organize the electoral system, candidate and party lists, and campaign rules continued through year's end.

In September 2004 the Palestinian cabinet adopted a one-year reform action plan, approved by the PLC to create a more equal balance of power between the executive and the PLC and to introduce greater accountability and transparency in its governance. The March 1 Quartet-sponsored London meeting provided additional support to the PA's efforts to reform government transparency and improve the economy. During the year the PA made little progress.

While Palestinians with residency permits were eligible to vote in Jerusalem municipal elections, most did not recognize Israeli jurisdiction in Jerusalem and did not participate. There were no Palestinians on the Jerusalem City Council.

During the year there were 5 women on the 88-member PLC, and 2 women served in ministerial-level positions. There were six Palestinian Christians in the PLC.

Israeli authorities restricted Palestinian political activity, especially in East Jerusalem where several candidates in the January PA presidential elections were detained after attempting to campaign without a permit.

Government Corruption and Transparency

There was a widespread public perception of PA corruption, notably within the security forces. Many social and political elements called for reform. The PA security forces made little progress in rationalizing the security forces payroll and rooting out corruption in the services. On September 18, Abbas appointed a new attorney general to focus on corruption. Local NGOs praised the appointment and hoped he would effectively address PA corruption. At year's end the attorney general had announced investigations into several corruption cases. PA members and the general Palestinian public widely criticized the growing lawlessness inside the West Bank and Gaza and the failure by PA security forces to provide security.

The law requires official PA institutions to "facilitate" acquisition of requested documents or information to any Palestinian; however, the law does not require any PA agency to provide such information. Many Palestinians cited the law when seeking to acquire information; however, there were no PA court cases. NGOs sought to make it mandatory to provide information to Palestinians; however, there was no action during the year.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

Local Palestinian human rights groups and several international organizations monitored the PA's human rights practices. By the end of the year, approximately 305 NGOs were registered; another 45 remained in processing.

PA officials usually met NGO representatives. Since the beginning of the Intifada, public NGO criticism was somewhat less forthcoming; several NGOs voluntarily decided to defer criticism of the PA's human rights performance. Observers noted documentation of abuses was very limited. NGOs, however, criticized the PA's inadequate security performance.

In March 2004 in Gaza City, unknown assailants shot and killed Khalil al-Zaban, a journalist and advisor to then PA president Arafat on human rights and the media. Al-Zaban headed the PA's government-appointed NGO Council and published its monthly newsletter. He criticized both Islamic militancy and those critical of the PA, particularly on human rights. At year's end the killers and their motives remained unidentified.

Some PA security organizations, including the General Intelligence Service in the West Bank and the police, appointed officials as liaisons with human rights groups. These officers met human rights organizations and diplomats to discuss human rights cases.

Israeli, Palestinian, and international humanitarian and human rights NGOs monitored the Israeli government's practices in the occupied territories. The Israeli government permitted human rights groups to publish and hold press conferences and provided the ICRC and other groups with access to detainees (see section 1.c.). Some organizations criticized Israeli government practices and cooperation. During the year Israel established direct contact with NGOs and human rights groups. Human rights groups, however, continued to report that Israeli closures impeded and, at times, completely prevented their work.

In October 2004 members of the Christian Peacemakers Teams, AI, and an Italian NGO ("Operation Dove") escorted Palestinian children from the village of Tuwani to a nearby school. While walking past the settlement of Ma'on, masked settlers attacked the escorts with baseball bats, seriously injuring a volunteer. At year's end the assailants had not been identified or apprehended.

In January 2004 Thomas Hurndall, a British International Solidarity Movement (ISM) activist, died from injuries sustained in 2003 when an IDF soldier shot him as he attempted to move Palestinian children to safety during clashes in Rafah. On August 11, an IDF court sentenced Sergeant Wahid Taysir, earlier convicted of manslaughter and obstruction of justice in Hurndall's killing, to eight years in prison. At year's end Taysir had begun serving his prison sentence.

On March 16, 2003, an Israeli bulldozer clearing land in Rafah in the Gaza Strip crushed and killed Rachel Corrie, 23, a US citizen peace activist. Corrie was standing in front of the bulldozer and was wearing a reflective vest. Eyewitness demonstrators stated that they believe the driver knew Corrie was in front of the bulldozer as he proceeded forward. IDF investigations concluded that the operator was not negligent. US officials who have seen the IDF report found inconsistencies among the statements of those observing the incident. Some observers continue to raise questions concerning whether the investigation was thorough, credible, and transparent, and the Corrie family continued to pursue the case. In conjunction with the report of the IDF Judge Advocate General, the IDF implemented two remedial procedures for improved safety: the presence of more senior officers to oversee such operations and the designation of closed military zones with orders forbidding the presence of civilians in areas where IDF military operations are conducted.

In April 2003 gunfire from an undetermined source struck ISM activist Brian Avery. The IDF denied responsibility for the incident. Avery was walking outside during curfew in Jenin when an IDF armored personnel carrier approached him. In

December 2004 a lawyer petitioned the Israeli high court to require military authorities to investigate Avery's shooting. According to B'tselem an IDF internal investigation concluded it was impossible to determine whose gunfire hit Avery. On February 28, the high court ordered the IDF to investigate the incident further; however, the Judge Advocate General, following the interview of civilian eyewitnesses, decided not to launch a criminal investigation. At year's end the high court had not decided whether to order the IDF to open a criminal investigation.

In 2003 Israel began requiring foreigners entering Gaza to sign a waiver providing that "the Government of the State of Israel and its organs cannot be held responsible for death, injury and/or damage/loss of property which may be incurred as a result of military activity." The requirement continued on a selective basis throughout the year.

UNRWA and other groups reported improvement in transporting goods to Palestinian refugees in the occupied territories, with some reported delays. Since October 2004 Israeli authorities have often denied UNRWA's staff access to the Barta'a area in the West Bank, due to lack of permits to enter the seam zone. UNRWA staff also reported some abuse and intimidation at the seam zone gates by IDF personnel.

UNRWA staff in the West Bank and Gaza had been harassed and staff members kidnapped by Palestinians. On May 18, three armed Palestinian gunmen entered an UNRWA clinic in the al-Fariah refugee camp in the northern West Bank, threatened an UNRWA doctor, fired shots into the air, proceeded to the UNRWA girls' school, threatened the school's principal, and demanded the school dismiss one of the teachers.

On August 8, the ICRC suspended operations in Gaza after unidentified Palestinians fired bullets at its offices in Khan Yunis. On August 16, the ICRC resumed operations after receiving PA security assurances.

For four years Israeli authorities have denied access to Gaza to Physicians for Human Rights, which offered weekly "mobile clinics" in Palestinian villages, and the group had only limited access to the West Bank.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The law states that all Palestinians are equal without discrimination because of race, gender, color, religion, political views, or disability.

Women

There was no reliable data on the incidence of violence against women. PA law does not explicitly prohibit domestic violence, but assault and battery are crimes. There were reports that Palestinian domestic violence had increased since 2000. Human rights groups reported an increase in family "honor" killings during the year.

During the year family members killed four women and injured another in so-called honor crimes, according to human rights groups. On May 2, two sisters from East Jerusalem were strangled and a third severely injured by their older brother. One sister reportedly engaged in an extramarital relationship, and the others tried to intervene to save her. On April 30, the father of a Palestinian Christian woman from Ramallah fatally bludgeoned her, reportedly in response to her relationship with a Palestinian Muslim. In September clashes erupted between Christians in Taybeh and Muslims from nearby villages after the family of a Muslim woman killed her for reportedly engaging in a relationship with a Christian man.

Rape is illegal, but its legal definition does not address spousal rape.

Women's shelters do not exist. Women generally approached village or religious leaders for assistance.

Prostitution is illegal. There was no openly practiced prostitution.

There were no special laws regarding women's rights in the workplace. Before 2000 women increasingly worked outside the home, often encountering discrimination and, occasionally, sexual harassment. Women were underrepresented in professional life, although a small group was prominent in politics, medicine, law, teaching, and NGOs.

Palestinian women endured social prejudice and repression. Education and cultural restrictions associated with marriage occasionally prevented women from completing mandatory schooling or attending college. Families often disowned Muslim and Christian women who married outside their faith. Local officials sometimes advised such women to leave their communities to prevent harassment.

For Muslims personal status law is derived from Shari'a (Islamic law). Ecclesiastical courts rule on personal status issues for Christians. Shari'a pertaining to women is part of the 1976 Jordanian Status Law, which includes inheritance and marriage laws. Women can inherit under Shari'a but not an equal share. Legally, men may take more than one wife; the practice was rare. Women may make "stipulations" in marriage contracts to protect their interests in divorce and child custody; however, only an estimated 1 percent did so. Children often stayed with the mother after divorce. Until a child reached legal maturity, men paid child support and alimony, depending on the man's income.

Children

Although MOEHE's stated commitment is to provide children access to educational facilities and ensure their welfare, it must rely on the international community for assistance to build capacity for child protection and development.

The PA provides for compulsory education through the ninth grade. The MOEHE and Central Bureau of Statistics contrasted 2004-05 basic school enrollment (89.2 percent in grades 1 to 10) with much lower enrollment at the secondary stage (10.8 percent in grades 11 and 12), concluding this indicated a significant dropout rate. Girls who married before the ninth grade left school at the behest of husbands, and in rural areas and refugee camps, boys left school to help support their families.

Internal closures, checkpoints, and the separation barrier significantly impeded students and teachers in reaching educational facilities (see sections 2.a. and 2.d.).

In areas under curfew, all classes were cancelled. In 2004 and during the year, the number and frequency of curfews declined; the majority of restrictions centered around closures. Prior to the Israeli withdrawal from Gaza in August, one thousand UNRWA teachers in the south of Gaza had to travel through checkpoints to schools in north and central Gaza. Nearly 76 percent of UNRWA's schools operated double-shifts with average classrooms of 40.5 pupils.

Education and health care professionals judged that the violence produced lack of focus, nightmares, and behavioral problems. OCHA reported during the year that 42 percent of students in Gaza recorded lower school achievement since 2000. One-third of Palestinian children have had their education disrupted.

OCHA reported that since September 2000, Palestinian universities had approximately \$4.85 million (22.3 million NIS) of infrastructure destroyed due to Intifada violence, while Palestinian schools suffered \$5.2 million (23.9 million NIS) of damage. According to the MOEHE, 4 percent (150 thousand students) of the Palestinian population pursued higher education studies at 11 universities, 5 university colleges, and 25 society colleges in the West Bank and Gaza.

According to a 2003 report by the Jerusalem Center for Social and Economic Rights, Palestinians constituted 33 percent of the city's total population, but the municipal budget accorded to East Jerusalem was only 10.9 percent. As a result East Jerusalem schools were underfunded and overcrowded, and schools refused to enroll new students due to lack of classroom space.

In 2001 the Israeli high court ordered the municipality to build 245 new classrooms within the next 4 years. Over the past 4 years, the municipality budgeted for 47 new East Jerusalem classrooms; however, none were built. Of the 161 classrooms built in East Jerusalem within the last 4 years, 148 were budgeted during the 1990s and under construction at the time of the 2001 ruling. At year's end no classrooms were under construction.

On September 11, 10 thousand East Jerusalem students stayed home after their parents called a strike to protest lack of classrooms and "intolerable" conditions. The Israeli education ministry blamed East Jerusalem residents, claiming classroom shortage resulted from residents' refusal to sell land for school construction.

In August Palestinian teachers living in the West Bank were directed to obtain permits to cross the checkpoints to reach their schools in East Jerusalem. After extended delays, by December 21, authorities issued 237 of a total of 249 requested. In the interim the MOEHE used substitute teachers and asked teachers with access to East Jerusalem to carry a double load of classes.

The PA health ministry immunized children, and PA insurance provided basic children's medical care, for a small monthly fee. The latest available figures showed a slight improvement in nutrition from 2003 when 3.4 percent of Palestinian children suffered from acute malnutrition and 10.7 percent suffered from chronic malnutrition.

Child abuse was not a widespread problem. The law does not explicitly prohibit child abuse, but sanctions parents who failed to protect children from abuse. PA courts may protect children in cases of neglect or abuse.

The law provides that no one under 14 can work. Those between 15 and 18 can be employed under limited conditions (see section 6.d.). There is no juvenile court system, but certain judges specialized in juvenile cases.

International and domestic NGOs promoted educational, medical, and cultural services for children, and other groups specialized in the needs of children with disabilities.

Palestinian terrorist groups used minors to conduct attacks, smuggle weapons, or act as human shields. On August 29, the IDF arrested a 14-year-old Palestinian at the Huwwara checkpoint, near Nablus, as he attempted to smuggle three pipe bombs.

Trafficking in Persons

Palestinian law does not specifically prohibit trafficking in persons; however, there were no reports that persons were trafficked to, from, or within the occupied territories.

Persons with Disabilities

Access to public facilities was not mandated in the occupied territories. There was discrimination against Palestinians with disabilities in most spheres, including education, employment, transportation, and access to public facilities. The Health, Development, Information, and Policy Institute estimated that 10 percent of the approximately 29 thousand Palestinians injured in the past 5 years would have permanent disabilities.

Care for Palestinians with disabilities was a problem. Some institutions cared for persons with disabilities; however, they were underfunded. Cultural stigmas and inadequate funding resulted in poor quality care. The PA depended on NGOs to care for persons with physical disabilities and offered substandard care for those with mental disabilities. In February 2004 the health ministry, with input from the World Health Organization (WHO), released a strategy for mental health services calling for increased care for mental health patients and their reintegration into the community. During the year the health ministry worked closely with WHO to formulate a five-pronged strategy to develop public mental health services in the West Bank and Gaza.

Other Societal Abuses and Discrimination

There is no legal discrimination against homosexuals, and there were no specific reports of abuse because of sexual orientation. However, cultural traditions and religion reject homosexuality, and Palestinians alleged that public and PA security officers harassed, abused, and sometimes arrested homosexuals because of their sexual orientation.

Section 6 Worker Rights

a. The Right of Association

The law permits workers to form and join unions of their choice without previous authorization. In March 2003 the International Labor Organization (ILO) funded the Department of Law at Birzeit University to lead a project to disseminate the 2001 labor law and to draft bylaws. Birzeit gathered employers and union representatives to discuss the labor law, and the group developed 28 bylaws. All the bylaws were approved by the PA during the period from 2004 to year's end and were published in the *Palestinian Gazette*.

Workers may establish unions without government authorization. The two most active union organizers are the General Union for Palestinian Workers and the Palestine General Federation of Trade Unions (PGFTU). The PGFTU is a member of the international confederation of free trade unions. Both are registered with the labor ministry.

Workers in Jerusalem may establish unions but may not join West Bank federations; however, this restriction was not enforced. Workers holding Jerusalem identity cards may belong simultaneously to West Bank unions and the General Federation of Labor (Histadrut).

Palestinians working in Israel or Jerusalem prior to 2000 were partial members of Histadrut; 1 percent of their wages was withheld. Partial membership entitled them to limited benefits. Histadrut and West Bank union officials negotiated an agreement in 1995 to transfer half of this fee to the PGFTU, which claimed it was owed \$6.5 million (29.9 million NIS). One Palestinian official, however, claimed Histadrut owed Palestinians \$2.2 million (10.1 million NIS).

The labor law provides for the right to strike. Prospective strikers must provide written warning to the other party and the ministry of labor two weeks in advance of the basis for the strike. (Strikes affecting public utilities require four weeks notice.) In practice strikers had little protection from retribution. Unions seeking to strike must accept labor ministry arbitration and are subject to disciplinary action if they reject the result.

b. The Right to Organize and Bargain Collectively

A majority of workers in the occupied territories were self-employed or unpaid family helpers. Approximately 35 percent worked for wages. UNRWA and the PA employed most such workers. The labor law stated that a mediator from the ministry should resolve conflicts. If the ministry cannot resolve a dispute, it can be referred to a special committee and, eventually, to a special court. Accordingly, in practice the right to strike remained questionable.

There were no export processing zones in the occupied territories, although the Gaza Industrial Estate previously enjoyed free trade access to foreign markets.

c. Prohibition of Forced or Compulsory Labor

The law states that work is a right, duty, and honor and that the PA will strive to provide it to any individual capable of performing it. According to a labor ministry official, the PA also interpreted this law to mean that forced and compulsory labor is prohibited. The law also states that children shall not be exploited or allowed to perform work, which might damage their safety, health, or education.

d. Prohibition of Child Labor and Minimum Age of Employment

The minimum employment age is 15, and there are special conditions for employment between 15 and 18. The law prohibits minors from working at night, hard labor, and travel beyond their domicile. However, many underage children worked in family farms and shops, as street vendors, or in small manufacturing enterprises. Representatives from the PA ministries of labor and social affairs said Palestinian children working in Israeli settlements faced security problems, exploitation, and harassment since there was no enforceable law to monitor and protect child laborers. Officials said Palestinian child workers illegally entered green-line Israel where they could be exploited.

The high secondary school dropout rate (see section 5) implied a significant level of child labor. As of September the PA had only 10 child labor inspectors for the West Bank and Gaza.

The ILO and UNICEF worked with the PA to develop its capacity to protect child rights. UNICEF representatives reported it worked to promote education in projects targeting attitudes and practices of caretakers and children. The PA has an agreement with the ILO to allow ILO's International Program for the Elimination of Child Labor (IPEC) activities in West Bank and Gaza; however, IPEC reported no activities during the year.

e. Acceptable Conditions of Work

There was no minimum wage. Prior to 2000 average wages for full-time workers provided a decent living standard; however, the living standard dropped significantly over the past five years.

The normal workweek was 45 to 48 hours, but maximum workweek laws were not effectively enforced. The PA observed religious holidays but they were not formally incorporated in labor law. Although it is not obligatory for an employer to provide Christians with Sunday off, employers are required to allow Christians to attend church on Sunday if the employee desires. In some establishments employers offered Christians the option of taking Sunday off, rather than Friday.

The PA labor ministry was responsible for safety standards, but its enforcement ability was limited. The ministry stated new factories and workplaces met international health and safety standards, but older ones did not. Palestinians who worked in Israel must contribute to the National Insurance Institute and received limited benefits.

Exhibit G

47 F.3d 1177
47 F.3d 1177, 1995 WL 66792 (C.A.9 (Cal.))
(Cite as: 47 F.3d 1177)

H

U.S. v. Singleton C.A.9 (Cal.), 1995. NOTICE: THIS IS AN UNPUBLISHED OPINION. (The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA9 Rule 36-3 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Ninth Circuit.
UNITED STATES of America, Plaintiff-Appellant,
v.
Henry E. SINGLETON, Defendant-Appellee.
No. 94-10474.

Argued and Submitted Jan. 12, 1995.
Decided Feb. 16, 1995.

Appeal from the United States District Court, for the Northern District of California, D.C. No. CR-91-00537-FMS; Fern M. Smith, District Judge, Presiding.
N.D. Cal.

AFFIRMED.

Before ALDISERT FN*, CHOY and SCHROEDER, Circuit Judges.

MEMORANDUM FN**

*1 The United States of America ("Government") appeals the district court's denial of the Government's motion, pursuant to 28 U.S.C. § 1826, for an order of civil contempt directed at Henry E. Singleton ("Singleton") for his refusal to comply with a grand jury subpoena. Having jurisdiction under 28 U.S.C. § 1291, we affirm the district court's decision.

I

On January 28, 1992, Singleton was indicted for various drug offenses including conspiracy to distribute heroin. During pretrial proceedings, Singleton, represented by Tony Serra, Esq., refused to consider any plea offer that included a United States Sentencing Guidelines § 5K1.1 provision contemplating Singleton's assistance to the Government. The Government offered various plea agreements, including one with a fifteen-year minimum period of incarceration but without a §

5K1.1 provision. Singleton rejected all Government offers, and the case proceeded to trial. All Government plea offers became void at that time.

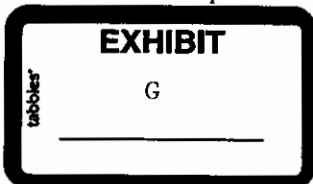
On September 14, 1992, jury selection commenced. On the same day, the Government filed an Allegation of Prior Conviction, informing Singleton that he would face enhanced penalties of a minimum mandatory of twenty-five years if convicted. The Government contends that three days later, Singleton reinitiated negotiations for a plea agreement. Singleton counters, however, that the Government reinitiated plea negotiations by dropping its demand that any plea agreement include cooperation.

The second set of plea negotiations took place in the district court's chambers, where the presiding judge had an opportunity to listen to the discussion between the prosecutor and Mr. Serra. On the basis of that conversation, the district court found that Singleton had a firm position that he was not going to cooperate with the Government in any manner.

The negotiations resulted in a written plea agreement executed on September 17, 1992. In exchange for a plea of guilty, Singleton received certain concessions from the Government, including mandatory minimums, Sentencing Guideline calculation stipulations, dismissal of remaining counts of the indictment, and the return of Singleton's residence to his family. The plea agreement does not contain any provision regarding cooperation, and paragraph 19 of the plea agreement provides:

This agreement constitutes all the terms of the plea bargain between the government and the defendant, and the government has made no other representations to the defendant or his attorney.

Singleton contends that the plea agreement does not explicitly mention cooperation because everyone understood that he had always refused any hint of cooperation. The district court found that the plea agreement itself contained no ambiguities whatsoever but identified the comments made by the two attorneys during plea negotiations as one source of confusion outside the plea agreement. On March



47 F.3d 1177
(Cite as: 47 F.3d 1177)

Page 2

24, 1993, Singleton was sentenced to fifteen years of incarceration, and the Government returned his residence to his family.

*2 On September 9, 1993, the Government issued a grand jury subpoena to Singleton. On September 20, 1993, Singleton moved to quash the subpoena on the ground that it violated the terms of the plea agreement, and the Government filed its opposition on October 1. On October 6, 1993, the district court conducted a hearing but did not make a decision at that time.

On November 19, 1993, after both Singleton and the Government filed supplemental letter briefs, the district court denied Singleton's motion to quash. Although Singleton's motion for reconsideration was denied on December 8, 1993, the district court signaled its agreement with Singleton's argument that the plea agreement precluded the Government from seeking grand jury testimony on matters arising out of the indictments. Subsequently, Singleton was called before the grand jury on January 11, 1994, where he refused to answer any of the Government's questions.

On July 28, 1994, the Government requested the district court to issue an order to show cause why Singleton should not be held in contempt, and Singleton filed his opposition on September 16, 1994. On September 23, 1994, the district court held oral arguments. The district court acknowledged that the plea agreement was clear on its face regarding cooperation but nevertheless concluded that Singleton believed that he would not be called before the grand jury. On September 27, 1994, the district court entered an order denying the Government's motion for contempt. The Government timely appeals.

II

The Government contends that the district court erred in denying its motion for an order of civil contempt because the plea agreement between the Government and Singleton does not prohibit the enforcement of a federal grand jury subpoena.

We review the district court's finding of fact regarding the terms of the plea agreement under a clearly erroneous standard. *United States v. Helmandollar*, 852 F.2d 498, 501 (9th Cir.1988).

This court "must affirm the trial court's determinations unless [this court is] left with the definite and firm conviction that a mistake has been committed." *Id.* at 501 (quoting *United States v. McConney*, 728 F.2d 1195, 1200 (9th Cir.), cert. denied, 469 U.S. 824 (1984) (quotations omitted)). The district court was required to determine "what the defendant reasonably understood to be the terms of the agreement when he pleaded guilty." *United States v. De La Fuente*, 8 F.3d 1333, 1337 (9th Cir.1993). The defendant's understanding at the time of the plea controls. *United States v. Anderson*, 970 F.2d 602, 607 (9th Cir.1992), amended, reh'g denied, 990 F.2d 1163 (9th Cir.1993). A claim that the Government breached the terms of the plea agreement, which is a question of law, is subject to de novo review. *United States v. Fisch*, 863 F.2d 690, 690 (9th Cir.1988).

The plea agreement between Singleton and the Government is clear on its face and does not contain any provision indicating that the Government agreed to forego its grand jury subpoena power or that Singleton reserved some affirmative right to refuse to cooperate. Parol evidence exists, however, to suggest that Singleton agreed to the plea agreement only because he believed that the plea agreement included an affirmative right to refuse to cooperate with the Government. The Fourth Circuit, in *United States v. Garcia*, 956 F.2d 41 (4th Cir.1992), barred the Government from compelling testimony on the basis of parol evidence even though the plea agreement was unambiguous on its face.

*3 In *Garcia*, the Government sent a letter to the defendant's counsel memorializing an oral agreement. The letter stated that, "In return for this guilty plea to Count One of the Indictment, the Government will (a) not require as part of the plea agreement that the defendant cooperate with law enforcement,...." *Id.* at 42. Although the plea agreement did not contain any provision stating that the defendant was not required to cooperate, the Fourth Circuit admitted the parol evidence and found that the Government could not compel testimony.

In this case, parol evidence comes not from a letter written by the Government, but from the district court's own observation of the plea negotiations. The district court made a finding of fact as to Singleton's objective belief regarding the terms of

47 F.3d 1177
(Cite as: 47 F.3d 1177)

Page 3

the plea agreement. On the basis of its own observations of the discussion between Mr. Serra and the prosecutor during plea negotiations, the district court concluded that Singleton's agreement to plead guilty was influenced by his understanding that he would not be required to cooperate with the Government. The district court recognized that Singleton had a firm position on his refusal to cooperate.

The district court could not remember specific statements which led to this impression, but stated that after observing the negotiations, it had a firm impression that Singleton was not going to cooperate with the Government. While such impressions are difficult to evaluate for clear error, difficulty of review does not mandate the conclusion that the impression was clearly erroneous. Furthermore, in this case, outside factors support the district court's impression that Singleton could have reasonably believed the terms of his plea agreement to include immunity from grand jury subpoenas.

Given the fact that the § 5K1.1 provision was included in previous discussions where various cooperation agreements were contemplated, it is not unreasonable for Singleton to have believed that an absence of a § 5K1.1 provision indicated that he would not be required to cooperate with the Government. The Government erroneously asserts that previous plea discussions should be entirely ignored when interpreting the plea agreement that was finally signed. While it is true that previous plea offers were no longer available, prior discussions had an obvious effect on Singleton's understanding of the terms of the signed plea agreement.

Singleton has testified that he understood cooperation to include revealing and testifying against coparticipants in his offenses. Singleton's understanding of "cooperation" to include compelled testimony is plausible as the *Garcia* court found. The Fourth Circuit in *Garcia* rejected the argument that "cooperation" means only voluntary cooperation and not compelled testimony and found that the term "cooperate" is ambiguous in the context of a plea agreement:

In short, there is no general rule that, as a matter of law, "cooperate" in a plea agreement means only "voluntary" cooperation. The government knows the word "voluntary," and could have avoided any

ambiguity by using it....

*4 *Garcia*, 956 F.2d at 45.

The Government tries to distinguish *Garcia* by emphasizing *Garcia*'s lack of English fluency. The structure of the *Garcia* opinion, however, indicates that the Fourth Circuit first concluded that the term "cooperate" in a plea agreement does not necessarily mean only "voluntary" cooperation. The court then used the defendant's lack of English fluency as an additional support for its conclusion.

Singleton's belief regarding cooperation was further buttressed by the fact that he pled guilty in exchange for a fifteen-year sentence. In earlier plea negotiations, he was informed that he would not be allowed less than a fifteen-year sentence without an agreement to cooperate. The district court's finding of fact that Singleton reasonably understood one of the terms of the plea agreement to be that he would not have to cooperate, voluntarily or involuntarily, with the Government is not clearly erroneous.

The Government warns that acceptance of the district court's holding would result in a *per se* prohibition against issuing grand jury subpoenas to any defendant who declines to voluntarily cooperate with a federal criminal investigation. Such a prohibition can be avoided if the Government clearly discloses at the outset of plea negotiations that refusal to cooperate with the Government does not guarantee immunity from grand jury subpoenas. Furthermore, the Government should disclose that if the defendant refuses to answer a grand jury subpoena, he may be found in contempt and may have to serve a longer sentence than bargained for in the plea agreement. Such clarification will assist the defendant in making a more accurate decision and can lead to a stable plea agreement that reflects the understanding of both parties.

If the Government were allowed to issue the grand jury subpoena to Singleton and hold him in contempt for refusing to testify, Singleton would not get the full benefit of the bargain. There is no question that Singleton received a favorable plea agreement and that his is not a case where the Government is offering nothing in exchange for something. However, if Singleton were compelled to testify, he would be denied a benefit that was an important basis for his decision to accept the plea

47 F.3d 1177
(Cite as: 47 F.3d 1177)

Page 4

agreement and without which he may have gone to trial.

III

We find that the terms of Singleton's plea agreement, as supplemented by parol evidence, restrict the Government from compelling Singleton's testimony. Therefore, Singleton cannot be held in contempt for his refusal to comply with the grand jury subpoena. We AFFIRM the district court's order denying the Government's motion for an order of civil contempt against Singleton.

AFFIRMED.

FN* The Honorable Ruggero J. Aldisert, Senior United States Circuit Judge for the Third Circuit, sitting by designation.

FN** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

C.A.9 (Cal.), 1995.

U.S. v. Singleton

47 F.3d 1177, 1995 WL 66792 (C.A.9 (Cal.))

END OF DOCUMENT

Exhibit F

representatives of the U.S. Attorney's Office expressed their confidence that Dr. Al-Arian would be sentenced to the low end of the Guidelines and they calculated he would complete his term of incarceration by June 1, 2006 and be deported from the U.S. shortly thereafter.

5. On or about September 12, 2006, I had a discussion with AUSA Gordon Kromberg, who informed me he had obtained an immunity order for Dr. Al-Arian and intended to writ Dr. Al-Arian to the Eastern District of Virginia to testify before a federal grand jury. He also offered to meet informally with Dr. Al-Arian and defense counsel to discuss the subject matter of the grand jury's investigation. AUSA Kromberg told me that, before Dr. Al-Arian's arrest, Dr. Al-Arian had asked AUSA Kromberg to listen to Dr. Al-Arian's side, and that now AUSA Kromberg was giving Dr. Al-Arian his chance. AUSA Kromberg also told me he wished to inquire about IIIT financing and Dr. Al-Arian's role in the same. AUSA Kromberg also told me he felt Dr. Al-Arian's sentence had been "a bonanza" for Dr. Al-Arian in that it was far lower than the sentence he deserved. I commented to AUSA Kromberg that I feared Dr. Al-Arian was being called before the grand jury as a perjury or contempt trap. AUSA Kromberg denied that this was the reason for issuing the writ.
6. On or about September 18, 2006, AUSA Kromberg called to inform me he was going to writ Dr. Al-Arian to Virginia to testify before the grand jury empanelled there. AUSA Kromberg added that it would probably take ten (10) business days to effectuate Dr. Al-Arian's transfer. He further stated that he intended to call Dr. Al-Arian to testify in mid-October. AUSA Kromberg also confirmed that he had access to and reviewed the FISA wiretaps pertaining to Dr. Al-Arian's case.

7. That same day, after consulting with Dr. Al-Arian, and at his request, I asked AUSA Kromberg whether he would consider delaying Dr. Al-Arian's travel until after the end of Ramadan. In response to my client's request, AUSA Kromberg became agitated and responded that "they can kill each other during Ramadan, they can appear before the grand jury; all they can't do is eat before sunset." I understood "they" to mean Muslims. AUSA Kromberg went on to explain Dr. Al-Arian's request was "all part of the attempted Islamization of the American Justice System." AUSA Kromberg further told me he was not going to put off Dr. Al-Arian's grand jury appearance just to assist in the Islamization of America. I terminated the discussion at that point and contacted the Office of the U.S. Attorney for the Middle District of Florida to express my concern with AUSA Kromberg's motivation and apparent bias against Muslims.
8. Later that day, on September 18, I called back AUSA Kromberg to express to him my belief that comments such as the kind made earlier in the day called into question his ability to conduct an objective investigation of Dr. Al-Arian or his former associates and acquaintances.
9. On September 20, 2006, I called AUSA Kromberg to reiterate my feeling that, given his sentiment about the Islamic faith and its adherents, as well as his feeling that Dr. Al-Arian had received a bonanza at sentencing, I had serious concerns with his ability to be objective in this matter, and asked AUSA Kromberg to recuse himself. I made this call on speakerphone in the presence of Zuckerman Spaeder attorney Lee Fugate, and Dr. Al-Arian's former attorney Linda Moreno, and informed AUSA Kromberg of the presence of witnesses. AUSA Kromberg responded harshly, "We can do this the hard way or the easy way." I responded that in view of his sentiments he expressed to me, I believed Dr. Al-Arian was

being compelled to testify before the grand jury as either a perjury or contempt trap, especially in light of the fact I had confirmed with AUSA Krigsman that AUSA Kromberg had access to all of the FISA electronic surveillance of Dr. Al-Arian throughout the period in question. In support of this conclusion, I further noted that Dr. Al-Arian has been incarcerated since his encounter with AUSA Kromberg.

In conformity with 28 U.S.C. § 1746, I, Jack E. Fernandez, Esq., declare under penalty of perjury that the foregoing is true and correct. Executed on October 25, 2006.

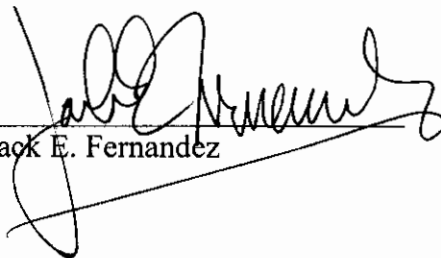

Jack E. Fernandez

Exhibit E

DOC. 1561

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:03-CR-77-T-30TBM

UNITED STATES OF AMERICA

-vs-

14 April 2006

SAMI AMIN AL-ARIAN,

1:10 p.m.

Defendant.

TRANSCRIPT OF PROCEEDINGS
(CHANGE OF PLEA HEARING)
BEFORE THE HONORABLE THOMAS B. MCCOUN, III,
UNITED STATES DISTRICT COURT MAGISTRATE

APPEARANCES:

For the Government:

WALTER FURR, ESQUIRE
TERRY ZITEK, ESQUIRE
CHERIE KRIGSMAN, ESQUIRE
United States Attorney's Office
400 North Tampa Street
Suite 3200
Tampa, Florida 33602

For the Defendant
Sami Al-Arian:

LINDA MORENO, ESQUIRE
Linda Moreno, P.A.
Post Office Box 10985
Tampa, Florida 33679

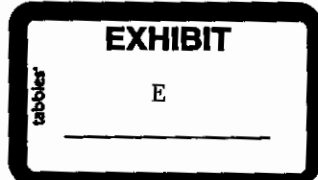
JACK FERNANDEZ, ESQUIRE
SIMON ALEXANDER GAUGUSH, ESQUIRE
DELMAR LEE FUGATE, ESQUIRE
Zuckerman, Spaeder
101 East Kennedy Boulevard,
Suite 1200
Tampa, Florida 33602

ALSO PRESENT:

SAMI AMIN AL-ARIAN (Defendant)
SONYA COHN (Courtroom Deputy
Clerk)

(appearances continued on next page)
STENOGRAPHICALLY REPORTED
COMPUTER-AIDED TRANSCRIPTION

Sherrill L. Jackson, RPR
Official Court Reporter, U.S. District Court
Middle District of Florida, Tampa Division



REPORTED BY:

SHERRILL LYNN JACKSON, RPR
Official Court Reporter
801 North Florida Avenue
Suite 13A
Tampa, Florida 33602
Phone: (813) 301-5041

I N D E X

	<u>Page</u>
CERTIFICATE OF REPORTER.....	48

E X H I B I T S

(None marked or received)

Sherrill L. Jackson, RPR
Official Court Reporter, U.S. District Court
Middle District of Florida, Tampa Division

1 and we'll work through those; and if at any time you need to
2 talk to either Miss Moreno or Mr. Fernandez, please indicate
3 that as well.

4 I want you to begin by looking at page 3. On this
5 page, there begins certain concessions that your lawyers
6 have negotiated with the Government in this matter. So, at
7 Paragraph 5, the Government has agreed with your counsel
8 that at the time of sentencing all the remaining counts
9 against you will be dismissed pursuant to Rule 11.

10 Now, in the next paragraph, Paragraph 6 there,
11 there is an agreement that the United States Attorney's
12 Office for the Middle District of Florida and the
13 Counter-Terrorism Section of the United States Department of
14 Justice agree not to charge you with committing any other
15 federal crimes or offenses about which they have knowledge.
16 As I understand it, the Government needs to speak to this
17 provision a little bit.

18 MS. KRIGSMAN: Yes, Your Honor. I have been
19 authorized by the Deputy Assistant Attorney General of the
20 Criminal Division to further bind the Eastern District of
21 Virginia such that if the Court accepts the plea agreement,
22 the United States Attorney's Office for the Eastern District
23 of Virginia likewise will not charge the Defendant with
24 committing any other federal crimes known to that
25 United States Attorney's Office at the time of the agreement

1 related to the conduct giving rise to the agreement.

2 THE COURT: Okay. At the bottom of page 3,
3 there's another concession -- a significant concession that
4 has been made. The parties, your counsel, and counsel for
5 the Government have agreed that the appropriate disposition
6 in this case as it relates to sentence will fall within a
7 guideline range of 46 to 57 months; and this is arrived at
8 by a guidelines calculation which results in a digested
9 level of -- Level 23 and a criminal history of 1.

10 Now, the plea agreement suggests that the Court
11 may accept or reject this aspect of the agreement or defer a
12 decision. However, an order has been entered by Judge Moody
13 as of yesterday in which he has indicated that he accepts
14 the guidelines calculation made -- agreed to by the parties
15 and as calculated by Probation. So, in this case, this is
16 an example of -- of something that the Court has agreed to
17 ahead of time, and you are assured that your sentence will
18 fall within this range; and should something happen that it
19 does not, you'll be permitted to withdraw the plea.

20 If you go to the bottom of page 4, there is the
21 next concession that has been negotiated by your lawyers.
22 At this section -- excuse me. In this section, it is agreed
23 by the United States that they will make no recommendation
24 as to the imposition or amount of any fine in this case. As
25 I indicated to you and as I'll talk more about in a minute,

1 to the Court's attention and highlight the deportation
2 issue.

3 We have been in conversation with the Government
4 quite materially about their efforts to expedite
5 Dr. Al-Arian's deportation. We are mindful of the other
6 example of the Co-Defendant in this matter and the problems
7 that have occurred there. We believe the Government has
8 exercised a lot of good faith and told us that they would do
9 everything they can to assist us in expediting this and, in
10 fact, has shared information with Mr. Fernandez and
11 Mr. Fugate about the deportation.

12 So, I just want to make it clear to the Court that
13 inducement in this particular agreement was the expedited
14 deportation and the assistance of the United States
15 Government in helping facilitate that as soon as possible.

16 THE COURT: Okay. Well, I think we've spoken
17 briefly to that issue earlier; but let me say this: As I
18 read the plea agreement, there's no guarantee of an
19 expedited deportation; but what the Government has assured
20 you is that they will make their best effort to try to
21 induce ICE to expedite the proceedings.

22 Is that correct, for the Government?

23 MR. ZITEK: That's correct. What Miss Moreno is
24 referring to is that process has already started, you know.
25 So, we're talking about actually trying to implement that

CERTIFICATE OR REPORTER

I, SHERRILL LYNN JACKSON, Official Court Reporter
for the United States District Court, Middle District of
Florida, Tampa Division,

DO HEREBY CERTIFY, that I was authorized to and
did, through use of Computer-Aided Transcription, report in
shorthand the proceedings and evidence in the above-styled
cause, as stated in the caption hereto, and that the
foregoing pages numbered 1 to 48, inclusive, constitute a
true and correct transcription of my shorthand report of
said proceedings and evidence.

IN WITNESS WHEREOF I have hereunto set my hand
this 17th day of April, 2006.

SHERRILL LYNN JACKSON, RPR
Official Court Reporter

Exhibit D

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 8:03-cr-77-T-30TBM

SAMI AMIN AL-ARIAN,

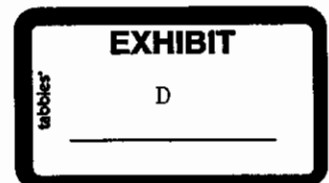
Defendant.

_____ /

DECLARATION OF LINDA MORENO, ESQ.

I, Linda Moreno, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney duly licensed to practice in the state of Florida, and I was co-counsel with William Moffitt, Esq., for Dr. Sami Al-Arian in the above-entitled case.
2. Soon after Dr. Al-Arian's acquittals, Mr. Moffitt and I engaged in plea negotiations with the United States Attorney for the Middle District of Florida and the Department of Justice's Counterterrorism Division in Washington, D.C.
3. On January 4, 2006, I, along with Mr. Moffitt, met in Washington, D.C. at the Department of Justice with Alice Fisher, the head of the Criminal Division for the Office of Attorney General. Among others in attendance was Paul Perez, United States Attorney for the Middle District of Florida.



4. From the outset of negotiations with all parties involved, we conveyed Dr. Al-Arian's position of *non-cooperation* with the government. The government never rejected the defense's stance on this issue and it never asserted that Dr. Al-Arian could be forced to cooperate under the plea agreement or would be expected to do so voluntarily. The government knew Dr. Al-Arian would never enter a plea agreement where he would be expected to cooperate or forced to cooperate with the government, therefore, this issue was a non-starter. Accordingly, no cooperation provision was entertained by the parties or included in any draft of the plea agreement—though I believe cooperation paragraphs are standard provisions in the plea agreements used by the U.S. Attorney's Office for the Middle District of Florida. After plea negotiations commenced, and the non-cooperation element had been established, the subject of Dr. Al-Arian's cooperation was completely taken off the table and not revisited.
5. All throughout our negotiations, we also made it very clear that we were only discussing a plea bargain if it *terminated all business between Dr. Al-Arian and the Department of Justice*. The government never contested this as being the overarching purpose of the plea agreement.
6. Once plea negotiations commenced, we made clear to the government that we wanted to bind all prosecuting authorities in the U.S. federal government—essentially the U.S. as a sovereign power—to the plea agreement. We referred to this as a “global plea.”

7. On February 7, 2006, I had a conversation, among many, with Assistant United States Attorney Cherie Krigsman on various issues to be negotiated, including the “global aspect of the plea agreement” as we proposed. She indicated that her office understood our position and believed it to be “reasonable,” but she wanted to insert more “appropriate language” than our version. At that time, Ms. Krigsman indicated she did not know of anyone else, in any other jurisdiction, “who is interested in Sami.” In my tenure of working with Ms. Krigsman throughout this trial, her unassailable integrity assured me that this would not be a problem for us.
8. Ultimately, the government took the position that it was not inclined to change the “boilerplate language” of the standard plea agreement used by the U.S. Attorney’s Office for the Middle District of Florida. While the specific language we suggested regarding the global plea did not survive the numerous revisions of the plea agreement—in that the government did not want to bind the U.S. government as an entire entity to the agreement—the government finally agreed to add the Eastern District of Virginia to the parties bound by the plea agreement.
9. In Ms. Krigsman’s recorded recitation at the plea colloquy on April 14, 2006, she informed the Court that she had the “specific authority to bind the Eastern District of Virginia” to the plea agreement. This oral amendment was given in turn for our abandonment of the original language regarding the “global plea.”

10. The clear intention of both the defense and the government was an expedited deportation of Dr. Al-Arian, thus we stipulated to deportation.
11. The government agreed to recommend to the sentencing Judge the low end of the Guidelines. As originally contemplated, this would have essentially resulted in a sentence of time served.¹ It was explicitly discussed and agreed between the defense and the government that the usual 85% formula applied to a sentence would calculate Dr. Al-Arian's sentence out to 39.1 months; Dr. Al-Arian had served nearly 39 months at the time of his sentence on May 1, 2006. It was my expectation that Dr. Al-Arian would be sentenced to the low end of the Guidelines. I believe this expectation was shared by the government as well.
12. As a result of the sentence calculations, it was expected that immediately upon his release from incarceration, Dr. Al-Arian would be deported. In fact, the government explicitly and on the record, indicated its assistance in expediting Dr. Al-Arian's deportation.
13. This position necessarily negated any contemplation of cooperation by Dr. Al-Arian in another jurisdiction, most particularly in the Eastern District of Virginia, which was specifically bound by the plea agreement.
14. Sometime in May 2006, Ms. Kringsman called to inform me that Assistant United States Attorney Gordon Kromberg, of the Eastern

¹ At the time of the plea negotiations, Dr. Al-Arian had served 39 months in prison. The low end of the Guidelines sentence as agreed was 46 months, with the top level of 57 months.

District of Virginia, was going to subpoena Dr. Al-Arian to testify before a federal grand jury.

15. I conveyed to Ms. Krigsman my profound disappointment in what I believed to be a violation of the plea agreement. Notwithstanding this unexpected news, I did not believe Ms. Krigsman either knew of AUSA Kromberg's intent to compel Dr. Al-Arian to testify before the grand jury in Virginia at the time of our plea negotiations or deceived the defense regarding the non-cooperation aspect of the parties' plea agreement.

16. I further expressed my belief that Dr. Al-Arian was being called before the grand jury as a perjury or contempt trap. Ms. Krigsman denied this as being the purpose of the grand jury proceeding in Virginia.

In conformity with 28 U.S.C. § 1746, I, Linda Moreno, Esq., declare under penalty of perjury that the foregoing is true and correct. Executed on October 25, 2006.

/s/ Linda Moreno²

Linda Moreno

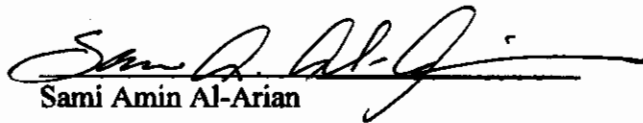
² My declaration with the original signature will be forwarded forthwith to the Court.

Exhibit C

government to provide cooperation in any fashion and this was a key motivation in my execution of the plea agreement.

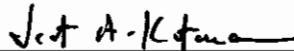
8. During the plea colloquy on April 14, 2006, the government orally amended the plea agreement to bind the U.S. Attorney's Office for the Eastern District of Virginia to the plea agreement. It was my understanding, at the time the government orally amended the plea agreement, that the U.S. Attorney's Office for the Eastern District of Virginia was added to the parties bound by the agreement to prevent that office from bringing charges against me, holding me as a material witness, or calling me to testify before the grand jury investigating IIII.

In conformity with 28 U.S.C. § 1746, I, Sami Amin Al-Arian, declare under penalty of perjury that the foregoing is true and correct. Executed on October 25th 2006.


Sami Amin Al-Arian

County of Richmond
State of Virginia

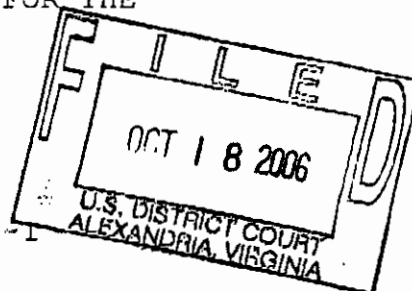
Sworn and Subscribed to before me this 25th day of October, 2006.


Notary Public

My Commission Expires: 11/30/06

Exhibit B

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



UNITED STATES,)
)
)
v.) GRAND JURY 06-1
) UNDER SEAL
)
)
JOHN DOE A01-246 (T-112).)
)

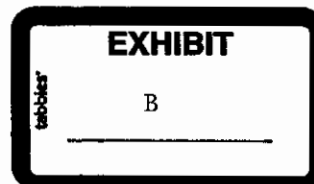
ORDER

THIS MATTER is before the Court on Witness Dr. Sami Amin Al-Arian's ("Al-Arian") Motion to Quash the Grand Jury Subpoena. For the reasons stated in court, it is hereby

ORDERED that Witness is DIRECTED to file his Motion to Enforce His Plea Agreement in the United States District Court for the Middle District of Florida no later than October 26, 2006. It is further

ORDERED that the United States is DIRECTED to file its Opposition, if any, to Witness' Motion to Enforce His Plea Agreement no later than November 2, 2006. It is further

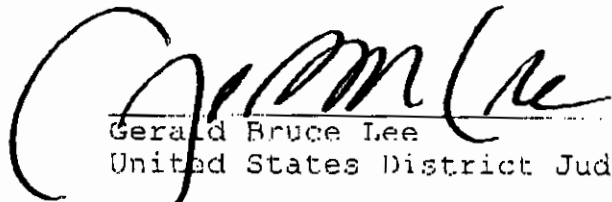
ORDERED that in the event that the United States District Court for the Middle District of Florida is unable to rule on the Witness' Motion Prior to November 6, 2006, the United States and the Witness are DIRECTED to appear before this Court on November 10, 2006, at 10:00 a.m. for oral argument on Motion to Enforce His Plea Agreement. It is further



ORDERED that at the same time parties file any documents with the United States District Court for the Middle District of Florida Clerk's office, they shall contemporaneously file copies in the United States District Court for the Eastern District of Virginia Clerk's office and hand deliver two (2) courtesy copies of each document to the Judge's Chambers. Additionally, the parties are required to contact the Judge's Chambers and to provide electronic copies of any documents filed with the Clerk's office to Judge's Chambers.

The Clerk is directed to forward a copy of this Order to counsel of record.

ENTERED this 19th day of October, 2006.


Gerald Bruce Lee
United States District Judge

Alexandria, Virginia
10/19/06

Exhibit A

~~FILED~~

Filed
4-14-06

SEALED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

06-11-03-2 PM 12:25

UNITED STATES OF AMERICA

v.

CASE NO. 8:03-CR-77-T-30TBM

SAMI AMIN AL-ARIAN

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Paul I. Perez, United States Attorney for the Middle District of Florida, and the defendant, Sami Amin Al-Arian, and the attorneys for the defendant, William B. Moffitt and Linda G. Moreno, mutually agree as follows:

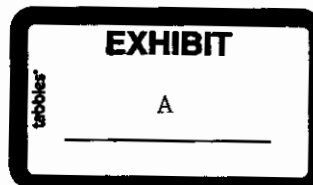
A. **Particularized Terms**

1. **Counts Pleading To**

The defendant shall enter a plea of guilty to Count Four of the Superseding Indictment. Count Four charges the defendant with Conspiracy to make or receive contributions of funds, goods or services to or for the benefit of the Palestinian Islamic Jihad, a Specially Designated Terrorist, in violation of 18 U.S.C. § 371.

Defendant's Initials SA

AF Approval [Signature]



~~2006~~
~~4-14-06~~

2. Maximum Penalties

Count Four carries a maximum sentence of five years imprisonment, a fine of \$250,000, and a term of supervised release of not more than three years. Each count carries a special assessment of \$50 per felony count for offenses committed prior to April 24, 1996, \$100 per felony count thereafter; for organizations the amounts are "\$200" and "\$400" respectively, said special assessment to be due on the date of sentencing.

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offenses with which defendant has been charged and to which defendant is pleading guilty. The elements of Count Four are:

- First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan;
- Second: That the object of the plan was to make or receive a contribution of funds, goods, or services, to, or for the benefit of, a Specially Designated Terrorist;
- Third: That the defendant, knowing the unlawful purpose of the plan, willfully joined in it;
- Fourth: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the "overt acts" described in the Superseding Indictment; and
- Fifth: That such "overt act" was knowingly committed at or about the time alleged in an effort to carry out or accomplish some object of the conspiracy.

Defendant's Initials SA

4. Utilization of the Sentencing Guidelines

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the Court determine the defendant's applicable guidelines range and defendant's guidelines sentence, with any applicable departures, pursuant to the United States Sentencing Guidelines.

5. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts One, Three, Seven, Nine, Thirty-Eight through Forty and Forty-Four will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

6. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida and the Counterterrorism Section of the United States Department of Justice agree not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office or the Counterterrorism Section at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

7. Sentencing Guideline Range

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the parties agree that the appropriate disposition of this case is a sentence within the guideline range of 46-57 months. The parties agree that the adjusted guideline level for the offense to which the defendant is pleading guilty is Level 26, to be reduced by 3 levels for acceptance of responsibility to a Level 23, and a criminal history of Category One. The Court may accept or reject this agreement, or defer a decision until it has had an opportunity to

Defendant's Initials *ST*

consider the presentence report prepared by the United States Probation Office. If the Court rejects this agreement, it must give the defendant an opportunity to withdraw the plea of guilty and advise the defendant personally that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

8. Deportation by the United States Immigration and Customs Enforcement - Stipulation and Cooperation

The defendant agrees to stipulate to deportation pursuant to section 238(c)(5) of the Immigration and Nationality Act (codified at 8 U.S.C. § 1228(c)(5)), and to cooperate with and provide to the United States Immigration and Customs Enforcement (ICE) prior to his transfer to ICE custody, any documentation necessary for the defendant's deportation to a country outside and not contiguous to the United States, including a travel document, validly issued by a country to the defendant. The defendant further agrees to arrange that said travel document will remain valid until the defendant has been successfully removed to the country that issued the travel document. The defendant agrees that the Court may make these provisions a condition of any sentence of probation or supervised release. Representatives of the Department of Justice agree to recommend to the Bureau of Immigration and Customs Enforcement that it expedite its efforts to execute the judicial order of deportation to be entered by the Court.

9. Recommendation as to Fine

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), at the time of sentencing, the United States agrees to make no recommendation as to the imposition or amount of a

Defendant's Initials

SH

fine. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

10. Recommendation as to Facility

The parties understand that: a) the defendant is free to ask the Court to recommend that the Bureau of Prisons designate a particular facility or type of facility in which the defendant should be detained for the remainder of his sentence in this matter; and b) the government defers to the Bureau of Prison to designate the facility and type of facility in which the defendant should be detained for the remainder of his sentence in this matter.

11. Low End

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), at the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a sentence at the low end of the applicable guideline range, as calculated by the Court. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Defendant's Initials SP

B. Standard Terms and Conditions

1. Monetary Penalties

The defendant understands that the Court will inform and determine that the defendant understands the maximum monetary penalties pursuant to Fed. R. Crim. P. 11(b)(1)(H - L). On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offenses to which the defendant is pleading provide for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the counts to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Defendant's Initials

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office and the United States Probation Office, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition.

4. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

5. Appeal of Sentence-Waiver

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to

Defendant's Initials SA

appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by Title 18, United States Code, Section 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by Title 18, United States Code, Section 3742(a).

6. Department of Justice Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and the Counterterrorism Section of the Department of Justice and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

Defendant's Initials SA

8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also

Defendant's Initials

SA

understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

a. During the period of the late 1980s, and early to mid-1990s, defendant Al-Arian was associated with several organizations, including the Palestinian Islamic Jihad. Defendant Al-Arian knew that co-defendants Ramadan Abdullah Shallah (Shallah), Bashir Musa Mohammed Nafi (Nafi) and Mazen Al-Najjar (Al-Najjar) were also associated with the Palestinian Islamic Jihad.

b. On or about January 23, 1995, President William Clinton issued Executive Order 12947, which declared a national emergency regarding the grave acts of violence committed by foreign terrorists that disrupted the Middle East Peace Process. Executive Order 12947 prohibited certain transactions, including the making or receiving or any contribution of funds, goods, or services, to or for the benefit of organizations and individuals who were declared "Specially Designated Terrorists." Executive Order 12947 also made unlawful any transaction that evaded or avoided, or had the purpose of evading or avoiding, or attempted to violate, any of the prohibitions

Defendant's Initials

SA

set forth in the Order. By January 24, 1995, the United States had designated the Palestinian Islamic Jihad, Sheik Abd Al Aziz Awda and Fathi Shiqaqi as Specially Designated Terrorists. Later that year, in November, 1995, the United States designated Ramadan Shallah as a Specially Designated Terrorist.

c. Defendant Al-Arian performed services for the PIJ in 1995 and thereafter.

d. Such services included filing for immigration benefits for individuals associated with the PIJ, hiding the identities of individuals associated with the PIJ, and providing assistance for an individual associated with the PIJ in an United States Court proceeding. The services are described with more particularity in the following paragraphs.

e. On or about February 6, 1995, defendant Al-Arian had a telephone conversation with a co-conspirator and discussed the recent Presidential Executive Order against terrorists.

f. Defendant Al-Arian was aware that the PIJ achieved its objectives by, among other means, acts of violence.

g. On or about August 25, 1995, defendant Al-Arian filed a visa renewal petition with the INS on behalf of co-defendant Nafi.

h. On or about September 1, 1995, co-defendant Al-Najjar wrote a \$5,000 check drawn on the Muslim Women Society (MWS) account, payable to World and Islam Studies Enterprise (WISE) which was deposited into the WISE account.

i. On or about October 25, 1995, co-defendant Al-Najjar executed an Affidavit filed with the INS in support of Nafi's alien employment petition. In the Affidavit, Defendant's Initials SA

Al-Najjar stated that he and defendant Al-Arian had sufficient financial means to fund Nafi's salary. Al-Najjar further stated that in 1993, he contributed \$36,000 to WISE and that in January and February 1994, he had in excess of \$50,000 available to support the operations of WISE.

j. On or about October 30, 1995, in the early morning hours, defendant Al-Arian received a telephone call from a co-conspirator in which the co-conspirator asked whether defendant Al-Arian had heard that Fathi Shiqaqi had been killed. Defendant Al-Arian indicated that he had heard and then refused to talk. Later that day, he had a telephone conversation with Al-Najjar. Defendant Al-Arian indicated he wanted to meet with Al-Najjar.

k. On or about October 30, 1995, co-defendant Nafi made a telephone call to defendant Al-Arian. Nafi whispered during this conversation and defendant Al-Arian said the matter had been complicated and inquires had begun.

l. On or about October 30, 1995, defendant Al-Arian had a telephone conversation with a journalist with The St. Petersburg Times. When the journalist asked about Shallah being named the Secretary General of the PIJ, defendant Al-Arian falsely stated that Shallah's name must have been mixed up with someone else and falsely stated he only knew Ramadan Abdullah Shallah as Ramadan Abdullah. Later, defendant Al-Arian had another telephone conversation with a journalist with The St. Petersburg Times. During this conversation, defendant Al-Arian expressed shock and surprise and falsely stated there was nothing Shallah had done while at WISE to indicate any political affiliation. Defendant Al-Arian falsely stated that Shallah was not

Defendant's Initials

SA

involved in any political activities while at WISE and that Shallah had been engaged in only scholarly work.

m. On or about October 31, 1995, defendant Al-Arian and co-defendant Al-Najjar caused a facsimile to be sent from WISE which explained its mission and its experience with Shallah and falsely denied any knowledge of Shallah's association or affiliation with any political group in the Middle East.

n. On or about August 7, 2000, defendant Al-Arian, who was in the Middle District of Florida, had a telephone conversation with co-defendant Nafi, who was in England, about utilizing a contact of Nafi's in Egypt to obtain travel documents for Al-Najjar. They then spoke about Nafi's problems with his immigration status in the United States. Then they had a coded conversation about the account to which Nafi had sent money to assist in the defense of co-defendant Al-Najjar's ongoing INS proceeding.

o. On or about August 8, 2000, defendant Al-Arian, who was in the Middle District of Florida, called a co-conspirator, who was outside the State of Florida. When defendant Al-Arian asked co-conspirator if any thing was deposited in his account or his wife's account, the co-conspirator replied there were "ten shirts" (referring to a sum of money). Defendant Al-Arian then directed the co-conspirator to send nine of them to the account of another co-conspirator.

p. Later in the day on August 8, 2000, defendant Al-Arian, who was in the Middle District of Florida, had a telephone conversation with co-defendant Nafi, who was outside the State of Florida, and told Nafi that the issue of "the magazines" (referring to a sum of money) was resolved, but the travel document had not been

Defendant's Initials

SA

received from Egypt. They then discussed utilizing the press to support Al-Najjar in his INS hearing by setting up an interview with Abd Al Aziz Awda (Awda) to show that he had the permission of the Israelis to reside in the Gaza Strip. Defendant Al-Arian then asked Nafi for Awda's telephone number. Nafi told him to call back the next day to get the number. Additionally, they discussed Nafi's response to allegations in the press that he was a member of the PIJ.

q. On or about August 8, 2000, defendant Al-Arian directed co-defendant Hatem Najl Fariz (Fariz) to arrange a newspaper interview with Awda.

r. On or about August 9, 2000, defendant Al-Arian and co-defendant Fariz had a telephone conversation about causing one or more newspaper articles to be written on Awda. They desired to utilize these articles in the INS hearing regarding Al-Najjar and wanted them to portray Awda as a religious figure with no relation to the PIJ.

10. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

Defendant's Initials

SA

11. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 28th day of February, 2006.

PAUL I. PEREZ
United States Attorney

By: Terry A. Zitek
Terry A. Zitek
Executive Assistant United States Attorney

Sami Amin Al-Arian
Sami Amin Al-Arian
Defendant

William B. Moffitt
William B. Moffitt
Attorney for Defendant

James R. Klindt FOL
James R. Klindt
First Assistant United States Attorney

Linda G. Moreno
Linda G. Moreno
Attorney for Defendant